

Proposed Guide

19 September 2013

Comments requested by 31 October 2013



Proposed Guide for Registered Auditors

Engagements on Attorneys' Trust Accounts

REQUEST FOR COMMENTS

The Committee for Auditing Standards (CFAS) of the Independent Regulatory Board for Auditors (IRBA) approved this proposed Guide for Registered Auditors: *Engagements on Attorneys' Trust Accounts* (the proposed Guide) in August 2013 for exposure for a period of 60 days for comment. The proposed Guide may be modified in light of comments received, before being issued in final form.

This proposed Guide has been prepared by a CFAS Task Group comprising representatives of the relevant Law Societies, technical staff from the IRBA, and auditors with experience in reporting on Attorneys Trust Accounts.

The IRBA's legislative mandate

The objects of the Auditing Profession Act, 2005 (Act No 26 of 2005) (the "Act") are set out in section 2 and include, inter alia:

- (c) *"to approve the development and maintenance of internationally comparable ethical standards and auditing standards for auditors that promote investment and as a consequence employment in the Republic; and*
- (d) *to set out measures to advance the implementation of appropriate standards of competence and good ethics in the auditing profession;"*

To give effect to the objects of the Act, section 4 of the Act sets out the general functions of the Regulatory Board (the "IRBA"), including that *"the Regulatory Board must, in addition to its other functions provided for in this Act"* take steps to meet certain specific requirements. These include section 4(1) which specifies that the IRBA must:

- (c) *"prescribe standards of professional competence, ethics and conduct of registered auditors;" and*
- (e) *"prescribe auditing standards".*

To enable the IRBA to meet these requirements, section 4(2)(a) states that *"the IRBA may participate in the activities of international bodies whose main purpose it is to develop and set auditing standards and to promote the auditing profession;"*.

Statutory responsibility of the CFAS

The statutory responsibility of the CFAS is set out in section 22(2) which requires that *"the CFAS must assist the IRBA to:*

- (a) *develop, maintain, adopt, issue or prescribe auditing pronouncements;*
- (b) *consider relevant international changes by monitoring developments by other auditing standard-setting bodies and sharing information where requested; and*
- (c) *promote and ensure the relevance of auditing pronouncements.*

The proposed Guide may be downloaded free-of-charge from the IRBA website at: www.irba.co.za.

Comments should be submitted by **30 October 2013**.

Respondents are requested to submit their comments electronically in a Word and .pdf format to the Director: Standards, Sandy van Esch svanesch@irba.co.za or to standards@irba.co.za. All comments will be considered a matter of public record and will be posted on the IRBA website, www.irba.co.za. Comments may also be faxed for the attention of the Director: Standards at +27 086 575 6535 or mailed to:

REQUEST FOR COMMENTS

The Director: Standards
The Independent Regulatory Board for Auditors
P O Box 8237
Greenstone1616
South Africa

Should you have any queries, or experience any technical difficulties in downloading the documents, please e-mail the Standards Department at: standards@irba.co.za or contact:

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EXPLANATORY MEMORANDUM

Introduction

This memorandum provides background to and an explanation of this proposed Guide for Registered Auditors: *Engagements on Attorneys Trust Accounts* (the proposed Guide). This proposed Guide replaces the previous *SAICA Guide: Guidance for Auditors, The Audit of Attorneys Trust Accounts in terms of the Attorneys Act, No 53 of 1979, and the applicable rules of the Provincial Law Societies* (issued June 2004) (the SAICA Guide) which is to be withdrawn.

The Committee for Auditing Standards (CFAS) approved this proposed Guide in August 2013.

Background

This proposed Guide provides guidance to the registered auditor when performing a reasonable assurance engagement on whether an attorney's trust accounts complies with Sections 78(1), 78(2)(a) and (b), 78(2A), 78(3), 78(4) and 78(6) of the Attorneys' Act, No 53 of 1979 (the "Act") and the Accounting Rules of the relevant Law Society, and also to report on the Attorney's Annual Statement on Trust Accounts.

This proposed Guide has been prepared on the basis of the present accounting rules of each Law Society and will be updated when the proposed Uniform Rules, which have been drafted, are approved and issued.

This proposed Guide deals with the special circumstances applicable to an attorney's trust accounts, including the nature and characteristics of attorneys' trust accounts and the nature of an engagement to report thereon. The proposed Guide emphasises professional competencies, professional scepticism, and special considerations applicable to fraud and theft in the specific circumstances of an auditor's engagement on attorneys' trust accounts.

External confirmations from financial institutions

The South African Auditing Practice Statement (SAAPS) 6 *External Confirmations from Financial Institutions* provides guidance to registered auditors (auditors) in implementing the requirements of the IAASB's International Standard on Auditing (ISA) 505 *External Confirmations* when obtaining external confirmations from financial institutions was issued by the IRBA in July 2013. SAAPS 6 is effective for external confirmation requests issued on or after **1 October 2013** and should be applied by auditors when requesting external confirmation of attorney's trust accounts from banks and other financial institutions.

Project timetable

Subject to comments received on exposure of this proposed Guide, the CFAS intends to finalise the Guide in the last quarter of 2013.

Effective date

Depending on comments received, it is anticipated that the final Guide may be recommended by CFAS in November 2013 for approval by the IRBA Board and issued in December 2013. If so, a possible effective date for implementation of the Guide may be applicable to auditors' engagements commencing on or after 1 March 2014.

The Provincial Law Societies will require the illustrative auditors' reports in the format in Appendices 4 and 5, as applicable, and the Attorney's Annual Statement on Trust Accounts set out in Appendix 6, to be provided for auditors' reports submitted on or after 1 March 2014.

The CFAS is interested in whether an effective date of 1 March 2014 would permit sufficient time for implementation of the guidance contained herein, by auditors performing such engagements.

Guide for respondents

The CFAS welcomes comments on all matters addressed in the exposure draft. Comments are most helpful when they refer to specific paragraphs, include the reasons for the comments, and where appropriate, make specific suggestions for any proposed changes to wording. When a respondent agrees with the proposals in this exposure draft it will be helpful for the CFAS to be made aware of this view.

Request for specific comments

Comments on any aspects of the proposed Guide are welcome. Respondents are requested, in particular, to comment on the following:

1. Do respondents agree that an assurance engagement on attorneys' trust accounts is an ISAE 3000 engagement?
If not, what kind of engagement is it? Please motivate your response.
2. Do respondents agree with the emphasis on professional competencies (paragraph 46), professional scepticism (paragraphs 47 and 48), and the special considerations applicable to fraud and theft (paragraphs 49 to 57)?
If you do not agree, please motivate your disagreement.
3. Do respondents agree that the an engagement on attorneys trust accounts meets part (b) of the definition of 'Audit' contained of the Auditing Profession Act, 2005, and that, accordingly, the registered auditor undertaking the engagement on attorneys trust accounts is subject to the requirements of section 45, *Duty to Report on Irregularities* (see paragraph 26)?
If you do not agree, please motivate your disagreement.
4. Do respondents agree with the layout and wording of the illustrative auditor's reports (seen appendices 4 and 5)? If not please suggest alternatives.
5. Do respondents agree with the layout and wording of the Attorney's Annual Statement on Trust Accounts (Appendix 6)? If not please suggest alternatives.
6. Are there any other aspects of this proposed Guide that respondents disagree with? Please provide details and suggestions for correction and/or improvements.
7. Do respondents believe that the proposed effective date to be applied by auditors, for engagements on attorneys' trust accounts commencing on or after 1 March 2014, will enable sufficient time for implementation of the guidance contained herein? If not, what effective date will be practicable?

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ENGAGEMENTS ON ATTORNEYS' TRUST ACCOUNTS**
(Effective <insert date>)

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This proposed *Guide for Registered Auditors: Engagements on Attorneys Trust Accounts* provides guidance to registered auditors (auditors) in implementing the requirements of the IAASB's *International Standards on Assurance Engagements* (ISAEs), and relevant *International Standards on Auditing* (ISAs), when performing assurance engagements on attorneys' trust accounts as required by the Attorney's Act, No 53 of 1979 and Rules of the relevant Provincial Law Society.

Guides are developed by the Committee for Auditing Standards 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 Standards 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 or related services engagement.

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.

An auditor should be aware of, and comply with, any legislation or regulations applicable to the audit in the conduct of the engagement. A court of law, and in the event of an Inspection or Investigation, the IRBA, when considering the adequacy of the work of an auditor, is likely to seek confirmation that, in the performance of the assurance engagement work, the auditor has complied, in all material respects, with requirements in the auditing pronouncements.

Introduction

Scope of this Guide

1. The scope of this Guide is to provide guidance to registered auditors on engagements on attorneys trust accounts.
2. The guidance relates to understanding the nature and characteristics of attorneys trust accounts and the nature and extent of work in the engagement, and emphasises professional competencies and professional scepticism. The proposed Guide also provides illustrative auditor's reports on reporting compliance with the Sections 78(1), 78(2)(a) and (b), 78(2A), 78(3), 78(4) and 78(6) of the Attorneys' Act, No 53 of 1979 (the "Act") and the Accounting Rules of the relevant Law Society (the "Rules"), and also to report on the Attorney's Annual Statement on Trust Accounts, in the circumstances most likely to be encountered by the auditor.
3. This proposed Guide has been prepared on the basis of the present Accounting Rules of each Law Society and will be updated when the proposed Law Society of South Africa's *Uniform Rules*, which have been drafted, are approved and issued.
4. There is an expectation by the Attorneys Fidelity Fund, the relevant Law Societies, financial institutions, attorneys' clients and members of the public, for the auditor of an attorney's trust accounts to detect fraud and theft, whereas the main objective of an engagement on an attorney's trust accounts is for the auditor to evaluate whether an attorney's trust accounts were maintained in compliance with the Act and Rules. Accordingly the proposed Guide contains special considerations applicable to fraud and theft in the specific circumstances of an engagement on attorneys trust accounts.
5. This Guide does not provide guidance in respect of the audit of an attorney's financial statements which must be conducted in accordance with *International Standards on Auditing* (ISAs).

Purpose of an engagement on attorney's trust accounts

6. The main purpose of an engagement on an attorney's trust accounts is for the auditor to express a reasonable assurance opinion on whether, for the relevant financial period, the attorney's trust accounts were maintained in compliance with the Act and Rules.
7. The secondary purpose is for the auditor to agree the information extracted from the accounting records and included in the attached Attorney's Annual Statement on Trust Accounts (Appendix 6) to the underlying records that were the subject of the engagement on the compliance of the attorneys trust accounts with the Act and Rules.
8. The auditor is also required to read the attorney's representations and the other disclosures in the Attorney's Annual Statement on Trust Accounts for the purpose of identifying material inconsistencies with the auditor's knowledge obtained in the engagement on compliance of the attorney's trust accounts with the Act and Rules.

Nature of engagement on attorneys trust accounts

9. An engagement on attorneys trust accounts is an assurance engagement within the scope of the ISAE 3000, *Assurance Engagements Other Than Audits or Reviews of Historical Financial Information*. Although ISAs and ISREs do not apply to engagements covered by ISAEs, they may nevertheless provide guidance to an auditor¹ in this engagement. The auditor is not required to express an assurance opinion on the Attorney's Annual Statement on Trust Accounts.

Effective date

10. This Guide is effective for engagements to report on attorneys trust accounts commencing for periods beginning on or after <insert date>. Early adoption is encouraged.

Definitions

11. For purposes of this Guide, the following terms have the meanings attributed below:

Act - the Attorneys Act No. 53 of 1979;

Auditor - the term 'auditor' used in the Act and Rules refers to an auditor who is registered as an auditor in terms of the Auditing Profession Act, 2005, who engages in public practice as an auditor registered in terms of that Act. The term "auditor" used in this Guide is the duly appointed auditor of the entity that has been engaged to conduct an audit of an attorney's financial statements. The term also refers to a registered auditor who is engaged to conduct an audit of an attorney's trust accounts when an audit of an attorney's financial statements is not required.

