

**Revised Guide**

March 2017



*Revised Guide for Registered Auditors*

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**Engagements on Attorneys' Trust Accounts**

Independent Regulatory Board for Auditors

PO Box 8237, Greenstone, 1616

Johannesburg

This *Revised Guide for Registered Auditors: Engagements on Attorneys' Trust Accounts* (this Guide) was prepared by a Task Group of the Committee for Auditing Standards (CFAS) of the Independent Regulatory Board for Auditors (IRBA), which comprised auditors and representatives of the Law Society of South Africa, the Provincial Law Societies and the Attorneys Fidelity Fund. This Guide was approved for issue in March 2017 and replaces the previous IRBA Guide – “*Guidance for Registered Auditors: Engagements on Attorneys' Trust Accounts*” that has been withdrawn.

Guidance is provided to registered auditors in the special circumstances applicable to engagements on attorneys' trust accounts as required by the Attorneys Act, No. 53 of 1979 and the Rules for the Attorneys' Profession (the Act and the Rules), including an auditor's responsibility to report a reportable irregularity. This Guide is also relevant for attorneys in understanding the nature of the engagement, and the respective responsibilities of the parties.

There is an expectation by the Attorneys Fidelity Fund, the Law Societies, financial institutions, attorneys' clients and members of the public that auditors of attorneys' trust accounts will detect fraud and theft, whereas the main purpose of an engagement on an attorney's trust account is for the auditor to evaluate the compliance of an attorney's trust accounts with the Act and the Rules. Accordingly, the Guide contains considerations applicable to fraud and theft in the circumstances of engagements on attorneys' trust accounts.

The Attorney's Annual Statement on Trust Accounts contains the attorney's compliance representations to the relevant Provincial Law Society and information extracted from the trust accounting records. The Attorney's Annual Statement on Trust Accounts is to accompany the auditor's report.

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

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ENGAGEMENTS ON ATTORNEYS' TRUST ACCOUNTS**  
(Effective for financial periods commencing on or after 1 March 2016)

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This *Revised Guide for Registered Auditors: Engagements on Attorneys' Trust Accounts* provides guidance to registered auditors (auditors) in implementing the requirements of the International Standards on Assurance Engagements (ISAEs) and relevant International Standards on Auditing (ISAs), and reporting on the Attorney's Annual Statement on Trust Accounts, in the special circumstances applicable to engagements on attorneys' trust accounts required by the Attorneys Act, No. 53 of 1979, and the Rules for the Attorneys' Profession.

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

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

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

## Introduction

### Scope of this Guide

1. The scope of this Guide is to provide guidance to registered auditors conducting 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.
3. The Guide also provides illustrative auditor's reports on reporting compliance 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 Rules<sup>1</sup> for the Attorneys' Profession (the Rules), and also on reporting on the Attorney's Annual Statement on Trust Accounts.
4. This Guide has been prepared on the basis of the Rules for the Attorneys' Profession effective 1 March 2016.
5. There is an expectation by the Attorneys Fidelity Fund, the Law Societies, financial institutions, attorneys' clients and members of the public that the auditor of attorneys' trust accounts will detect fraud and theft, whereas the main objective of an engagement on attorneys' trust accounts is for the auditor to evaluate whether an attorney's trust accounts were maintained in compliance with the Act and the Rules. Accordingly, the Guide contains considerations applicable to fraud and theft in the specific circumstances of engagements on attorneys' trust accounts.
6. This Guide does not provide guidance in respect of the audit or review of an attorney's financial statements, which are conducted in accordance with International Standards on Auditing (ISAs) or the International Standard on Review Engagements (ISRE) 2400 (Revised), *Engagements to Review Historical Financial Statements* (ISRE 2400 (Revised)), as applicable.

### Purpose of an Engagement on Attorneys' Trust Accounts

7. The main purpose of an engagement on attorneys' 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 the Rules.
8. 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 attorneys' trust accounts with the Act and the Rules, and then to report as required.
9. The auditor is also required to read the attorney's representations, the other disclosures and other information in the Attorney's Annual Statement on Trust Accounts for the purpose of identifying material inconsistencies with the auditor's

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<sup>1</sup> Rules effective 1 March 2016: 35.5; 35.6; 35.7; 35.8; 35.9; 35.10; 35.11; 35.12; 35.13.1 - 35.13.6; 35.13.7.1.5 - 35.13.7.1.6; 35.13.8 - 35.13.16; 35.14; 35.15; 35.16; 35.17; 35.30; 35.31; 35.32; 35.33; 35.34; 35.35; 36.4; 36.5; 36.6; 36.7; 36.8; 36.9; 36.10; 36.11.

knowledge obtained in the course of the engagement on the compliance of attorneys' trust accounts with the Act and the Rules and report thereon.

