

# ASSURANCE ENGAGEMENTS On Attorneys' Trust Accounts

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**The Attorneys Act, No. 53 of 1979 (Act) requires attorneys to have their trust accounts audited, in terms of whether those accounts have been maintained in compliance with Section 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Act, and certain identified Rules of the Attorneys' Profession (Rules). This article provides an overview of the current assurance model applied by auditors in conducting such a compliance engagement.**

## CURRENT ASSURANCE MODEL

In terms of the current assurance model, the registered auditor (RA) is required to perform a reasonable assurance engagement in accordance with ISAE 3000 (Revised)<sup>1</sup> and by applying the Revised Guide for Registered Auditors: Engagements on Attorneys' Trust Accounts (IRBA Guide), as issued by the Independent Regulatory Board for Auditors (IRBA).

A reasonable assurance opinion expressed by a RA in terms of ISAE 3000 (Revised) is designed to enhance the degree of confidence of the intended users about the subject matter or subject matter information.

In this instance, the assurance opinion relates to whether the attorneys' trust accounts were maintained, in all material respects, in compliance with the Act and the Rules for the period under review. This reasonable assurance opinion is intended to provide a high, but not absolute, level of assurance regarding compliance with the identified requirements of the Act and the Rules. The Law Societies and the Attorneys Fidelity Fund (AFF), as primary users of the assurance report, would use the assurance opinion in relation to their information needs, for example, managing the risks that the AFF is exposed to with respect to the payment of claims pertaining to the misappropriation of trust funds.

## BENEFITS AND INHERENT LIMITATIONS OF THE CURRENT ASSURANCE MODEL

The main benefit of any assurance engagement is the confidence that the users obtain in the subject matter or subject matter information; i.e. the degree to which the work performed by an independent assurance practitioner, who is subject to recognised ethics, quality control and engagement standards, enhances the credibility of the subject matter or information for the users.

However, any assurance engagement is also subject to certain inherent limitations, including but not limited to:

- The evidence obtained in an assurance engagement is persuasive rather than conclusive;
- The audited entity (in this instance, the attorney or attorney's firm) is required to implement internal controls to ensure the relevance and reliability of financial reporting, or to ensure that the entity and the entity's personnel comply with applicable laws and regulations (in this instance, the Act and the Rules).

The auditor's risk assessment and design of audit procedures in response to assessed risks are subject to the inherent limitations of these internal controls;

- The effect of selective testing, including sampling given that the auditor does not test all populations or all items in all populations, but rather selects certain items for testing; and
- The auditor exercises professional judgement in planning and performing an audit, which by its nature is susceptible to a range of subjectivity and is dependent on behavioural traits.

Because of the inherent limitations of an assurance engagement, there is an unavoidable risk that some misstatements or non-compliance, as applicable, may not be detected, even though the audit is properly planned and performed in accordance with the relevant auditing and assurance standards.

<sup>1</sup> ISAE 3000 (Revised), Assurance Engagements Other than Audits or Reviews of Historical Financial Information (ISAE 3000 (Revised)).



## THE AUDITORS' RESPONSIBILITY IN TERMS OF DETECTING FRAUD

The primary purpose of an assurance engagement on an attorney's trust accounts is for the RA to evaluate whether the attorney's trust accounts were maintained in compliance with the Act and the Rules. Various users and stakeholders also have an expectation that RAs will detect fraud and theft. Although not the primary purpose of this compliance assurance engagement, the RA does respond to this expectation.

Since ISAE 3000 (Revised) does not contain specific requirements in relation to the RA's response to fraud and only makes mention of fraud in its application and other explanatory material, the RA may draw from the guidance contained in ISA 240 (Revised)<sup>2</sup> in determining how to appropriately identify, assess and respond to fraud risk factors that may be applicable to any given engagement on attorneys' trust accounts.

The attorney or the partners or directors of the attorney's firm are responsible for ensuring that the trust accounts are maintained in compliance with the Act and the Rules, and for such internal control as they determine is necessary to maintain the integrity of those trust accounts in accordance

with the relevant client mandates, including such controls as they determine are necessary to prevent and detect fraud and theft. The RA will, as part of the assurance engagement, identify and assess the risks of non-compliance due to fraud by, for example, inquiring about and being alert to certain fraud risk factors, inquiring whether the attorney is aware of any known fraud or suspected fraud, and obtaining an understanding regarding the accounting and internal control systems in place to prevent, or detect and correct fraud and error.

In a compliance assurance engagement, the inherent limitations as discussed in the section above, may be exacerbated because non-compliance often stems from intentional actions to deceive or conceal or mislead. The risk of not detecting non-compliance resulting from fraud is higher than for non-compliance resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

The IRBA Guide contains a specific section relating to special considerations applicable to fraud and theft<sup>3</sup>.

## IDENTIFIED INSTANCES OF NON-COMPLIANCE

As indicated above, the primary purpose of an assurance engagement on an attorney's trust accounts is for the RA to evaluate whether the attorney's trust accounts were maintained in compliance with the Act and the Rules. To this end, any identified instances of non-compliance are considered to be qualitatively material and the RA is required to qualify the auditor's report by listing all these instances of non-compliance, regardless of whether or not they have been appropriately accounted for or resolved by management. Instances of non-compliance that have been reported and resolved should be indicated accordingly<sup>4</sup>. Many legal practitioners are not comfortable with this practice; however, this discomfort probably stems from a lack of understanding of the assurance engagement and related assessment process.

In many instances, legal practitioners view a qualified auditor's report as an immediate "fail" in complying with the qualifying criteria for obtaining a fidelity fund certificate. They are not aware that the AFF applies their discretion to the nature of the non-compliance in considering the appropriate response, including whether or not to issue the legal practitioner with a fidelity fund certificate. This is therefore not viewed as an automatic failure. It is important to note that the RA cannot make the assessment of the required response to instances of non-compliance on behalf of the AFF as this is beyond the scope of the compliance assurance engagement.

## IN CONCLUSION

The assurance engagement on attorneys' trust accounts that is performed by a RA in accordance with the applicable pronouncements, including relevant quality control standards and the Codes of Conduct<sup>5</sup>, is designed to enhance the degree of confidence of the intended users about whether the trust accounts were maintained in compliance with the Act and the Rules. The users of the auditor's report include the legal practitioners themselves. These legal practitioners should not view this merely as a grudge purchase imposed by legislative requirements but embrace the engagement as one that provides valuable information that can be used in controlling their risks and enhancing their business.

<sup>2</sup> ISA 240 (Revised), The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements.

<sup>3</sup> IRBA Guide, paragraphs 58 to 66.

<sup>4</sup> IRBA Guide, paragraphs 55 to 57.

<sup>5</sup> This includes both the SAICA Code of Conduct and the IRBA Code of Professional Conduct for Registered Auditors.