Assurance report – is the assurance report contemplated in ISAE 3000, which is prepared and signed off by a registered auditor

Attorney - any person duly admitted to practice as an attorney in any part of the Republic;²

Code - the Independent Regulatory Board for Auditors' (IRBA) *Code of Professional Conduct for Registered Auditors*;

Firm or practice - the incorporated company, partnership, or sole practitioner in which the attorney practices;

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 advantage³;

Fraud risk factors - are events or conditions that indicate an incentive or pressure to commit fraud or provide an opportunity to commit fraud⁴;

IRBA - Independent Regulatory Board for Auditors;

¹ ISAE 3000 *Assurance Engagements Other Than Audits or Reviews of Historical Financial Information* (ISAE 3000) paragraph 3

² Attorneys Act No. 53 of 1979.

³ ISA 240 *The auditor's responsibilities relating to fraud in an audit of financial statements*, paragraph 11(a).

⁴ ISA 240 paragraph 11(b)

ISAE 3000 – refers to the IAASB's International Standard on Assurance Engagements (ISAE) 3000, *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*.

Management - the attorney(s) responsible for the management of the Firm;

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 an attorney's trust accounts.

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 evidence⁵;

Registered auditor - a registered auditor as defined in the Auditing Profession Act, 2005 and referred to hereafter as the 'auditor';

Republic - the Republic of South Africa;

Rules Regarding Improper Conduct - the IRBA Rules Regarding Improper Conduct.

Service activities – the transactions of an attorney'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 which falls within the scope of an attorneys legal practice, that gives rise to money, or other property, being held in the attorneys' trust accounts and for which the attorney is responsible and accountable.

Trust Accounts - in relation to an attorney, means an account comprising-

- (a) The trust banking account(s) referred to in section 78(1) of the Act; or
- (b) Any trust savings or other interest-bearing account referred to in sections 78(2)(a) and 78 (2A) of the Act.

Trust account transactions – the transactions in an attorney's trust accounts, comprising receipts, payments and transfers, non-recurring, unusual transactions or adjustments, in accordance with the terms of the mandate relating to each transaction.

Trust account balance(s) – the balance(s) due after the trust account transactions.

The Act and Rules⁶

12. The requirements of Sections 78 of the Act are intended to ensure that proper accounting records are kept by an attorney relating to that attorney's trust accounts. Proper records are intended to ensure that monies received from an attorney's client are both preserved and dealt with in terms of the mandate to the attorney. The accounting rules impose duties on an attorney to ensure that the necessary accounting records relative to the attorney's trust accounts are kept properly, and that an auditor is appointed who is required to report to the Council of the relevant Law Society in accordance with the duties assigned to the auditor.

⁵ IFAC *Glossary of Terms (February 2009)*

⁶ The Act uses the words "*practising practitioner*" and "*attorney*" interchangeably. For the purposes of this guide reference will be made interchangeably to the words "*practitioner*" or "*attorney*".

13. Relevant Extracts from the Act affecting Trust Accounts, and Rules affecting the appointment of the auditor, the auditor's right of access to the accounting records and the duties of the auditor, are given in Appendix 7. Reading these extracts is not a substitute for reading and understanding the requirements of the Act and Rules.
14. The requirements of the Rules, the assessed assurance engagement risks and responses to the risks are given in Appendix 1

Understanding the nature and characteristics of an attorney's trust account and compliance with the Act and Rules as evaluated by the auditor

15. The accounting records of an attorney relate to all moneys received and expended by the attorney, including monies deposited to a trust account, or invested in a savings or other interest bearing account; and all transactions relating to the attorney's business
16. An attorney's trust accounts relate to records of deposits, withdrawals, transfers to and from the attorney's business account and balances on hand, by persons other than the attorney⁷. The resulting balance from these and related transactions, which include fees paid to the attorney and any adjusting journal entries, are in terms of the mandate to the attorney and is the amount due by persons other than the attorney. Transactions not in terms of the mandate of the persons other than the attorney may result in balances incorrectly reflected in the trust ledger.
17. An attorney's business 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 attorney.
18. An attorney's financial statements are prepared from the transactions which pass through the attorney's business and trust accounts. However, as the trust bank accounts and the trust balances are not the respective assets and liabilities of the attorney, there is no disclosure of those balances in the attorney's financial statements, nor is there disclosure of transactions, including interest earned on balances in trust bank accounts and payable to the Attorneys Fidelity Fund. Accordingly, the auditor's engagement on an attorney's financial statements only covers the attorney's trust accounts to the extent that these may affect the auditor's opinion on the financial statements, while the auditor's engagement of on attorneys trust accounts only covers the attorney's financial statements to the extent that these may affect the auditor's opinion on the trust accounts in compliance with the Act and Rules.
19. An attorney's annual statement on attorney's trust accounts (Appendix 6) is prepared by the attorney and contains certain financial information extracted from the accounting records of the attorney relating to the trust accounts and trust bank balances and interest and certain declarations by the attorney, as required by the Law Society and Attorneys Fidelity Fund.

⁷ Connected persons – e.g. conveyancing transactions, where the attorney acts for the seller, but also, to a certain extent, has a fiduciary duty toward the purchaser.

20. The Rules require the keeping of identified accounting records relating to both an attorney's business and trust accounts, and the procedures applicable to maintaining those records, including adequate narrative so that trust transactions may be understood by persons not familiar with the transactions.
21. The auditor of the attorney's trust accounts performs sufficient work to:
 - a) evaluate whether the identified records were maintained in compliance with the Act and applicable Rules and whether trust account transactions were in accordance with the client mandate, including whether transactions were supported by adequate documentation or explanation; and
 - b) be able to report the auditor's findings on the Attorneys Annual Statement on Trust Accounts.
22. The auditor's report on an attorney's trust accounts is required by the relevant Law Society so that the attorney may obtain an annual Fidelity Fund Certificate⁸.

The engagement and the registered auditor

23. There is no requirement in the Act or Rules for an attorney's financial statements to be audited. Any such requirement emanates from another Act, such as the Companies Act. However, an attorney is required by the Rules to engage a registered auditor to undertake an engagement on the attorney's trust accounts whether or not the financial statements have been audited and whether or not by that auditor. Accordingly, the registered auditor undertaking an engagement on Attorneys Trust Accounts need not be the auditor of the entity. However, this is unlikely.
24. The auditor undertaking an engagement on an attorney's trust accounts requires access to the accounting records relative to the attorney's business and trust account transactions for the purpose of evaluating whether the attorney's trust accounts were maintained in compliance with the Act and Rules.
25. An auditor accepting an engagement to report on an attorney's trust accounts is reminded of the requirement of paragraph 15 of ISAE 3000 to obtain an understanding of the Act and Rules and the engagement circumstances. The auditor is also reminded of the additional 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 does not, as a result, possess an audit level of knowledge of the entity.
26. An auditor accepting an engagement on an attorney's trust accounts is also reminded of the requirement of paragraph 9 of ISAE 3000, that the auditor should only accept the engagement (or continue where applicable) when the auditor is satisfied that those persons who are to perform the engagement collectively possess the necessary professional competencies. An auditor who is professionally competent to audit financial statements may not have the specialized skills and knowledge necessary to undertake an audit on an attorney's trust accounts.
27. An engagement on attorneys trust accounts meets part (b) of the definition of 'Audit' contained of the Auditing Profession Act, 2005. Accordingly, the registered auditor undertaking the engagement on attorneys trust accounts is subject to the requirements of section 45, Duty to Report on Irregularities.

⁸ Refer Sections 41, 42 and 43 of the Attorneys' Act, No. 53 of 1979

Respective roles and responsibilities

Attorney

28. The attorney is responsible for ensuring that the attorney's trust accounts are maintained in compliance with the Act and the Rules, and for such internal control as the attorney determines is necessary to maintain the integrity of the trust accounts in accordance with the relevant mandates, including such controls as the attorney determines is necessary to prevent and detect fraud and theft. The attorney is also responsible for the preparation of the attorney's annual statement on trust accounts.

Auditor

29. The auditor is responsible for expressing a reasonable assurance opinion on the compliance of the attorney's trust accounts, in all material respects, with the Act and Rules, based on the auditor's procedures performed, and to report the auditor's findings on the Attorney's Annual Statement on Trust Accounts.
30. The auditor is reminded that the involvement of the engagement partner is required throughout the engagement.

Auditor's assurance report

31. The auditor's assurance report content follows the guidance in paragraphs 49 and 50 of ISAE 3000.
32. The auditor's responsibility paragraph states inter-alia that:

"A reasonable assurance report in accordance with ISAE 3000 involves performing procedures to obtain evidence about the compliance of the attorney's trust accounts with the Act and Rules. The nature, timing and extent of procedures selected depend on the auditor's judgement, including the assessment of the risks of non-compliance with the Act and Rules, whether due to fraud and error. In making those risk assessments we considered internal control relevant to the circumstances of the engagement. A reasonable assurance engagement includes:

 - a) Considering and applying when considered applicable in the engagement circumstances, the guidance in the Guide on Engagements on Attorneys' Trust Accounts issued by the Independent Regulatory Board for Auditors.
 - b) Inquiries of the attorney and the attorney's staff.
 - c) Testing of transactions for all significant activities with the objective of evaluating whether (1) transactions were appropriately identified as trust transactions, (2) trust transactions were in accordance with mandates and supported by adequate documentation and narrative to identify from whom funds were received, and for whose credit, and (3) deposits and withdrawals from the trust bank account were to, or for, a trust creditor and that transfers to the attorney's business account were only in respect of moneys claimed to be due to the attorney.

- d) Testing and/or scrutinising bank reconciliations, as considered appropriate in the engagement circumstances, and evaluating whether confirmations from financial institutions were in support of the records made available to us.⁹
33. Illustrative assurance reports are dealt with in paragraphs 69 to 71, with illustrative unqualified and qualified reports in Appendices 5 and 6.

Relevant Law Society

34. The relevant Law Society is responsible for establishing an investigation (whether forensic or otherwise) and a disciplinary process and taking appropriate action against attorneys who do not comply with the Act and/or the Rules.
35. The relevant Law Society may communicate, at the request of the auditor, any complaints that come to the attention of that Law Society in respect of an attorney.
36. It is the responsibility of the relevant Law Society to examine the auditor's report on an attorney's trust accounts and make a decision on whether or not to accept the auditor's report in support of the decision to issue an annual Fidelity Fund Certificate.

Law Society of South Africa

37. The Law Society of South Africa promotes the common interests of its members, having regard at all times to the broader interests of the community, business, public sector or general public whom the profession serves. It is an industry body and not a regulator.

Attorneys Fidelity Fund

38. The Attorneys' Fidelity Fund¹⁰, inter alia, is the recipient of claims made against the Fund by persons for compensation for theft of money or other property entrusted to an attorney other than funds held by an attorney under investment mandates.

Internal control

39. There is no specific requirement in the Act and Rules for the auditor to report on material deficiencies in internal control that have come to the auditor's attention in the course of the auditor's engagement on an attorney's trust accounts.
40. The auditor does not express an opinion on the attorney's internal control relevant to the application of the Rules. The auditor draws from ISA 260 *Communication of Audit Matters with Those Charged with Governance*, which applies to an audit of financial statements, and communicates appropriately to the directors and management (those charged with governance) deficiencies in internal control, that have come to the auditor's attention. In addition the Rules inter-alia require the auditor to report to the relevant Law Society if, at any time, during the discharge of his functions and duties, any material queries regarding its accounting records which he has raised with the firm, have not been dealt with to his satisfaction. This includes deficiencies in internal control.