### **Nature of an Engagement on Attorneys' Trust Accounts**

10. An engagement on attorneys' trust accounts to report compliance with the Act and the Rules is a reasonable assurance engagement within the scope of the ISAE 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (ISAE 3000 (Revised)). Although ISAs and ISREs do not apply to engagements covered by ISAEs, they may nevertheless provide guidance to an auditor<sup>2</sup> in this engagement.
11. The auditor is not required to express an assurance opinion on the Attorney's Annual Statement on Trust Accounts.

### **Effective Date**

12. This Guide is effective for financial periods commencing on or after 1 March 2016.

### **Definitions**

13. For purposes of this Guide, the following terms have the meanings attributed below:
  - a) Act: The Attorneys Act No. 53 of 1979.
  - b) Assurance report: The assurance report contemplated in ISAE 3000 (Revised), which is prepared and signed off by a registered auditor.
  - c) Attorney: Any person duly admitted to practice as an attorney in any part of the Republic.<sup>3</sup>
  - d) Code: The IRBA *Code of Professional Conduct for Registered Auditors*.
  - e) Client mandate: Written instruction or engagement letter to an attorney detailing the services to be rendered, or if the instruction is received verbally, written confirmation of the terms given to the client.
  - f) Engagement risk: The risk that the auditor expresses an inappropriate opinion when the attorney's trust accounts are not maintained, in all material respects, in compliance with the Act and the Rules.
  - g) Firm or practice: The incorporated company, partnership or sole practitioner in which an attorney practises.
  - h) Fraud: An intentional act by one or more individuals among management, those charged with governance, employees, or third parties involving the use of deception to obtain an unjust or illegal advantage.<sup>4</sup>
  - i) Fraud risk factors: Events or conditions that indicate an incentive or pressure to commit fraud or provide an opportunity to commit fraud.<sup>5</sup>

<sup>2</sup> ISAE 3000 (Revised), *Assurance Engagements Other Than Audits or Reviews of Historical Financial Information* (ISAE 3000 (Revised)), paragraph A22.

<sup>3</sup> Attorneys Act No. 53 of 1979.

<sup>4</sup> ISA 240 (Revised), *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements* – paragraph 11(a).

- j) Management: The attorney(s) and other persons responsible for the conduct of the attorney's firm's operations.
- k) Misstatement: A difference between the attorney's trust accounts and the appropriate measurement or evaluation thereof in accordance with the Act and the Rules. Misstatements can be intentional or unintentional, qualitative or quantitative, and include instances of non-compliance, i.e. instances where an action or event or transaction in relation to the attorney's trust accounts is not, or has not occurred, in compliance with those requirements from the Act and the Rules that are applicable for purposes of the assurance engagement.
- l) 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.
- m) Professional scepticism: An attitude that includes a questioning mind, being alert to conditions, which may indicate possible misstatement due to error or fraud, and a critical assessment of evidence.
- n) Registered auditor: A registered auditor as defined in the Auditing Profession Act, 2005 (Act No. 26 of 2005) referred to as the "auditor".
- o) Reasonable assurance engagement: An assurance engagement in which the auditor reduces engagement risk to an acceptably low level in the circumstances of the engagement as the basis for the auditor's opinion. The auditor's opinion is expressed in a form that conveys his/her opinion on the outcome of the measurement or evaluation of the underlying subject matter against criteria.
- p) Rules: The Rules for the Attorneys' Profession effective 1 March 2016.
- q) Rules Regarding Improper Conduct: The *IRBA Rules Regarding Improper Conduct*.
- r) 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 that falls within the scope of an attorney's legal practice – that give rise to money, or other property, being held in the attorney's trust accounts and for which the attorney is responsible and accountable.
- s) Trust accounts: In relation to an attorney, this means an account comprising –
  - (i) The trust banking account(s) referred to in Section 78(1) of the Act; or
  - (ii) Any trust savings or other interest-bearing account referred to in sections 78(2)(a) and 78 (2A) of the Act.
- t) Trust account transactions: The transactions in an attorney's trust accounts, comprising receipts, payments and transfers, non-recurring and unusual transactions or adjustments, in accordance with the terms of the client mandate relating to each transaction.

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<sup>5</sup> ISA 240 (Revised) paragraph 11(b).



- u) Trust account balance(s): The balance(s) due to trust creditors after recording the trust account transactions.

## The Act and the Rules<sup>6</sup>

14. The requirements of Section 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 moneys received from an attorney's client are preserved and dealt with in terms of the mandate to the attorney. The 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.<sup>7</sup>
15. Relevant extracts from the Act affecting Trust Accounts, and a summary of the 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 the Rules. This Guide has been drafted using the term attorney when referring to the responsibilities of both the attorney and the firm, it is therefore useful to note that the Rules refer to the firm.
16. The requirements of the Rules, the identified assurance engagement risks and illustrative responses to the assessed assurance risks are given in Appendix 1.