⁹ See SAAPS 6, External confirmations from Financial Institutions.

¹⁰ Refer section 26 of the Attorney's Act for the responsibilities of the Attorney's Fidelity Fund.

Nature and extent of the auditor's work

41. The nature and extent of work performed is that required to express a reasonable assurance opinion on the compliance of the attorney's trust accounts with the Act and Rules, any exceptions that came to the auditor's attention are listed in the auditor's qualified report (refer to Appendix 5) or any explanation provided as to why the auditor is unable to express an opinion.
42. In an engagement on an attorney's trust accounts the auditor may design and perform tests of controls following the auditor's evaluation of internal control. Notwithstanding that the auditor may choose to rely on controls, the extent of testing for compliance is likely to be greater, rather than lesser, especially as the auditor is evaluating compliance with all the Rules and, because trust account transactions are not necessarily homogenous, any testing of internal control and transactions covers all significant trust account activities.
43. In the engagement on extracted information the auditor agrees the financial information contained in the attorney's annual statement on trust accounts to the underlying records that were the subject of the compliance engagement.

Materiality

44. The auditor's determination of materiality is a matter of professional judgement. In the context of an engagement on attorneys trust accounts there is little room for judgement as the Rules are drafted for compliance and are not audited to levels of materiality as in an audit of financial statements, which are also prepared and presented to levels of materiality. Consequently, any instance of non-compliance identified in the course of the assurance engagement, irrespective of materiality, is to be reported in the auditor's qualified report.

Ethical requirements and quality control

45. The auditor is required to comply with the requirements of the IRBA *Code of Professional Conduct for Registered Auditors*.
46. The auditor is also required to implement quality control procedures that are applicable to this engagement in accordance with ISQC 1 *International Standard on Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information and Other Assurance and Related Services Engagements*.

Agreeing the terms of the engagement

16. The auditor agrees on the terms of the engagement with the attorney in an engagement letter or other suitable form of contract. Refer to Appendix 2 for an illustrative engagement letter.

Emphasis on professional competencies

47. The professional competencies of the auditor that accepts an engagement to report on an attorney's trust accounts, and the auditor's staff assigned to the engagement, includes knowledge of the Act and Rules sufficient to enable the auditor to conduct the engagement, including an ability to evaluate whether there has been compliance with the Act and Rules, and an understanding of the risks

of fraud and theft relative to an attorney's trust accounts. If the auditor does not have the professional competencies the auditor does not accept the engagement.

Emphasis on professional scepticism

48. The auditor exercises professional scepticism throughout the engagement with emphasis on assessing the risks of fraud and theft, and determining whether there is any suspicion of misappropriation arising from fraud and theft and in performing procedures in response to such suspicion.
49. The auditor recognises the possibility that misappropriation due to fraud or theft may exist, notwithstanding the auditor's past experience with the firm with respect to the honesty and integrity of the attorney (which includes 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 activities of the attorney's practice may indicate the existence of fraud risk factors.

Emphasis on special considerations applicable to fraud and theft

50. The guidance in International Standard on Auditing (ISA) 240, *The Auditor's Responsibility to Consider Fraud in an Audit of Financial Statements*, may be adapted and used by the auditor in an engagement on attorneys trust accounts. The auditor is advised to consider the Appendices to ISA 240 in identifying and assessing fraud risk factors.
51. The inquiries of an attorney by the auditor include obtaining knowledge of the attorney's understanding regarding the accounting and internal control systems in place to prevent and detect fraud and error, and assessing how the attorney is discharging those responsibilities and whether the attorney is aware of any known fraud that has affected the attorney's practice or suspected fraud that the practice may be investigating.
52. The nature, extent and frequency of the attorney's assessment of the risk of fraud and error are relevant to the auditor's understanding of the control environment. When the attorney has not made an assessment of the risk of fraud and error it may be indicative of the lack of importance attached by that attorney to internal controls.
53. When an attorney places strong reliance on trusted individuals with poor or non-existent segregation of duties and an absence of independent review over financial statements and reconciliations, experience has shown that it is easy for dishonest persons not only to misappropriate funds with alacrity and ease, but also to cover their tracks to avoid detection.
54. In addition to enquiries of the attorney, 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 affecting the firm. It should be noted that, although the auditor's inquiries of the attorney may provide useful information concerning the risks of misappropriations from the attorneys' trust accounts resulting from employee fraud, such inquiries are unlikely to provide useful information regarding the risks of misappropriations resulting from management fraud. Making inquiries of others within the firm, in addition to the attorney, may be useful in providing the auditor with a perspective that is different from that provided by the attorney.

55. Examples of fraud risk factors in respect of attorneys' trust accounts which the auditor should be aware of:
- Firms that do not have a good reputation;
 - Firms that receive adverse media reporting;
 - Firms managed by sole directors or sole practitioners;
 - 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 accounting records properly which includes proper narrative for each transaction (so that transactions and balances may be identified by persons not familiar with the transactions);
 - Poor state of 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 Rules;
 - Incomplete accounting records, including business accounting records and poor filing procedures;
 - Unauthorised journal entries passed through an attorney's trust accounts;
 - Journal entries that are passed over weekends, on public holidays or at period-end;
 - A high volume of unidentifiable receipts;
 - Transfers in rounded amounts, especially at period end;
 - Unusual transactions;
 - Unusual service activities;
 - A high incidence of claims paid by the Attorneys Fidelity Fund classified by type of service activity carried on by the attorney and when conveyance and personal accident service activities of firms are the largest contributors to claims paid¹¹;
 - Poor segregation of duties within the firm and reliance on key persons;
 - Contravention of any applicable legislation, for example:
 - Financial Intelligence Centre Act (FICA);
 - Financial Advisory and Intermediary Services Act (FAIS)
 - Prevention of Organised Crimes Act (POCA);
 - Income Tax Act;
 - VAT Act;
 - Foreign exchange regulations;
 - Any other unusual behaviour observed.

¹¹ This information can be obtained from the Fund's website at www.fidfund.co.za

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. In part to corroborate the responses to the inquiries from the attorney, the auditor considers inquiring from the relevant Law Society and the Attorneys Fidelity Fund regarding any complaints in respect of management of trust monies by the firm.
58. Where instances of potential or alleged fraud have been identified, the auditor should immediately discuss these with the attorney and report these to the relevant Law Society, without necessarily waiting for the forensic investigators.

Compliance with law and regulation

59. The auditor also considers the guidance in ISA 250 *Consideration of Laws and Regulations in an Audit of Financial Statements*, Any instances of non-compliance are reported as matters coming to the attention of the auditor.
60. As part of obtaining an understanding of the entity and its environment, the auditor¹² obtains a general understanding of:
 - (a) The legal and regulatory framework applicable to the profession and the service activities provided by the attorney's firm; and
 - (b) How the firm is complying with that framework.¹³
61. The auditor may, for example:
 - Use the auditor's existing understanding of the attorney's profession, 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 fund transactions in the attorney's trust account; and
 - Inquire of the attorney concerning the attorney's policies and procedures to ensure compliance with the Act and Rules and other laws and regulations.
62. If the auditor becomes aware of information concerning an instance of non-compliance or suspected non-compliance with the Act and 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 attorney's trust account.
63. 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 attorney or firm by the applicable Provincial Law Society, any regulatory organisations, government departments or evidence of payment of fines or penalties;

¹² Including the engagement team

¹³ ISA 250, paragraph 12.

- Payments for unspecified services or loans to consultants, related parties, employees or government employees not in accordance with the service activity or client mandate.
- Unusual payments in cash, purchases in the form of cash cheques payable to bearer or transfers to numbered bank accounts;
- Unusual trust fund transactions 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 fails, whether by design or by accident, to provide an adequate audit trail or sufficient evidence;
- Unauthorised transactions or improperly recorded transactions;
- Adverse media comment.

Written representations by an attorney

64. The auditor obtains written representations in respect of the attorneys' trust accounts from the attorney. It should be noted that representations by an attorney do not replace other evidence the auditor reasonably expects to be available. Appendix 3 contains an illustrative representation letter.

Subsequent events

65. The auditor considers the effect on the attorney's trust accounts and on the assurance report of events up to the date of the auditor's report. The extent of consideration of subsequent events depends on the potential for such events to affect the attorney's trust accounts and to affect the appropriateness of the auditor's conclusion.

Auditor's documentation

66. The auditor records matters that are significant in providing evidence that supports the auditor's report.¹⁴ This includes a record of the auditor's reasoning on all significant matters that require the exercise of judgement, and related conclusions. The existence of difficult questions of principle or judgement, calls for the documentation to include the relevant facts that were known by the auditor at the time the conclusion was reached.
67. It is recommended that the auditor prepares an 'issues document' that records issues identified in planning, issues arising in the course of the engagement and the manner of dealing with such issues.
68. The auditor is reminded to document work performed on opening balances in both initial and continuing engagements

¹⁴ See paragraphs 42 to 44 of ISAE 3000 for full requirements.

Illustrative auditor's report

69. Appendix 4 contains an illustrative report in respect of an unmodified opinion when the auditor has concluded that the attorneys trust accounts were in compliance with the Act and Rules.
70. Appendix 5 contains an illustrative report in respect of a qualified opinion when the auditor has concluded that the contraventions of the Act and Rules were not significant. The auditor discloses in the basis for qualified opinion paragraph of the auditor's report, details of contraventions of the Act and Rules in sufficient detail to enable the relevant Law Society to pursue its own investigations should it wish to do so.
71. In other circumstances such as when there were significant contraventions (adverse opinion), certain insufficient evidence (qualified opinion), and significant insufficient evidence or a combination of significant contraventions and insufficient evidence (disclaimer of opinion), the auditor adapts the guidance of the layout and wording in the appropriate illustrative reports in ISA 705, *Modifications to the Independent Auditor's Report*, to the illustrative reports in Appendices 4 and 5.

Other reporting responsibilities

72. The auditor considers other reporting responsibilities, including the appropriateness of communicating relevant matters of governance interest arising from the assurance engagement with those charged with governance. The auditor considers ISA 260, *Communications with Those Charged with Governance*, and ISA 265, *Communicating Deficiencies in Internal Control to Those Charged with Governance and Management*.
73. "Governance" describes the role of persons entrusted with the supervision, control and direction of a responsible party. Those charged with governance ordinarily are accountable for ensuring that an entity achieves its objectives and for reporting to interested parties.

Appendix 1: Rule requirements, assessed assurance engagement risk and response to assessed assurance engagement risk

Note: Some firms accounting systems may be fully computerised, in which case, auditors are advised to adapt the following procedures accordingly. The illustrative responses to assessed assurance engagement risk are not exhaustive, and not necessarily the only appropriate responses. The auditor adapts them as necessary in the circumstances of the engagement.

No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
1	C: 13.5 KZN: 20.1(a) FS: 16.1 NP: 68.1.3 S78(6)	<p><u>Accounting records</u></p> <p>A firm shall keep in an official language of the Republic such accounting records as are necessary to represent fully and accurately in accordance with generally accepted accounting practice 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"> records containing particulars and information of all moneys received, held and paid by it for and on account of any person as well as of all moneys invested by it in terms of section 78(2)(a) or section 78 (2A) of the Act and of any interest referred to in section 78(3) of the Act which is paid over or credited to it, as well as any interest credited to or on any separate trust savings or other interest-bearing account referred to in section 78(2A). 	<p>The firm may fail to keep accounting records in a manner required by the Rules, and this may lead to the attorney's trust accounts transactions being incomplete and inaccurate. This applies equally to the Business' accounting books and records, especially if they have not been kept up to date.</p>	<p>Document the key controls identified by the attorneys that address each of the control objectives listed below in respect of the accounting records:</p> <ul style="list-style-type: none"> accounting records are accurate (accuracy) loss of the accounting records is prevented (completeness) <p>Inspect the accounting records to ensure that they comply with the Rule.</p>
2	C: 13.7 KZN: 20.3	<p><u>Distinction between trust account and business account transactions</u></p> <p>The accounting records shall distinguish in readily</p>	<p>The firm's accounting records may not distinguish between the business account</p>	<p>Using the knowledge obtained during the understanding of the nature of the attorney's trust account transactions,</p>

¹⁵ For purposes of this Exposure Draft, the Rules reflected in this Table refer to those of each Provincial Law Society. They will be updated with the references to the relevant Uniform Rules once approved and issued by the LSSA.