## Characteristics of an attorney's trust account and compliance with the Act and the Rules

17. The accounting records of an attorney relate to all moneys received and expended by the attorney, including moneys deposited to a trust account, or invested in a savings or other interest bearing account, and all transactions relating to the attorney's business.
18. An attorney's trust accounts relate to records of deposits, withdrawals, transfers to and from the attorney's business account and balances on hand, which could include fees paid to the attorney and any adjusting journal entries, in terms of the client mandate. Transactions not in terms of client mandates may result in balances being incorrectly reflected in the trust creditors' ledger.

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, in accordance with an acceptable financial reporting framework.<sup>8</sup>

19. An attorney's financial statements are prepared from the transactions that 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

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<sup>6</sup> 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*".

<sup>7</sup> Refer to Rule 35.5.

<sup>8</sup> Refer to Rule 35.6.

statements, nor is there disclosure of transactions, including interest earned on balances in trust bank accounts, payable to the Attorneys Fidelity Fund. Accordingly, the auditor's engagement on an attorney's financial statements covers only 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 on an attorney's trust accounts covers only the attorney's financial statements to the extent that these may affect the auditor's opinion on whether the trust accounts were maintained in compliance with the Act and the Rules.

20. An illustrative Attorney's Annual Statement on Trust Accounts, for completion by the attorney in support of the firm's application for its annual Fidelity Fund Certificate, is included in Appendix 6. It contains certain financial information extracted from the accounting records of the attorney relating to the trust accounts and trust bank balances and interest, and certain declarations by the attorney, as required by the relevant Law Societies and the Attorneys Fidelity Fund. A copy signed by the attorney accompanies the auditor's report.
21. 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.
22. The auditor of attorneys' trust accounts performs sufficient work to:
  - a) Evaluate whether the identified records were maintained in compliance with the Act and the Rules and whether trust account transactions were in accordance with the client mandate, including whether transactions were supported by adequate documentation or explanation; and
  - b) Report on the Attorney's Annual Statement on Trust Accounts as required.
23. 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 Certificate.<sup>9</sup>

### **The engagement and the auditor**

24. The Rules require a firm of attorneys to appoint a registered auditor to discharge the duties assigned to the auditor in terms of the Rules. This "appointment" constitutes the "auditor of the entity" contemplated in Section 44(1)(a) of the Auditing Profession Act, 2005.
25. There is no requirement currently in the Act or the Rules for an attorney's financial statements to be audited. Such requirement may emanate from another Act, such as the Companies Act or an audit may be undertaken voluntarily. However, an auditor is required by the Rules to undertake an engagement on the compliance of attorneys' trust accounts with the Act and the Rules, whether or not an audit is conducted on the financial statements.
26. 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 the Rules.

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<sup>9</sup> Refer Sections 41, 42 and 43 of the Attorneys' Act, No. 53 of 1979.

27. An auditor accepting an engagement to report on attorneys' trust accounts obtains an understanding of the Act, the Rules and the engagement circumstances.<sup>10</sup> The auditor is 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 may, as a consequence, need to perform additional procedures to obtain an audit level of knowledge of the business transactions that impact on the trust accounts.
28. An auditor who is professionally competent to audit financial statements considers whether such an auditor has the specialised skills and knowledge necessary to undertake an engagement on attorneys' trust accounts.
29. An engagement on the compliance of attorneys' trust accounts with the Act and the Rules, undertaken by the individual registered auditor of the entity<sup>11</sup>, comprises an ISAE 3000 (Revised) reasonable assurance engagement on which an opinion (as opposed to a conclusion in the case of a limited assurance engagement) is expressed and consequently meets part (b) of the definition of "audit" contained in the Auditing Profession Act, 2005. In such cases, the auditor undertaking an engagement on attorneys' trust accounts is subject to the requirements of Section 45, *Duty to Report on Irregularities*, in the Auditing Profession Act, 2005.<sup>12</sup>

## Respective Roles and Responsibilities

### Attorney

30. The attorney is responsible for ensuring that attorneys' trust accounts are maintained in compliance with the Act and the Rules, and for such internal controls as the attorney determines are necessary to maintain the integrity of the trust accounts in accordance with the relevant client mandates, including such controls as the attorney determines are 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

31. The auditor is responsible for expressing a reasonable assurance opinion on the compliance of attorneys' trust accounts, in all material respects, with the Act and the Rules, based on the auditor's procedures performed, and to report the auditor's findings on the Attorney's Annual Statement on Trust Accounts.
32. The involvement of the engagement partner is required throughout the engagement to provide adequate direction and supervision to the engagement team in the circumstances of the engagement.

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<sup>10</sup> Paragraph 46R of ISAE 3000 (Revised).

<sup>11</sup> Section 44(1)(a) of the Auditing Profession Act, 2005.

<sup>12</sup> Refer to the *Revised Guide for Registered Auditors: Reportable Irregularities in terms of the Auditing Profession Act* issued by the IRBA.

## **Relevant Law Society**

33. The relevant Law Society is responsible for establishing an investigation (whether forensic or otherwise) and a disciplinary process, and for taking appropriate action against attorneys who do not comply with the Act and/or the Rules.
34. 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.
35. 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 to accept the auditor's report in support of the decision to issue an annual Fidelity Fund Certificate.

## **Law Society of South Africa**

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

## **Attorneys Fidelity Fund**

37. The Attorneys Fidelity Fund<sup>13</sup>, inter alia, is the recipient of claims made against the Fund for compensation for losses allegedly arising from theft of money or other property entrusted to an attorney.

## **Internal control**

38. Internal controls are the processes designed, implemented and maintained by an attorney to provide reasonable assurance about the achievement of the entities objectives with regard to reliable financial reporting and compliance with the Act and the Rules, while compliance is to ascertain whether or not the attorney complied specifically with the requirements of the Act and the Rules.
39. Although there is a requirement in the Rules<sup>14</sup> for the attorney to implement and design internal controls that operate effectively and are monitored regularly throughout the period, the auditor is currently not required per the Law Societies 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. However, the auditor is still required by ISAE 3000 (Revised)<sup>15</sup> to obtain an understanding of internal control over the preparation of the attorney's trust accounts relevant to the engagement. This includes evaluating the design of those controls relevant to the engagement and determining whether they have been implemented by performing procedures in addition to inquiry of the personnel responsible for the attorney's trust accounts.

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<sup>13</sup> Refer to the Act, Section 26 for the responsibilities of the Attorneys Fidelity Fund.

<sup>14</sup> Refer to Rule 35.13.7.1.1 - 35.13.7.1.4.

<sup>15</sup> Paragraphs 46R-47R of ISAE 3000 (Revised).

41. The auditor further draws from ISA 260 (Revised), *Communication with Those Charged with Governance*, and ISA 265, *Communicating Deficiencies in Internal Control to Those Charged with Governance and Management*, which applies to an audit of financial statements, and communicates appropriately to the directors and management (those charged with governance) any deficiencies in internal control that have come to the auditor's attention. In addition, the Rules require, inter alia, the auditor to report to the relevant Law Society if – at any time during the discharge of the auditor's duties – any inquiries regarding its trust accounting records that the auditor has raised with the firm have not been dealt with to the auditor's satisfaction (refer to paragraphs 55-57 for materiality). This includes inquiries regarding deficiencies in internal control.

## **Nature and Extent of the Auditor's Work**

42. The nature and extent of work performed is that required to express a reasonable assurance opinion on the compliance of the attorneys' trust accounts with the Act and the Rules. Any non-compliance is listed in the auditor's qualified report (Appendix 5) or an explanation is provided as to why the auditor is unable to express an opinion (refer to paragraphs 80-81).
43. In an engagement on attorneys' 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 through substantive procedures is likely to be greater, rather than lesser, especially as the auditor is evaluating compliance with all the applicable Rules and because trust account transactions are not necessarily homogenous. Accordingly the performance of control testing, where applicable and the performance of substantive testing covers all significant trust account activities, such as personal accident service and conveyancing transactions (which by their nature may be high risk if not homogenous).
44. In the engagement on information that has been extracted, 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.

In addition, the auditor reads the attorney's representations and the other information in the Attorney's Annual Statement on Trust Accounts, for the purpose of identifying any material inconsistencies with the auditor's knowledge obtained in the course of the compliance engagement on the attorney's trust accounts.

## **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* (IRBA Code), which is consistent with the International Ethics Standards Board for Accountants' (IESBA) Code of Ethics for professional accountants (Part A and Part B). The auditor should be especially aware of the requirements for independence (Section 291) and professional competence and due care (Section 130) in the context of engagements on attorneys' trust accounts.
46. Threats to independence could arise from the rendering of services by the attorney to the auditor, or the rendering of non-audit services by the auditor to the attorney. Threats to independence could also arise from long association and/or close

relationships between the auditor and the client. The IRBA provides rules in this regard.