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No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
	FS: 16.3 NP: 68.3 S78(1)	discernible form between business account transaction and trust account transactions.	transactions and the trust account transactions and this could potentially lead to inaccurate and incomplete accounting for the trust account transactions.	acquired during the planning stage, confirm by inspection of the accounting records that a distinction has been made between the trust account and the business account transactions.
3	C: 13.8 KZN: 20.4 FS: 16.4 NP: 68.4 S78(6)	<u>Retention of accounting records</u> A firm shall retain accounting records – <ul style="list-style-type: none"> • for at least five years from the date of the last entry recorded in each particular book or other document of record; • save with the prior written consent of the council, or when removed there from under other lawful authority, at no place other than its main office or a branch office but, in the latter case, only in so far as they relate to any part of its practice conducted at that branch office. 	The accounting records may not be retained for a period as prescribed by the Rules. The accounting records may be outsourced and kept at the computer bureau / service provider.	Discuss with management and inspect accounting records to confirm that the accounting records are kept for at least a period of 5 years at the firm's head office or branch offices.
4	C: 13.9 KZN: 20.5 FS: 16.5 NP: 68.5 S78(4)	<u>Updating of accounting records</u> A firm shall regularly and promptly update its accounting records and shall be deemed not to have complied with this rule, inter alia, if its accounting records have not been written up for more than one month and have not been balanced within two months after each date on which the trust creditor's lists are to be extracted.	The firm may fail to promptly update accounting records and to write them up as required by the Rules and this may lead to delays in the engagement performance and a potential scope limitation. This also applies to the business accounting records	Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the accounting records: <ul style="list-style-type: none"> • Accounting records are timeously updated (accuracy) Review the accounting records to confirm that they are written up monthly and balanced within two months after each quarter.
5	C: 13.10 KZN: 20.6 (a) FS: 16.6 NP: 68.6.1	<u>Trust money to be kept separate from other money</u> Trust money shall in no circumstances be deposited in or credited to a business banking account, while money other than trust money at	Trust money must be kept separate from other money and this may lead to misappropriation of the trust money, which may go	Using the knowledge obtained during the understanding of the nature of the attorney's trust accounts transactions, acquired during the planning stage, scrutinise the business banking account to

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No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
	S78(1)	<p>any time found in a trust banking account shall be transferred to a business account without undue delay: provided that a firm which –</p> <ul style="list-style-type: none"> • makes transfers from its trust banking account to its business banking account at least once a month; and • ensures that each such transfer covers the total amount due to it and debited as at that date of transfer shall be deemed to have complied with this rule. 	undetected.	<p>identify all transactions that should have been deposited into the trust banking account. Inspect the business debtors for credit balances.</p> <p>Scrutinise all reverse transfer journals from business to trust and discuss with management.</p>
6	<p>C:13.10.1-13.10.3.2 KZN: 20.6(b) FS: 16.7 NP: 68.6.2 S78(4) and (6)</p>	<p><u>Transfer from trust banking account</u> 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"> • the amount transferred is identifiable with and does not exceed the amount due to it; and • the balance of any amount due to its remaining in its trust banking account is capable of identification with corresponding entries appearing in its trust ledger. 	Transfers from the trust banking account may not be in compliance with the provisions of the Rules and this may lead to irreconcilable differences in the trust banking account and debit balances.	<p>Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the transfers from the trust banking account:</p> <ul style="list-style-type: none"> • Transfers from the trust banking account are properly authorised (validity) • The amount transferred is correct (accuracy) • Transfers are recorded in the correct accounting period (cut-off) <p>Select a sample of transfers made from the trust banking account into the business banking account and inspect supporting documentation; ensuring that the amount is a valid expense relating to the specific creditor and trace to the creditor's account. Select a sample of transfers which relate to fees and test to ensure that the fee is due and that the fee has been raised in the business books before the transfer is effected.</p>

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No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
				Scrutinise all rounded amounts. Inspect the supporting documentation for unusual payees.
7	C: 13.11 KZN: 20.7 FS: 16.8 NP: 68.7	<p><u>Accounting to clients</u> Every firm shall within a reasonable time after the performance or earlier termination of any mandate, account to its client in writing. Each account shall contain –</p> <ul style="list-style-type: none"> • details of all amounts received by it in connection with the matter concerned, appropriately explained; • particulars of all disbursements and other payments made by it in connection with the matter; • 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; • the amount due to or by the client; and the firm shall retain a copy of each such account for not less than five years. 	Non-disclosure to clients.	Obtain written evidence of the firm's accounting to its clients and confirm that the accounting to the firm's clients include the following: <ul style="list-style-type: none"> • details of amounts received by the firm from its respective clients and these amounts are appropriately explained; • disbursements made by the firm are included; • fees and other charges charged to or raised against the client are included; • the amount owing to or by the client is clearly shown. Confirm by inspection that the supporting documentation referred to above is properly authorised and relates to disbursements relative to the mandate of the client. Inspect the supporting documentation.
8	C: 13.13.1 KZN: 21.1 a-c FS: 16A.1 NP: 69.1 S78(1)	<p><u>Prompt deposit of trust money</u> A firm shall, promptly 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, deposit in its trust banking account all money received by it on account of any person.</p>	Trust money may not be promptly deposited and this may lead to trust money going missing or being used for the purposes which it is not intended.	Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the deposit of trust money: <ul style="list-style-type: none"> • trust money is deposited intact (any misappropriations of trust monies are identified) (accuracy) • deposits are recorded in the correct accounting period (cut-off); and • all trust money/EFTs received is accounted for, and allocated to the

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No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
				<p>correct trust account.</p> <p>Select a sample of receipts and inspect the corresponding bank stamped deposit slips to confirm whether the key controls have been implemented effectively and whether they operated effectively throughout the period under review.</p> <p>Using the sample selected above, confirm that the receipts:</p> <ul style="list-style-type: none"> • are pre-numbered • are issued in duplicates • provide the details as required by the Rule. <p>By inspection of the accounting records, confirm that the details required for receipts as detailed above are also provided for direct deposits received as well.</p>
9	<p>C: 13.13.3 KZN: 21.2 FS: 16A.2 NP: 69.2 S78(1), 78(2) (a) and (b)</p>	<p><u>Transfer from trust investment account to trust banking account</u></p> <p>Any amount withdrawn by a firm from a trust investment account shall promptly be deposited by it in its trust banking account.</p>	<p>Transfers from trust investment account to trust banking account may not be in accordance with the Rules, resulting in some trust monies not being appropriately accounted for.</p>	<p>Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the transfers from the trust investment account:</p> <ul style="list-style-type: none"> • transfers from the trust investment account are properly authorised (validity) • the amount transferred is correct (accuracy) • transfers are recorded in the correct accounting period (cut-off) <p>Select a sample of transfers made from the trust investment account and confirm that amounts transferred to the trust bank</p>

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No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
				<p>account are recorded in the correct accounting period.</p> <p>For each transfer made to the trust bank account, inspect the client mandate to confirm that the amount is authorised and is accurate.</p>
10	<p>C: 13.13.4 KZN: 21.3 FS: 16A.3 NP: 69.3 S78(1) and S78(2A)</p>	<p><u>Trust balances not to exceed trust moneys and trust accounts not to be in debit.</u></p> <p>A firm shall –</p> <ul style="list-style-type: none"> • 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 its trust creditors; • ensure that no account of any trust creditor is in debit; • employ and maintain a system to ensure that the above requirements are not infringed when amounts are transferred from its trust banking account to its business banking account. 	<p>The total amount of money in the firm's trust banking account, trust investment account and trust cash may be less than the total amount of credit balances of the trust creditors and this may bring about un-reconciled differences in the trust accounting records.</p> <p>Individual trust creditors may not go into debit.</p>	<p>Obtain an independent written confirmation of the balance of the trust banking account and trust investment account at year end from the financial institutions with which these accounts are held¹⁶. Obtain a reconciliation for any date in the period under review and a year-end reconciliation of the trust banking account, trust investment account and trust cash to total amount of trust creditors and audit the reconciliation as follows:</p> <p>Compare the balances on the reconciliation to the cashbook, bank statements and bank confirmation balances, respectively.</p> <p>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.</p> <p>Select a sample of receipts and payments from the cashbook and by inspection, confirm that they appear as entries:</p> <ul style="list-style-type: none"> • recorded in the bank statements prior

¹⁶ Refer to SAAPS 6 *External Confirmations from Financial Institutions* for external confirmation requests issued on or after **1 October 2013**.

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No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
				<p>to year end or</p> <ul style="list-style-type: none"> • they appear in the reconciliation as outstanding cheques or deposits/EFTs. <p>Confirm by tracing that the outstanding cheques and deposits reflected on the reconciliation appear in:</p> <ul style="list-style-type: none"> • the cashbook prior to the reconciliation date and • in the bank statement after reconciliation date <p>Enquire about any long outstanding deposits (say maximum 2 weeks) and long outstanding cheques which should possibly be written back.</p> <p>Inspect documentary evidence showing results of the trust cash count held at year end and agree the amount to the reconciliation.</p> <p>Obtain an explanation from management and follow up on any unusual reconciling items, by reference to supporting documentation.</p> <p>Agree the total amount on the reconciliation at year end and the other date selected to the total of the trust creditors at year end and on the other date selected and confirm that the total amount on the reconciliation is not less than the total of the trust creditors.</p> <p>By inspection of the trust creditor accounts, confirm that there is no account of any trust creditor which is in debit.</p> <p>Inspect the reconciliations for evidence of</p>

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No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
				review by a senior official.
11	C: 13.13.6 KZN: 21.4 FS: 16A.4 NP: 69.4 S78(1)	<p><u>Amounts received in advance</u> A firm shall ensure that amounts received in advance to cover a prospective liability for service rendered or to be rendered or disbursements (including counsel's fees) to be made are deposited forthwith to the credit of its trust banking account.</p>	Amounts received in advance may be inappropriately accounted for, resulting in misappropriations of the trust funds.	Obtain receipt books and list of EFTs and trace a sample to the trust banking account to confirm that these monies are appropriately accounted for. This applies to all trust receipts.
12	C: 13.13.7 KZN: 21.5 FS: 16A.5 NP: 69.5 S78(1)	<p><u>Withdrawals from trust banking account</u> A firm shall ensure that withdrawals from its trust banking account are made only –</p> <ul style="list-style-type: none"> • to or for or on behalf of a trust creditor; • as transfers to its business banking account, provided that such transfers shall be made only in respect of money claimed to be due to the firm. 	Withdrawals from the trust banking account may not be made in accordance with the Rules, and this could lead to misappropriation of the trust funds.	<p>Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the withdrawals from the trust banking account:</p> <ul style="list-style-type: none"> • withdrawals from the trust banking account are properly authorised (validity) • the amount withdrawn is correct (accuracy) • withdrawals are recorded in the correct accounting period (cut-off) <p>Select a sample of withdrawals from the trust banking account bank statements and confirm by inspecting supporting documentation whether the key controls have been implemented effectively and whether they operated effectively throughout the period under review.</p>
13	C: 13.13.9 KZN: 21.6 FS: 16A.6 NP: 69.6	<p><u>Trust cheques</u> Trust cheques to be made payable to or to order of designated payee and no transfers to be made to business banking accounts until disbursements made or liability incurred and fee debited –</p>	In the case where cheques are issued to effect payments, trust cheques may be issued irresponsibly. Un-issued cheques may not	<p><u>Cheque payments and EFTs</u> Select a sample of cheque and EFT payments from the trust bank statements and perform the following:</p> <p><i>Cheque payments:</i></p>