47. The auditor is also required to implement quality control procedures that are applicable to this engagement in accordance with the International Standard on Quality Control (ISQC) 1, *Quality Control for Firms that Perform Audits and Reviews of Financial Statements and Other Assurance and Related Services Engagements*. These include ensuring that:
- a) The engagement partner and the assigned engagement team have the required competence and capabilities to perform the engagement;
  - b) The engagement partner will be sufficiently involved so as to be able to accept responsibility for the conclusion on the attorney's trust accounts;
  - c) The engagement partner takes full responsibility for overall quality on the engagement, considers all possible ethical breaches by members of the engagement team and considers the latest results of the firm's monitoring process that are possibly relevant to the engagement; and
  - d) An engagement quality control review is performed in appropriate circumstances.

### **Acceptance and continuance**

48. Similar to other assurance engagements, the engagement partner performs suitable procedures to determine whether the client relationship and assurance engagement can be accepted or continued with. An attorney's trust accounts assurance engagement can only be accepted or continued with when:
- a) Ethical requirements, including independence can be met;
  - b) The engagement team collectively has the appropriate competence and capabilities; and
  - c) The terms of the engagement are agreed upon and the preconditions for the engagement have been met, including suitable roles and responsibilities of all parties and the availability of evidence needed to support the auditor's opinion.
49. If the preconditions are not met and further discussions with the potential client do not resolve the issues, the auditor cannot accept the engagement. Likewise, if new information comes to light that would have caused the auditor to decline the engagement had that information been available earlier, the auditor will communicate this to the client and take appropriate action.

### **Agreeing the terms of the engagement**

50. 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**

51. The professional competencies of an auditor who accepts an engagement to report on attorneys' trust accounts, and the professional competencies of the auditor's staff

assigned to the engagement, include knowledge of the Act and the Rules to sufficiently enable the auditor to conduct the engagement, including an ability to evaluate whether there has been compliance with the Act and the Rules, and an understanding of the risks of fraud and theft, relative to an attorney's trust accounts. If the auditor does not have the professional competencies, the auditor should not accept the engagement.

### **Emphasis on professional scepticism and professional judgement**

52. The auditor exercises professional scepticism throughout the engagement, with emphasis on:
  - a) Assessing the risks of fraud and theft;
  - b) Determining whether there is any suspicion of misappropriation arising from fraud and theft; and
  - c) Performing procedures in response to such suspicion.
53. 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 service activities of the attorney's practice may indicate the existence of fraud risk factors.
54. The auditor exercises professional judgement in conducting the engagement. The auditor uses professional judgement to determine the extent of the understanding of the entity and the nature, timing and extent of procedures to identify and assess risks of misstatement in order to provide a reasonable level of assurance.

### **Materiality**

55. The auditor considers materiality during planning when determining the nature, timing and extent of the procedures, and also to evaluate whether the attorney's trust accounts are free from material misstatement.
56. The auditor's determination of materiality is usually a matter of professional judgement. In the context of an engagement on attorneys' trust accounts there is less room for judgement as the Rules are drafted for compliance and are not audited to the same levels of materiality, as in an audit of financial statements, which are prepared and presented to levels of materiality.
57. Any instances of non-compliance of attorneys' trust accounts that come to the auditor's attention, whether or not appropriately accounted for or resolved by management, are considered qualitatively material and listed in the auditor's qualified report. Instances of non-compliance that have been reported and resolved should be indicated accordingly.

### **Emphasis on special considerations applicable to fraud and theft**

58. The guidance in ISA 240 (Revised), *The Auditor's Responsibilities Relating to 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 (Revised) in identifying and assessing fraud risk factors and further examples that may be encountered in engagements on attorneys' trust accounts (refer to paragraph 63).

59. The auditor's inquiries include obtaining knowledge of the attorney's understanding regarding the accounting and internal control systems in place to prevent, or detect and correct fraud and error; 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 affecting the practice which is under investigation.
60. The nature, extent and timing 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.
61. When an attorney places undue reliance on trusted individuals with poor or non-existent segregation of duties and an absence of independent review over the accounting records and trust accounts, experience has shown that it is easy for dishonest persons to misappropriate funds with ease, and to avoid detection.
62. In addition to inquiries 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 attorney's 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 persons within the firm other than management, in addition to the attorney, may be useful in providing the auditor with a perspective that is different from that provided by the attorney.
63. The fraud risk factors identified below are further examples of such factors that may be encountered by auditors in engagements on attorneys' trust accounts. Not all are relevant in all circumstances, and some may be of greater or lesser significance in attorneys' practices of different sizes or with different ownership characteristics or circumstances. Also, the order is not intended to reflect their relative importance or frequency of occurrence.
  - Firms that do not have a good reputation;
  - Firms that receive adverse media reporting;
  - Firms managed by sole directors or sole practitioners;
  - Long and unexplained absences by attorneys;
  - Sole partners or sole practitioners lacking financial and administration skills, or not having the time to perform the control functions for which they are responsible;
  - Failure to distinguish between trust monies and business monies;



- Failure to keep proper accounting records, which include a proper narrative for each transaction (so that transactions and balances may be identified by persons not familiar with the transactions);
  - Poor state of the firm's financial position, financial performance and cash flows as reflected in the financial statements;
  - Financial statements not completed at the time of the engagement on compliance of the trust accounts with the Act and the Rules;
  - Incomplete accounting records and incomplete records relating to trust transactions and poor filing procedures;
  - Unauthorised journal entries passed through an attorney's trust accounts;
  - Journal entries that are passed over weekends, on public holidays or in a relatively large volume at period-end;
  - A high volume of unidentifiable receipts;
  - Transfers in rounded amounts, especially at period end;
  - Unusual transactions;
  - Unusual service activities;
  - Service activities carried on by attorneys, which are identified by the Attorneys Fidelity Fund as those types of service activities where a high incidence of claims paid is experienced;<sup>16</sup>
  - Poor segregation of duties within the firm and reliance on key persons;
  - Contravention of any relevant legislation, for example:
    - Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) (FICA);
    - Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (FAIS);
    - Prevention of Organised Crimes Act, 1998 (Act No. 121 of 1998) (POCA);
    - Tax Administration Act (Act No. 28 of 2011);
    - Income Tax Act, 1962 (Act No. 58 of 1962);
    - Value-Added Tax (VAT) Act, 1991 (Act No. 89 of 1991); and
    - Foreign exchange regulations.
  - Any other unusual behaviour observed.
64. 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.

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<sup>16</sup> The report by the claims executive of the Attorneys Fidelity Fund is included in the Attorneys Fidelity Funds' annual report. This information can be accessed from the Fund's website at [www.fidfund.co.za](http://www.fidfund.co.za). Conveyancing and personal accident service activities of firms are reported as the largest contributors to claims paid.

65. The auditor may consider inquiring from the relevant Law Society and/or the Attorneys Fidelity Fund regarding any complaints that may have been received in respect of the management of trust monies by the firm.
66. Where instances of potential or alleged fraud have been identified, the auditor considers whether the circumstances indicate a reportable irregularity that requires investigation.

### **Compliance with laws and regulations**

67. 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 identified are reported as matters coming to the attention of the auditor.
68. As part of obtaining an understanding of the entity and its environment, the auditor<sup>17</sup> 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.<sup>18</sup>
69. The auditor may, for example:
  - Use the auditor's existing understanding of the attorneys' profession and regulatory and other external factors;
  - Update the understanding of those laws and regulations that directly affect matters included in the auditor's assurance report;
  - Inquire of management as to other laws or regulations that may be expected to have a material effect on transactions in the attorney's trust account; and
  - Inquire of the attorney concerning the firm's policies and procedures to ensure compliance with the Act and the Rules and other relevant laws and regulations.
70. If the auditor becomes aware of information concerning an instance of non-compliance or suspected non-compliance with the Act, the Rules and other laws and regulations, the auditor obtains:
  - (a) An understanding of the nature of the non-compliance and the circumstances in which it has occurred; and
  - (b) Further information to evaluate the possible effect on fund transactions reflected in the attorney's trust account.
71. 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 relevant Law Society, any regulatory organisations, government departments or evidence of payment of fines or penalties;

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<sup>17</sup> Including the engagement team.

<sup>18</sup> ISA 250, paragraph 12, A7-A8 and A9, in particular, regarding legal and regulatory implications affecting different service lines and client mandates that might result in the auditor becoming aware of instances of non-compliance of an attorney's trust accounts with the Act and the Rules.

- Payments for unspecified services or making of loans to consultants, related parties, employees or government employees not in accordance with the relevant service activity or client mandate;
- Payments in cash, or in the form of cash cheques payable to bearer, or electronic fund transfers to numbered bank accounts, where the payee is not identified;
- Unusual offshore or cross-border transactions in the attorney's trust accounts with entities in other jurisdictions (including tax havens);
- Payments for goods or services made other than to the country from which the goods or services originated;
- Payments without proper exchange control documentation;
- Existence of an information system which, whether by design or accident, fails to provide an adequate audit trail or sufficient evidence;
- Unauthorised transactions or improperly recorded transactions; and
- Adverse media comment.

### **Written representations by an attorney**

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

### **Subsequent events**

73. The auditor considers the effect on the attorney's trust accounts and 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. The auditor should be alert to transactions recorded after the period/year-end but before the date of the auditor's report that may have an effect on the auditor's previous consideration of compliance. Furthermore, the auditor has no responsibility to perform any procedures regarding the attorney's trust accounts after the date of the auditor's report.

## Auditor's documentation

74. The auditor records matters that are significant in providing evidence that supports the auditor's report.<sup>19</sup> 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.
75. The auditor documents work performed on opening trust balances (as per the trust accounting system) in both initial<sup>20</sup> and continuing engagements.