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No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
	S78(1)	<ul style="list-style-type: none"> • any cheque drawn on a firm's trust banking account shall be made payable to or to the order of a payee specifically designated; • no transfer from its trust banking account to its business banking account shall be made in respect of any disbursement (including counsel's fees) or fees of the firm until- • the disbursement has actually been made by the firm; • a contractual obligation has arisen on the part of the firm to pay the disbursement; and • the fee or disbursement has been correctly debited in its accounting records. 	<p>be subject to strong stationery controls. The above may lead to misappropriation of trust funds. In the case of EFT payments, there may be weak or no controls over EFT payments.</p>	<ul style="list-style-type: none"> • confirm that paid cheques were made to or to the order of a payee specifically designated and are relevant to the clients matter. • agree to supporting documentation. • peruse the cashbook for any evidence of cash cheques. <p>Confirm by inquiry of management and inspection of the cheque book that cheques are issued in strict numerical sequence. Using the sample selected above confirm the following:</p> <ul style="list-style-type: none"> • cheques are signed in accordance with the bank mandate. • payments to business are to reimburse a disbursement already or fees already debited. <p>Confirm that un-issued cheques are subject to strict stationery controls.</p> <p>Electronic Funds Transfer: Inspect the signature of the senior accounts official e.g. Head of Department on the supporting documentation as evidence that the EFT payment was authorized after scrutiny of supporting documentation (validity) Inspect the EFT supporting documentation for evidence that computations were checked prior to authorising the payment (accuracy) Confirm by enquiry and observation that EFT payments are made and released in</p>

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No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
				<p>accordance with the attorney's bank mandate.</p> <p>Confirm by logging onto the EFT application that the EFT application will automatically shut down after three unsuccessful attempts.</p> <p>Enquire of management and inspect reports regarding security violation.</p> <p>Inspect the EFT audit trail for evidence that it was reviewed by senior personnel.</p> <p>Obtain evidence that management has established the ownership of the recipient's bank account.</p>
14	<p>C: 13.15 KZN: 21.8 FS: 16A.8 NP: 69.8</p> <p>(Note: The auditor is not required to report on these Rules)</p>	<p><u>Notification of trust banking accounts and the furnishing of particulars</u></p> <p>Every firm shall –</p> <ul style="list-style-type: none"> immediately notify the council in writing of the name and address of the bank(s) at which the firm has kept its trust banking account or accounts and shall thereafter notify the council immediately of any change in the name and address of such bank or banks; whenever so required by the council, furnish to the council within 10 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 financial institution with which the firm keeps any trust investment account setting out the balance at such date or dates as may be specified by the council. 	<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 procedure 10 above, compare the number and type of bank accounts held at the current year end with those held at the previous year end and following up on closed accounts.</p> <p>Agree the balance per the bank confirmation to the bank statement, trial balance or the trust ledger.</p> <p>Follow up on any differences noted.</p> <p>Note the date on which each bank account was opened and inspect correspondence with the relevant Law Society's Council to confirm that the Council was promptly notified of the firm's new bank account.</p>

PROPOSED GUIDE: ENGAGEMENTS ON ATTORNEYS' TRUST ACCOUNTS

No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
15	<p>C: 13.14 KZN: 21.7 FS: 16A.7 NP: 69.7</p>	<p><u>Extracts of lists of trust creditors</u></p> <ul style="list-style-type: none"> • Every firm shall extract at intervals of not more than three calendar months in clearly legible manner a list of amounts then standing to the credit of any person, who shall be identified therein by name, in respect of all money held or received by it on account of such person 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. • 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 balances was extracted. • Each such list shall be part of the accounting records of the firm to be retained for the five year period. 	<p>The list of trust creditors may be inaccurate or incomplete.</p>	<p>Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the extraction of lists of trust creditors:</p> <ul style="list-style-type: none"> • information on the lists of trust creditors is correct (accuracy) • loss of extracted lists of trust creditors is prevented (completeness) <p>Confirm whether the key controls have been implemented effectively and whether they operated effectively throughout the period under review.</p> <p>Obtain the extracted lists of trust creditors for the period under review and perform the following procedures:</p> <ul style="list-style-type: none"> • Confirm that the firm has extracted the lists of trust creditors at least quarterly during the period; • Inspect the lists to confirm that they have been totalled correctly; • Inspect the list for evidence of having been agreed or reconciled to the total of trust funds; • By inquiry of management and reference to prior periods' lists, confirm that the lists are retained for a period of 5 years. • At the closing date and at least one other date, agree on a test basis the individual balances from the trust ledgers with the quarterly balance book or quarterly schedules, ensuring that the selected balances are clearly

PROPOSED GUIDE: ENGAGEMENTS ON ATTORNEYS' TRUST ACCOUNTS

No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
				<p>indicated in each ledger account.</p> <ul style="list-style-type: none"> • At the closing date and at least one other date, identify all debit balances and obtain reasons therefor. • At the closing date, agree the total of the trust ledger credit balances with the aggregate of: <ul style="list-style-type: none"> • Balances in trust bank accounts. • Balance in savings accounts in terms of Section 78(2)(a) and 78(2A), and • Trust cash on hand. • Discuss all material discrepancies or reconciling items with management.
16	<p>C: 13.16 KZN: 21.9 FS: 16A.9 NP: 69.9 S78(2A)</p>	<p><u>Trust account investments in terms of Section 78(2A)</u> A member who invests funds on behalf of any person without that person's prior written instructions (specific or general) shall –</p> <ul style="list-style-type: none"> • not invest such funds otherwise than in a trust savings or other interest bearing trust account with a banking institution or building society; • obtain that person's written confirmation of the investment as soon as is reasonably possible or notify him or her forthwith thereof in writing; and • forthwith cause the relative trust savings or other interest bearing trust account to be endorsed in terms of section 78 (2A) of the Act; 	<p>Investments may be made in contravention of the Rules and this could lead to client's monies being used for other purposes than otherwise they are intended for.</p>	<p>By discussion with the attorney and inspection of the investment mandate, confirm that clients' trust investments are in terms of Section 78(2A).</p>
17	<p>C: 20.3 KZN: 17.3 FS: 16C.3</p>	<p><u>Mandates</u> A firm carrying on an investment practice shall obtain an investment mandate from each client</p>	<p>An investment mandate may not exist, resulting in client's monies being used for other</p>	<p>Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of</p>

PROPOSED GUIDE: ENGAGEMENTS ON ATTORNEYS' TRUST ACCOUNTS

No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
	NP: 77A.3 S78(2A)	before investing funds for that client. The form of the investment mandate should be substantially in the form referred to in the Fourth Schedule to these rules.	purposes than they are intended for.	the investments made on clients' behalf: <ul style="list-style-type: none"> investments are properly authorised (validity) Inspect the list of trust creditors and identify those for which the firm is carrying on an investment practice and, inspect the investment mandate for a sample of clients to confirm that the key controls have been implemented effectively and they have been operating throughout the period under review.
18	C: 20.4 KZN: 17.4 FS: 16C.4 NP: 77A.4	<p><u>Annual report to clients</u></p> <ul style="list-style-type: none"> Every firm carrying on an investment practice shall, not later than six months after the financial year end of such firm, supply every client from whom it is required to hold a mandate with a report reflecting all relevant details of such client's investments. The firm shall send such report by pre-paid post or shall deliver it by hand, in which latter case it shall obtain a written acknowledgement of receipt. A copy of such report shall also be made available at any other time upon the reasonable request of a client. 	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 misappropriation of client's monies.	Obtain an investment register and, confirm by inspection of the schedule that was submitted by the firm to the client that the firm has accounted to all its clients regarding the status of the client's investments within the period prescribed by the Rules.
19	C: 20.5 KZN: 17.5(a) FS: 16C.5 NP: 77A.5 S78(2A)	<p><u>Accounting records – Investment practices</u></p> <ul style="list-style-type: none"> Every firm carrying on an investment practice shall, in addition to its normal accounting records, also keep proper accounting records and supporting documents in respect of the investments made by it or under its control. The accounting records and other supporting documents shall be retained by the firm in 	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.	Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the accounting records: <ul style="list-style-type: none"> accounting records are accurate (accuracy) physical/ electronic loss of the accounting records is prevented

PROPOSED GUIDE: ENGAGEMENTS ON ATTORNEYS' TRUST ACCOUNTS

No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
		<p>such manner as to enable it to furnish each client upon request with all current details of the client's investments.</p> <ul style="list-style-type: none"> • Such accounting records and other supporting documents 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 clear audit trail which will enable a particular transaction to be identified at any time and traced through the accounting records to the client. • 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 access may be gained promptly to any particular record. • Where accounting records are maintained by means other than on paper, facilities shall exist for such records to be reproduced in printed form. • All accounting records required to be retained in terms of this sub rule and copies of all reports despatched shall be retained for at least five years from the date of the last entry recorded in each particular book or other document of record, unless there is statutory provision to the contrary, and shall be held at the same office as the firm's other accounting records. 		<p>(completeness)</p> <p>Select a sample of entries in the accounting records and by inspection and observation, confirm whether the key controls have been implemented effectively and whether they operated effectively throughout the period under review.</p>
20	<p>C: 20.5 KZN: Not applicable</p>	<p><u>Investment register</u> Every firm carrying on an investment practice shall, in addition to its normal accounting records,</p>	<p>The firm may fail to keep an investment register or the investment register may be</p>	<p>Confirm by inspection of the investment register that the firm has kept an investment register for the funds which are</p>

PROPOSED GUIDE: ENGAGEMENTS ON ATTORNEYS' TRUST ACCOUNTS

No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
	<p>FS: 16C.6 NP: 77A.6 S78(2A)</p>	<p>also maintain an investment register containing at least the following information:</p> <ul style="list-style-type: none"> • the names and addresses of the investors and the amounts invested; • the names and addresses of the borrowers (where applicable) and the amounts borrowed (where applicable); • the dates on which the loans are granted (where applicable) or investments made; • the period of the loan (where applicable); • the applicable interest rate; • the security and particulars of where the authority, the document denoting the debt and bonds or other documents are filed; • list of the total amounts received from investors; • a list of the total amounts invested with borrowers (where applicable); • a list of moneys invested with a financial institution in the interim with identification of which the money belongs to, the interest rate and where and how it was invested together with all other particulars; • a list of the moneys in the trust banking account pending registration of bonds or investment in any other medium; • an annual reconciliation of the lists; • a statement of whether the firm or any partner, director or employee of the firm, or any company, close corporation or other entity in which such partner, director or employee has an interest, has borrowed any moneys of the 	<p>incomplete or incorrect, and this may cause uncertainty about the accuracy and completeness of the client's investments.</p>	<p>invested on behalf of the clients, as required by the Rules. Inspect the investment register to confirm that the following details have at least been included therein:</p> <ul style="list-style-type: none"> • the names and addresses of the investors and the amounts invested by each of them and the date of each investment; • the names and addresses of the borrowers and the amounts borrowed by each of them as well as the date on which each loan was granted; • where applicable, the dates on which the loans are granted or investments made; • the period of each loan (where applicable); • the interest rate applicable to each investment; • details of any security held and particulars of where the authority, the documents of title reflecting the debt and bonds or other documents are filed; • a list of the total amounts received from investors; • a list of monies temporarily invested with a financial institution, indicating whom the monies belong to, the interest rate and where and how they invested together with all other particulars;

PROPOSED GUIDE: ENGAGEMENTS ON ATTORNEYS' TRUST ACCOUNTS

No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
		investors.		<ul style="list-style-type: none"> • a list of the monies in the trust banking account pending registration of bonds or investment in any other form; • an indication of whether the firm or any member thereof or any company, close corporation or other entity in which the firm or any member thereof has an interest, has borrowed any monies from the investors.
21	C: 20.6 KZN: 17.6 FS: 16C.7 NP: 77A.7 S78(2A)	<p><u>Money market transactions</u></p> <ul style="list-style-type: none"> • No firm may syndicate deposits or other money market investments in any manner otherwise than by accepting funds as agent for each participating client and placing such funds with a deposit-taking institution on the money market in the name of the client. The deposit-taking institution shall acknowledge receipt of each deposit or money market investment and such written receipts shall be retained by the member as part of his or her accounting records. • All monies received by a firm for investment with a deposit-taking institution, shall be paid to such institution as soon as reasonably possible after receipt by the firm, having regard to matters such as whether a payment made by cheque has been cleared with the drawee bank. • For the purpose of this rule “deposit-taking institution” shall mean any institution in terms of the Deposit-Taking Institutions Act, No. 94 of 1990. 	Money market transactions may not be in terms of the Rules.	Throughout the performance of the assurance engagement, confirm that all money market transactions are in terms of the Rules of the Provincial Law Society.
22	C: 20.7	<u>Restrictions applicable to certain investments</u>	Investments may be made in contravention of the Rules	In respect of the investments that are

PROPOSED GUIDE: ENGAGEMENTS ON ATTORNEYS' TRUST ACCOUNTS

No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
	<p>KZN: 17.7 FS: 16C.8 NP: 77A.8 S78(2A)</p>	<p>A firm may not invest on behalf of a client –</p> <ul style="list-style-type: none"> • in shares, or debentures in any company which is not listed on the Johannesburg Stock Exchange, unless it is a subsidiary of a listed company; or • in money market type investments, other than in the client's name in a deposit-taking institution; or • in loans in respect of which, in the firm's opinion, there is not adequate security; unless the client's specific written authorisation for each such investment has first been obtained. 	<p>and this may lead to client's monies being used for other purposes than otherwise they are intended for.</p>	<p>made in:</p> <ul style="list-style-type: none"> • shares or debentures in any company other than a subsidiary of a listed company; or • money market type of transactions; or • loans without adequate security, confirm by inspection of the client's written authorisation (mandate) that specific authorisation was obtained from the client before the investment was made.
23	<p>S78(1), S78(2) and S78(3)</p>	<p><u>Interest</u></p>	<p>General</p>	<p>Inspect the trust account bank statements for the whole year and identify all interest credited to the account/s.</p> <p>Confirm by inspection of evidence, that any interest credited has been paid to the Attorneys Fidelity Fund or its nominee on or before the last day of the succeeding calendar month. (Note that the Attorneys Fidelity Fund or its nominee may in its discretion exempt an attorney from this obligation).</p> <p>If interest is not transferred monthly, as required above, confirm that the necessary exemption has been received.¹⁷</p> <p>In addition, consider the reasonableness of the interest rate, i.e. whether or not the rate is market related.¹⁸ (Note: If the interest rate is not considered reasonable,</p>

¹⁷ The AFF has granted a blanket exemption, to give attorneys an opportunity to comply and to give the banks an opportunity to refine their banking products, for the monthly interest payment. This exemption will be removed in due course.

¹⁸ This can be tested against information available on the AFF's website at www.fidfund.co.za.

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No	Rule ¹⁵ /Act reference	Rule requirement	Assessed assurance engagement risk	Response to assessed assurance engagement risk
				point out to the client that his/her refund of trust account bank charges and audit fees from the Attorney's Fidelity Fund will be detrimentally affected.)
24	Accounting records	<u>Journals</u>	General	Review ALL general journals, including narrations and supporting evidence, and obtain reasons from management for the need for a general journal. Review accounting records for unusual transactions e.g. cash cheques and transfers between two trust creditor's accounts.
25	Accounting records	<u>Client's files</u>	General	Select a sample of client files and inspect for unusual transactions; select one item within each file and trace to the trust creditors ledger account to confirm that the entry has been correctly recorded.

Appendix 2: Illustrative Engagement Letter

(Auditor's letterhead)

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

(Address)

(Date)

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

Engagement on Attorneys Trust Accounts

You have requested that we undertake a reasonable assurance engagement on the compliance of the your trust accounts of (*insert the name of the attorney's firm*) with Section 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Attorneys Act, No. 53 of 1979 (the "Act"), and the Rules (*insert specific rule numbers*¹⁹) of the <*insert the name of the relevant Law Society*> for the <period from (*insert date*) to (*insert date*)> <*or year/period ended* <*insert date*>.

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

As part of our assurance engagement we are required to agree the information extracted from the accounting records and included in the attached Attorney's Annual Statement on Trust Accounts for the <period from (*insert date*) to (*insert date*)> <*or year ended* <*insert date*>> to the underlying records that were the subject of our engagement on the compliance of the attorneys trust accounts with the Act and Rules. We are also required to read the attorney's representations and the other disclosures in the Attorney's Annual Statement on Trust Accounts for the purpose of identifying material inconsistencies based on our knowledge obtained in our engagement on compliance of the attorneys trust accounts with the Act and Rules.

<*Practitioner/Partners/Directors*> *responsibility for the trust accounts*

You are responsible for ensuring that your 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 the trust accounts in accordance with the relevant mandates, including such controls as you determine is necessary to prevent and detect fraud and theft. You are also responsible for the preparing the Attorneys Annual Statement on Trust Accounts and for the financial information and declarations contained therein.

¹⁹ Applicable Rules for the Provincial Law Societies:

Cape Law Society	Rules 13.5.3; 13.7; 13.10; 13.13; 13.14.1; 13.14.2; 13.16 and 20
KwaZulu-Natal Law Society	Rules 17; 20; 21 and 21A
Law Society of the Free State	Rules 16; 16A; 16B and 16C
Law Society of the Northern Provinces	Rules 68.1; 68.2; 68.3; 68.4 68.5 68.6.1; 68.6.2; 68.8; 68.9; 69.1; 69.2; 69.3; 69.4; 69.5; 69.6; 69.7; 69.9; 70; 77 and 77A

Auditor's responsibility

Our responsibility is to express a reasonable assurance opinion on the compliance of the attorney's trust accounts, in all material respects, with the Act and Rules, based on our procedures performed, and to report our findings on the Attorney's Annual Statement on Trust Accounts.

We will conduct our engagement in accordance with International Standard on Assurance Engagements ISAE 3000, *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*. That standard requires that we plan and perform the engagement to obtain reasonable assurance about the compliance of your trust accounts, in all material respects, with the Act and Rules.

A reasonable assurance engagement in accordance with ISAE 3000 involves performing procedures to obtain evidence about the compliance of your trust accounts with the Act and Rules. The nature, timing and extent of the procedures selected depend on our judgement, including the assessment of the risks of non-compliance with the Act and Rules, whether due to fraud and error. In making those risk assessments we will consider internal control relevant to the circumstances of the engagement but not for the purpose of expressing an opinion on the internal control. A reasonable assurance engagement includes:

- Considering and applying when applicable in the engagement circumstances, the guidance in the Guide for Registered Auditors: *Engagements on Attorneys Trust Accounts* issued by the Independent Regulatory Board for Auditors.
- Inquiries of the attorney and the attorney's staff.
- Testing of transactions for all significant activities with the objective of evaluating whether:
 - Transactions were appropriately identified as trust transactions;
 - Trust transactions were in accordance with mandates and supported by adequate documentation and narrative to identify from whom funds were received, and for whose credit; and
 - Deposits and withdrawals from the trust bank account were to, or for, a trust creditor and that transfers to the attorney's business account were only in respect of moneys claimed to be due to the attorney.
- Testing and/or scrutinising bank reconciliations, as we consider appropriate in the engagement circumstances, and evaluating whether external confirmations requested from financial institutions, were in support of the trust records made available to us.

Our report

We expect to issue a report containing an opinion that, "*based on our work performed, your trust accounts for the period/year ended <insert date> were in compliance with the Act and the Rules*". However, should our evidence obtained not support that opinion, we are obliged by ISA 3000 to modify our opinion, listing exceptions and instances of non-compliance identified, or giving an explanation for reporting non-compliance.

We also expect to report that we have agreed the financial information included in the attached Attorney's Annual Statement on Trust Accounts for the <period from <insert date> to <insert date>> <or year/period ended <insert date>> to the underlying records that were the subject of our engagement on the on the compliance of the attorneys trust accounts with the Act and Rules. We also expect to report that based on our reading of the Attorney's Annual Statement on Trust Accounts we have not identified material inconsistencies between the attorney's representations and the other disclosures in the Attorney's Annual Statement on Trust Accounts based on our knowledge obtained in our engagement on compliance of the attorneys trust accounts with the Act and Rules. Our report will state that as we have not undertaken an assurance engagement on the Attorney's Annual Statement on Trust Accounts we do not express an opinion thereon.

However, should our evidence obtained not support that finding, our finding will be amended accordingly.

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

Restriction on use and distribution of our report

Our report will state that it is prepared for the purpose indicated in the report and may not be suitable for any other purpose, and that it is intended solely for your use, the use of the relevant Law Society and the Attorneys Fidelity Fund, and should not be distributed to other parties.

Other

Our engagement is undertaken on the basis you will provide us with, or arrange for us to be provided with:

- Access to all information of which you (management) are aware that is relevant to our engagement, including such business account records as we consider necessary,
- Additional information that we may request from you (management) for the purpose of our engagement, and
- Unrestricted access to persons with the entity from whom we determine it necessary to obtain evidence.

As part of our engagement we will request from you written confirmation concerning representations made to us in connection with our engagement.

Reportable irregularities

Please note that this assurance engagement meets the definition of audit as contained in the Auditing Profession Act, 2005, and we are subject to the requirements of section 45 of that Act, and have a duty to report to the IRBA on Reportable Irregularities, as defined in that Act, that may be identified in the course of our engagement.

Other matters

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

Appendix 3: Illustrative Representation Letter

(Attorney's letterhead)

(To the Registered Auditor)

(Address)

(Date)

Dear Sir(s)

Engagement on attorney's trust accounts

This representation letter is provided in connection with your engagement on the attorneys trust accounts of <insert the name of the attorney's firm> for the purpose of evaluating whether the trust accounts were maintained in compliance with Section 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Act ('the Act') and in terms of the Rules <insert specific rule numbers> of the <relevant> Law Society ('the Rules') for the period <insert date> to <insert date> and for reporting thereon to the relevant Law Society, and for agreeing the extracted financial information contained in the attorney's Annual Statement on Trust Accounts, 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 Rules and Act, 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 relevant Law Society in terms of the Rules of the Law Society and the Attorney's Fidelity Fund:

- We have provided you with:
 - Access to all information of which we are aware that is relevant such as clients' files, accounting records and underlying data.
 - Additional information that you have requested from us for the purpose of the engagement.
 - 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 Rules of the relevant Law Society.
- All transactions have been recorded and are reflected in the trust accounts.
- All trust money received has been promptly banked in properly designated separate trust bank accounts.
- 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 of the relevant Law Society.