## Auditor Reporting

### Assurance report content

76. The auditor's assurance report content follows the guidance in paragraphs 69-71 of ISAE 3000 (Revised).
77. For the auditor's opinion to be understood in the context of the engagement, the auditor's responsibility paragraph states, inter alia, that:

"A reasonable assurance report in accordance with ISAE 3000 (Revised) involves performing procedures to obtain evidence about the compliance of the attorney's trust accounts with the Act and the 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 the Rules, whether due to fraud and error. In making those risk assessments we considered internal control relevant to the engagement in order to design procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal control. Our reasonable assurance engagement included the following procedures:

- a) Considering and applying, when considered applicable in the engagement circumstances, the guidance in the Revised Guide for Registered Auditors, *Engagements on Attorneys' Trust Accounts*;
- b) Making inquiries of the attorney and the attorney's staff;
- c) Testing transactions for all significant activities with the objective of evaluating whether:
  - i) transactions were appropriately identified as trust transactions;
  - ii) 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;
  - iii) deposits and withdrawals from the trust bank account were to, or for, a trust creditor; and
  - iv) transfers to the attorney's business account were only in respect of moneys claimed to be due to the attorney; and

<sup>19</sup> Paragraphs 79-83 of ISAE 3000 (Revised).

<sup>20</sup> Refer to ISA 510, *Initial Audit Engagements – Opening Balances*.

- 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.”<sup>21</sup>

### **Illustrative reasonable assurance reports**

78. Appendix 4 contains an illustrative report in respect of an unmodified opinion when the auditor has concluded that the attorney’s trust accounts were in compliance with the Act and the Rules.
79. Appendix 5 contains an illustrative report in respect of a qualified opinion when the auditor has concluded that the attorney’s trust accounts were not maintained in compliance with the Act and the Rules. The auditor discloses, in the Basis for Qualified Opinion paragraph of the auditor’s report, details of contraventions of the Act and the Rules in sufficient detail to enable the relevant Law Society to exercise oversight should it wish to do so.
80. An illustrative report is not provided for instances when:
- (a) The auditor is unable to report compliance, due to the significance of identified contraventions (adverse opinion); or
  - (b) The auditor is unable to obtain sufficient appropriate audit evidence (qualified or disclaimer of opinion).
81. In such circumstances the auditor adapts the guidance on the layout and wording from the appropriate illustrative reports in ISA 705 (Revised), *Modifications to the Opinion in the Independent Auditor’s Report*, and considers other reporting responsibilities.

### **Report on Attorney’s Annual Statement on Trust Accounts**

82. The auditor reports separately on the information extracted from the trust accounting records and reflected in the Attorney’s Annual Statement on Trust Accounts in a paragraph following the assurance opinion.
83. The auditor also reads the Attorney’s Annual Statement on Trust Accounts for the purpose of identifying whether the information contained therein is inconsistent with the auditor’s knowledge obtained in the course of the engagement and then reports whether, based on the reading, any inconsistencies have been identified. As the auditor has not undertaken an assurance engagement on the Attorney’s Annual Statement on Trust Accounts, the auditor does not express an opinion thereon.
84. When an auditor’s assurance report on the compliance of attorneys’ trust accounts with the Act and the Rules contains a qualified opinion, an adverse opinion or a disclaimer of opinion, the illustrative wording of the paragraph in Appendix 5 may require an amendment. The auditor considers whether the qualified opinion, adverse opinion or disclaimer of opinion has any effect, or possible effect, on the consistency of the attorney’s representations and the other disclosures in the Attorney’s Annual Statement on Trust Accounts, with instances of non-compliance of attorneys’ trust accounts with the Act and the Rules identified in the auditor’s report, and if so, the auditor amends the wording appropriately, having regard to the circumstances.

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<sup>21</sup> See SAAPS 6, *External Confirmations from Financial Institutions*.

## Report on other legal and regulatory requirements

85. When the auditor has reported a reportable irregularity to the IRBA, the auditor includes a paragraph on “*Report on Other Legal and Regulatory Requirements*” in his report, following the paragraph on the *Report on Attorney’s Annual Statement on Trust Accounts* that discloses the information relating to the reportable irregularity. Illustrative wording, adapted as necessary to the circumstances, may be as follows:

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

## Other reporting responsibilities

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

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## Appendix 1: Rule Requirements, Identified Assurance Engagement Risk and Illustrative Procedures/Responses