- 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.
- All interest received has been properly accounted for and paid over to the relevant Law Society for the account of the Attorney's Fidelity Fund or the investor in terms of Sections 78(1), (2) and (2A) of the Attorneys Act, No. 53 of 1979.
- A separate system of accounting for deceased and insolvent estates was maintained.
- The disclosure of facts relating to any fraud or possible fraud known to us that may have affected the firm, involving:
 - Management.
 - Employees who have significant roles in internal control.
 - Others where the fraud could have a material effect on the trust accounts.
- We acknowledge that it is our responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud.
- 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 or may have been misappropriated.
- We have disclosed to you our knowledge of any allegations of fraud, or suspected fraud, affecting the entity's trust accounts communicated by employees, former employees, analysts, regulators or others.
- All known instances of non-compliance or suspected non-compliance with laws and regulations whose effects should be considered when preparing the trust account records have been disclosed to you.
- All events occurring subsequent to the date of the report which 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 list indicating names of partners/directors that joined the firm and names of partners/directors that resigned from the firm>

Yours faithfully

<Practitioner/Senior Partner/Director>

Date

<Senior Financial Officer>

Date

Appendix 4: Illustrative Auditor's Report (Unmodified opinion)

Circumstances

- Compliance of the attorney's trust accounts with the Act and Rules
- Unmodified auditor's opinion
- The information in the attorney's annual statement on trust accounts agrees with the underlying records that were the subject of the engagement on the attorney's trust accounts.

Independent Registered Auditor's Reasonable Assurance Report on the Attorney's Trust Accounts

To the <Practitioner / Partners / Directors²⁰> (insert the name of the attorney's firm)

We have undertaken a reasonable assurance engagement on the compliance of the attorneys trust accounts of <insert the name of the attorney's firm> with Section 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Attorneys Act, No. 53 of 1979 (the "Act"), and the Rules <insert specific rule numbers²¹> (the "Rules") of the <insert the name of the relevant Law Society> for the <period from <insert date> to <insert date>> <or year/period ended <insert date>.

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

As part of our assurance engagement we are required to agree the information extracted from the accounting records and included in the attached Attorney's Annual Statement on Trust Accounts for the <period from <insert date> to <insert date> / <or year ended <insert date>> to the underlying records that were the subject of our engagement on the on the compliance of the attorneys trust accounts with the Act and Rules. We are also required to read the attorney's representations and the other disclosures in the Attorney's Annual Statement on Trust Accounts for the purpose of identifying material inconsistencies with our knowledge obtained in our engagement on compliance of the attorneys trust accounts with the Act and Rules.

<Practitioner/Partners/Directors> responsibility for the trust accounts

The <practitioner/partners/directors> is/are responsible for ensuring that the attorneys trust accounts are maintained in compliance with the Act and the Rules, and for such internal control as the <practitioner/partners/directors> determines is necessary to maintain the integrity of the trust accounts in accordance with the relevant mandates, including such

²⁰ Throughout the report - delete whichever: "proprietor/partners/directors" is "not applicable"

²¹ Applicable Rules for the Provincial Law Societies:

Cape Law Society	Rules 13.5.3; 13.7; 13.10; 13.13; 13.14.1; 13.14.2; 13.16 and 20
KwaZulu-Natal Law Society	Rules 17; 20; 21 and 21A
Law Society of the Free State	Rules 16; 16A; 16B and 16C
Law Society of the Northern Provinces	Rules 68.1; 68.2; 68.3; 68.4 68.5 68.6.1; 68.6.2; 68.8; 68.9; 69.1; 69.2; 69.3; 69.4; 69.5; 69.6; 69.7; 69.9; 70; 77 and 77A

controls as <practitioner/partners/directors> determine is necessary to prevent and detect fraud and theft. The <practitioner/partners/directors> is/are also responsible for the preparing the attached statement and for the financial information and declarations contained therein.

Auditor's responsibility

Our responsibility is to express a reasonable assurance opinion on the compliance of the attorney's trust accounts, in all material respects, with the Act and Rules, based on our procedures performed, and to report our findings on the Attorney's Annual Statement on Trust Accounts.

We conducted our assurance engagement in accordance with the International Standard on Assurance Engagements ISAE 3000, *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*. That standard requires that we plan and perform the engagement to obtain reasonable assurance about the compliance of the attorney's trust accounts, in all material respects, with the Act and Rules.

A reasonable assurance engagement in accordance with ISAE 3000 involves performing procedures to obtain evidence about the compliance of the attorney's trust accounts with the Act and Rules. The nature, timing and extent of procedures selected depend on the auditor's judgement, including the assessment of the risks of non-compliance with the Act and Rules, whether due to fraud and error. In making those risk assessments we considered internal control relevant to the circumstances of the engagement. A reasonable assurance engagement includes:

- Considering and applying, when considered applicable in the engagement circumstances, the guidance in the Guide on *Engagements on Attorneys Trust Account* issued by the Independent Regulatory Board for Auditors.
- Inquiries of the attorney and the attorney's staff.
- Testing of transactions for all significant activities with the objective of evaluating whether (1) transactions were appropriately identified as trust transactions, (2) trust transactions were in accordance with mandates and supported by adequate documentation and narrative to identify from whom funds were received, and for whose credit, and (3) deposits and withdrawals from the trust bank account were to or for a trust creditor and that transfers to the attorney's business account were only in respect of moneys claimed to be due to the attorney.
- Testing and/or scrutinising bank reconciliations, as considered appropriate in the engagement circumstances, and evaluating whether confirmations from financial institutions were in support of the records made available to us.

We believe that our work performed and evidence obtained is sufficient and appropriate to provide a basis for our opinion.

Opinion

In our opinion, the attorneys trust accounts of (*insert the name of the attorney's firm*) for the period/year ended <insert date> were maintained in compliance with the Act and the Rules.

Report on Attorney's Annual Statement on Trust Accounts

We have agreed the financial information included in the attached *Attorney's Annual Statement on Trust Accounts* for the <period from *(insert date)* to *(insert date)*> <or year/period ended *<insert date>>*>') to the underlying records that were the subject of our engagement on the compliance of the attorneys trust accounts with the Act and Rules. Based on our reading of the *Attorney's Annual Statement on Trust Accounts* we have not identified material inconsistencies between the attorney's representations and the other disclosures in the *Attorney's Annual Statement on Trust Accounts* based on our knowledge obtained in our engagement on compliance of the attorneys trust accounts with the Act and Rules. As we have not undertaken an assurance engagement on the *Attorney's Annual Statement on Trust Accounts* we do not express an opinion thereon.

Restriction on use and distribution

This report is for the purpose of meeting the auditor reporting requirements of the Rules and, as regards the attached annual statement on attorneys trust accounts, the additional auditor reporting requirements of the relevant Law Society and the Attorneys Fidelity Fund. Consequently it may not be suitable for any other purpose. It is intended solely for the use of <*practitioner/partners/directors*> of the firm, the relevant Law Society and the Attorneys' Fidelity Fund, and should not be distributed to other parties without our prior consent.

Auditor's Signature

Name of individual registered auditor

IRBA Registration number for firm and/or auditor

Registered audit firm

Date of report

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

Appendix 5: Illustrative Auditor's Report (Qualified opinion)

Circumstances

- Certain non-compliance identified (rather than significant non-compliance) of the attorney's trust accounts with the Act and Rules.
- Qualified auditor's opinion
- The information in the attorney's annual statement on trust accounts agrees with the underlying records that were the subject of the engagement on the attorneys trust accounts.

Independent Registered Auditor's Reasonable Assurance Report on Attorneys Trust Accounts

To the <Practitioner / Partners / Directors²²> (insert the name of the attorney's firm)

We have undertaken a reasonable assurance engagement on the compliance of the attorneys trust accounts of <insert the name of the attorney's firm> with Section 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Attorneys Act, No. 53 of 1979 (the "Act"), and the Rules <insert specific rule numbers²³> (the "Rules") of the <insert the name of the relevant Law Society> for the <period from <insert date> to <insert date>> <or year/period ended <insert date>.

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

As part of our assurance engagement we are required to agree the information extracted from the accounting records and included in the attached Attorney's Annual Statement on Trust Accounts for the <period from <insert date> to <insert date> <or year ended <insert date>> to the underlying records that were the subject of our engagement on the on the compliance of the attorneys trust accounts with the Act and Rules. We are also required to read the attorney's representations and the other disclosures in the Attorney's *Annual Statement on Trust Accounts* for the purpose of identifying material inconsistencies based on our knowledge obtained in our engagement on compliance of the attorneys trust accounts with the Act and Rules.

<Practitioner/Partners/Directors> responsibility for the trust accounts

²² Throughout the report - delete whichever: "proprietor/partners/directors" is "not applicable"

²³ Applicable Rules for the Provincial Law Societies:

Cape Law Society	Rules 13.5.3; 13.7; 13.10; 13.13; 13.14.1; 13.14.2; 13.16 and 20
KwaZulu-Natal Law Society	Rules 17; 20; 21 and 21A
Law Society of the Free State	Rules 16; 16A; 16B and 16C
Law Society of the Northern Provinces	Rules 68.1; 68.2; 68.3; 68.4 68.5 68.6.1; 68.6.2; 68.8; 68.9; 69.1; 69.2; 69.3; 69.4; 69.5; 69.6; 69.7; 69.9; 70; 77 and 77A

The <practitioner/partners/directors> is/are responsible for ensuring that the attorneys trust accounts are maintained in compliance with the Act and the Rules, and for such internal control as the <practitioner/partners/directors> determines is necessary to maintain the integrity of the trust accounts in accordance with the relevant mandates, including such controls as <practitioner/partners/directors> determine is necessary to prevent and detect fraud and theft. The <practitioner/partners/directors> is/are responsible for the preparing the Attorney's Annual Statement on Trust Accounts and for the financial information and declarations contained therein.

Auditor's responsibility

Our responsibility is to express a reasonable assurance opinion on the compliance of the attorney's trust accounts, in all material respects, with the Act and Rules, based on our procedures performed, and to report our findings on the Attorney's *Annual Statement on Trust Accounts*.

We conducted our assurance engagement in accordance with International Standard on Assurance Engagements ISAE 3000, *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*. That standard requires that we plan and perform the engagement to obtain reasonable assurance about the compliance of the attorney's trust accounts, in all material respects, with the Act and Rules.

A reasonable assurance engagement in accordance with ISAE 3000 involves performing procedures to obtain evidence about the compliance of the attorney's trust accounts with the Act and Rules. The nature, timing and extent of procedures selected depend on the auditor's judgement, including the assessment of the risks of non-compliance with the Act and Rules, whether due to fraud and error. In making those risk assessments we considered internal control relevant to the circumstances of the engagement. A reasonable assurance engagement includes:

- Considering and applying when considered applicable in the engagement circumstances, the guidance in the Guide on *Engagements on Attorneys Trust Accounts* issued by the Independent Regulatory Board for Auditors.
- Inquiries of the attorney and the attorney's staff.
- Testing of transactions for all significant activities with the objective of evaluating whether (1) transactions were appropriately identified as trust transactions, (2) trust transactions were in accordance with mandates and supported by adequate documentation and narrative to identify from whom funds were received, and for whose credit, and (3) deposits and withdrawals from the trust bank account were to or for a trust creditor and that transfers to the attorney's business account were only in respect of moneys claimed to be due to the attorney.
- Testing and/or scrutinising bank reconciliations, as considered appropriate in the engagement circumstances, and evaluating whether from financial institutions were in support of the records made available to us.

We believe that our work performed and evidence obtained is sufficient and appropriate to provide a basis for our qualified opinion.

Basis for qualified opinion

The attorneys trust accounts were not maintained in compliance with the Act and the Rules, as follows²⁴;

List ...<insert instances of non-compliance identified>

Qualified opinion

In our opinion, except for the omissions listed in the preceding paragraph, the attorney's trust accounts of <insert the name of the attorney's firm> for the period/year ended <insert date> were maintained in compliance with the Act and the Rules.

Report on Attorney's Annual Statement on Trust Accounts

We have agreed the financial information included in the attached Attorney's *Annual Statement on Trust Accounts* for the <period from <insert date> to <insert date>> <or year/period ended <insert date>> to the underlying records that were the subject of our assurance engagement. Based on our reading of the Attorney's Annual Statement on Trust Accounts we have not identified material inconsistencies between the attorney's representations and the other disclosures in the *Attorney's Annual Statement on Trust Accounts* based on our knowledge obtained in our engagement on compliance of the attorneys trust accounts with the Act and Rules. As we have not undertaken an assurance engagement on the *Attorney's Annual Statement on Trust Accounts* we do not express an opinion thereon.

Restriction on use and distribution

This report is for the purpose of meeting the auditor reporting requirements of the Rules and, as regards the attached annual statement on attorneys trust accounts, the additional auditor reporting requirements of the relevant Law Society and the Attorneys Fidelity Fund. Consequently it may not be suitable for any other purpose. It is intended solely for the use of <practitioner/partners/directors> of the firm, the relevant Law Society and the Attorneys Fidelity Fund, and should not be distributed to other parties without our prior consent.

Auditor's Signature

Name of individual registered auditor

IRBA Registration number of firm and/or auditor

Registered audit firm

Date of report

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

²⁴ Any contravention of Sections 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Act, and any instance of contravention of the rules of the <insert Province> Law Society identified in the course of the engagement relating to trust accounts in terms of the Rules is regarded as material and should be reported.

Appendix 6: Attorney's Annual Statement on Trust Accounts²⁵

On attorney's letterhead

The Secretary

Insert the name of the relevant law society

Address

Date

Attorney's Annual Statement on Trust Accounts

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 attorneys in firm / practice applying for annual Fidelity Fund Certificate²⁶

- 1.
- 2.

2. Attorney's compliance representations

I/we confirm that I/we have maintained the necessary accounting records²⁷ as required in terms of sections 78(4) and 78(6) of the Attorney's Act, No 53 of 1979 and the Rules and regulations of the relevant Provincial Law Society for the ended <insert date>, inter alia:

- The firm's trust accounts have been updated monthly and balanced at least quarterly;
- 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 Attorneys Fidelity Fund and the firm's bank(s);
- The ratio as a percentage of total bank charges (excluding VAT) incurred during the year to the total of interest earned during the year was <insert percentage>;
- 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>;
- The following changes in the composition of the firm occurred during the year or during the period from <insert date> to <insert date>:

<insert changes>:

²⁵ To be attached to the auditor's Report on the Attorney's Trust Accounts to be submitted to the relevant Provincial Law Society

²⁶ Attach separate list if there are numerous partners / directors in the attorneys' firm or practice.

²⁷ Accounting records, include those for trust liabilities in respect of which the practitioner is the executor, trustee or curator or which he administers on behalf of the executor, trustee or curator.

- 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 attorney's firm>), as required by <relevant Law Society's Rules....,> *Prohibition of rendering of services as attorneys in certain circumstances*.
- The firm is registered as an Accountable Institution in accordance with the Financial Intelligence Centre Act, No 38 of 2001 and the No. of the firm is: <insert number>.
- The firm <has / has not> reported cash transactions for the period reported on in accordance with the requirements of Section 28 (of the FICA), "Cash transactions above prescribed limit".
- The firm <is / is not> registered as a Financial Services Provider (FSP) with the FAIS Department of the Financial Services Board.

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 addresses²⁸>:

<insert office addresses>

4. Information extracted from the trust accounting records

Reconciliation of interest earned on the firm's section 78(1) and section (2)(a) trust accounts from <insert commencement date> to <insert year / period end date>:

(i)	Amount brought forward from the previous financial year in respect of interest earned on monies deposited in terms of section 78(1) and monies invested in terms of section 78(2)(a) of the Attorneys Act, No. 53 of 1979	
(ii)	Amount earned during the current period on monies deposited in trust banking accounts in terms of section 78(1) and monies invested in trust investment accounts in terms of section 78(2)(a) of the Attorneys Act, No 53 of 1979	
(iii)	Amount incurred during the current period in respect of refundable bank charges (excluding VAT – firms not liable for Vat as vendors may include VAT)	
(iv)	Amount already paid over to the Law Society as nominee of the Attorneys Fidelity Fund during the period under review in terms of section 78(3) of the Attorneys Act, No. 53 of 1979 is: (a schedule of the payments made is to be attached)	

²⁸ Attach as a separate list if the firm has multiple offices in South Africa.

(v) Amount carried over to the next financial period in respect of interest earned on monies deposited in terms of section 78(1) and monies invested in terms of section 78(2)(a) of the Attorneys Act, No. 53 of 1979	
--	--

(vi) The amount referred to in paragraph 4(v) agrees/ does not agree²⁹ with the balance as recorded in the books of account, which amount, less the amount of R_____ paid over to the Society 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 interest has been dealt with is to be annexed to the report.

(vii) 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:

TOTAL TRUST CREDITORS / LIABILITIES	Local	Foreign ³⁰	At period / year end ³¹
Trust creditors/liabilities			
Trust creditors in terms of:			
- Section 78(1)			
- Section 78(2)(a)			
- Section 78(2A)			
- Interest			
Trust creditors in terms of estates ³²			
Trust creditors in terms of other entrusted assets ³³			
Liability in terms of the investment rules			
TOTAL TRUST CREDITORS / LIABILITIES			
Trust funds available in terms of trust banking accounts:			

²⁹ If the answer to paragraph 4(vi) is: "does not agree", 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 assurance report).

³⁰ Attach a detailed schedule of liabilities per foreign currency per category, in the same format, and convert to Rand at the reporting date.

³¹ The date selected, by the auditor, must be a date, other than the financial year end, which occurs during the financial year / period to which this assurance engagement relates.

³² This is trust liabilities in respect of which the practitioner is the executor, trustee or curator or which he administers on behalf of the executor, trustee or curator.

³³ This relates to the liability originating from any asset entrusted to the practitioner other than the items listed, supported by a detailed schedule of the nature of such liability.

- Section 78(1)			
- Section 78(2)(a)			
- Section 78(2A)			
- Trust cash on hand			
- Interest			
Trust funds and assets relating to estates			
Other entrusted assets			
Trust funds available in terms of the investment rules			
Debit balances in trust ledger ³⁴			
TOTAL FUNDS			
TRUST SURPLUS / (DEFICIT)³⁵			

5. 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 complied³⁶ in all respects with the provisions of <insert relevant Law Society's Rule>³⁷ of the Society's Rules;

.....

<Name of Attorney/s>

<Sole Practitioner/Partners/Directors>³⁸

³⁴ 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.

³⁵ Detailed explanation required on how the surplus / deficit originated and how it was subsequently cleared and resolved. Indicate when the deficit was reported to the law society.

³⁶ If the answer to paragraph 5(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 assurance report).

³⁷ **Applicable Rules relating to Investment Practices:**

Cape Law Society	Rule 20
KwaZulu-Natal Law Society	Rule 17
Law Society of the Free State	Rule 16C
Law Society of Northern Provinces	Rule 77A

³⁸ Delete whichever is not applicable. For practices with a large number of partners / directors this "*Attorney'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 <INSERT PROVINCE> LAW SOCIETY

FIRM (INSERT FIRM NAME)

Schedule of Interest payments

For the financial period _____ to _____

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

Notes:

1. The total indicated above should agree with Par 4(v) of the **Attorney's Annual Statement on Trust Accounts**.
2. Kindly note that a separate schedule (or Spreadsheet) should be submitted for each trust bank account operated by the firm.

Appendix 7: Relevant extracts from the Act and Law Societies Rules

The Act contains, inter alia, the following requirements:

1. **Section 78(1):** *“Any practitioner shall open and keep a separate trust banking account at a banking institution in the Republic and shall deposit therein the money held or received by him on account of any person³⁹.”*
2. **Section 78(2)(a):** *Any practitioner may invest in a separate trust savings or other interest-bearing account opened by him with any banking institution or building society any money deposited in his trust banking account which is not immediately required for any particular purpose⁴⁰.*
3. **Section 78(4):** *Any practitioner shall keep proper accounting records containing particulars and information of any money received, held or paid by him for or on account of any person, of any money invested by him in a trust savings or other interest-bearing account referred to in subsection (2) or (2A) of section 78 and of any interest on money so invested which is paid over or credited to him⁴¹.”*
4. For additional regulatory requirements for attorneys regarding the management of the attorneys' trust accounts, reference may be made to Appendix 6 to this Guide.

Appointment of the auditor⁴²

5. A firm shall at its expense once in each calendar year, or at such other times as the Council may require, appoint an auditor approved by the Council to act on behalf of and as the representative of the Attorneys' Fidelity Fund to discharge the duties assigned to the auditor in terms of the rules⁴³.

The auditor's right of access to the accounting records

6. A firm shall allow the auditor access to such of the firm's records as the auditor may deem it necessary to examine for the purposes of discharging the auditor's duties and shall furnish the auditor with any authority which may be required to enable the auditor to obtain such information, certificates or other evidence as the auditor may reasonably require for purposes of this engagement⁴⁴.
7. The auditor shall be granted access to the business books and records to the extent the auditor considers necessary to obtain sufficient appropriate evidence regarding trust account transactions, but not necessarily for the purpose of expressing an audit opinion on the financial statements of the practice.

³⁹ Section 78(1) of the Act

⁴⁰ Section 78(2)(a) of the Act

⁴¹ Section 78(4) of the Act

⁴² The word “*accountant*” which is currently referred to in the Rules, is synonymous with a “*registered auditor*” in terms of the Auditing Profession Act and is referred to as an “*auditor*” in this Guide.

⁴³ Law Society of the Northern Provinces Rule 70.1; KwaZulu-Natal Law Society Rule 21A(1); Law Society of the Free State Rule 16B1; and Cape Law Society Rule 13.17.

⁴⁴ Law Society of the Northern Provinces Rule 70.2; KwaZulu-Natal Law Society Rule 21A(2); Law Society of the Free State Rule 16B2 and Cape Law Society Rule 13.18.

8. The auditor's access to the business books and records must be sufficient to enable the auditor to understand the trust fund transactions arising from the service activities of the practice as a whole.
9. In examining the business books and records, the auditor should focus on transactions that have a bearing on trust fund transactions or movements and shall pay particular attention to fees, receipts and transfers from the trust account arising from the service activities of the practice.

Duties of the auditor⁴⁵

10. The Rules require that every auditor who has accepted an appointment shall –

“Within six months of the annual closing of the accounting records of the firm concerned or at such other times as the Council may require, furnish the Council with a report which shall be in the form of the schedule to the Rules⁴⁶;

Without delay report in writing directly to the Council if, at any time during the discharge of his or her functions and duties –

- *it comes to his or her notice that at any date the total of the balances shown on trust accounts in the accounting records of the firm exceeded the total amount of the funds in its trust banking account, its trust investment account and its trust cash;*
- *any material queries regarding its accounting records which he or she has raised with the firm have not been dealt with to his satisfaction;*
- *any reasonable request made by him or her for access to its records and supporting documents or for any authority has not been met to his or her satisfaction.”*

⁴⁵ Law Society of the Northern Provinces Rule 70.4; KwaZulu-Natal Law Society Rule 21A(4); Law Society of the Free State Rule 16B(4) and Cape Law Society Rule 13.20.

⁴⁶ We suggest that the Rules of all provinces be amended to include the proposed “Attorneys’ Annual Letter” in Appendix 6 to this Guide in the relevant *Schedule to their Rules*.