**Note:** The control environment, risks and systems will differ from entity to entity. Accordingly, auditors are advised to adapt the following procedures accordingly. The illustrative auditor's 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 <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
1	Act s78(6) Rule 35.5 and 35.6	<b><u>Accounting requirements – General</u></b> A firm shall keep in an official language of the Republic <sup>25</sup> such accounting records as are necessary to enable the firm to satisfy its obligations in terms of the Act, these rules and any other law with respect to the preparation of financial statements that present fairly and in accordance with an acceptable financial reporting framework in South Africa the state of affairs and business of the firm; and to explain the transactions and financial position of the firm, including and without derogation from the	General	To identify and assess risk within the assurance engagement, obtain an understanding of, and document key controls identified by the attorney that address each of the control objectives listed below in respect of the accounting records: <ul style="list-style-type: none"> <li>Accounting records are accurate (accuracy); and</li> <li>Loss of the accounting records is prevented (completeness).</li> </ul> Inspect the latest available financial statements of the entity and ensure

<sup>22</sup> For purposes of this Guide, the Rules reflected in this table refer to the Rules for the Attorneys' Profession (Rules) as published in the Government Gazette No. 39740 on 26 February 2016.

<sup>23</sup> These are risks that have been identified as typically present in attorneys' trust accounts engagements in relation to the Accounting Rules.

<sup>24</sup> The auditor exercises judgement in the circumstances of the engagement at the attorney's firm, and adapts the illustrated procedures/responses as necessary, based on the auditor's assessment of the risks of non-compliance of the attorney's trust accounts with the Act and the Rules.

<sup>25</sup> The Republic of South Africa.

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
		<p>generality of this rule:</p> <ul style="list-style-type: none"> <li>• Records showing all assets and liabilities as required in terms of sections 78(4) and 78(6) of the Act;</li> <li>• Records containing entries from day to day of all monies received and paid by it on its own account, as required by sections 78(4) and 78(6) of the Act;</li> <li>• Records containing particulars and information of: <ul style="list-style-type: none"> <li>○ All moneys received, held and paid by it for and on account of any person;</li> <li>○ All moneys invested by it in terms of Section 78(2) or Section 78 (2A) of the Act;</li> <li>○ Any interest referred to in Section 78(3) of the Act which is paid over or credited to it; and</li> <li>○ Any interest credited to or in respect of any separate trust savings.</li> </ul> </li> </ul> <p><b>Acceptable financial reporting framework</b></p> <p>For purposes of these rules:</p> <ul style="list-style-type: none"> <li>• Acceptable financial reporting frameworks which are to be</li> </ul>		<p>that they are presented in terms of either IFRS or IFRS for SMEs and include specific additional disclosure as published by the Council. Inspect the accounting records to ensure that they comply with the Rules and to establish whether the accounting records maintain separately the records of:</p> <ul style="list-style-type: none"> <li>• The firm's financial transactions relating to its practice;</li> <li>• The particulars and information of trust account transactions: <ul style="list-style-type: none"> <li>○ All moneys received, held or paid by the attorney for the account of any person;</li> <li>○ All money invested by the attorney in a trust savings account or other interest bearing account; and</li> <li>○ All interest on money so invested that is paid over or credited to the attorney;</li> </ul> </li> <li>• The firm's assets and liabilities; and</li> <li>• That the records are maintained in an official language of the Republic.</li> </ul>



No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
		<p>recognised and applied are:</p> <ul style="list-style-type: none"> <li>○ "IFRS", being International Financial Reporting Standards as issued from time to time by the International Reporting Standards Board, or its successor body;</li> <li>○ "IFRS for SMEs", being IFRS for Small and Medium Enterprises.</li> <li>● In determining what is meant by "acceptable financial reporting frameworks" regard shall be had, <i>inter alia</i>, to any rulings of the Council published to members with respect to specific additional disclosures required to be made in the financial statements or trust account schedules.</li> </ul>		
2	<p><b>Act s78(1)</b>  <b>Rule 35.7</b></p>	<p><b><u>Distinguishing between trust account and business account transactions</u></b></p> <p>The accounting records shall distinguish, in readily discernible form, between business account transactions and trust account transactions.</p>	<p>The firm's accounting records may not distinguish between the business account transactions and the trust account transactions and this could potentially lead to inaccurate and incomplete accounting for the trust account transactions.</p>	<p>Using the knowledge obtained during the understanding of the nature of the attorney's trust account transactions and service activities – acquired during the planning stage – determine by inspection of the accounting records whether a clear distinction has been made between the trust account transactions and the business account transactions.</p>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
3	Act s78(6) Rule 35.8	<p><b><u>Retention of accounting records and files</u></b></p> <p>A firm shall retain its accounting records and all files and documents relating to matters dealt with by the firm on behalf of clients:</p> <ul style="list-style-type: none"> <li>• For at least five years from the date of the last entry recorded in each particular book or other document of record or file;</li> <li>• Save with the prior written consent of the Council, or when removed there from under other lawful authority, at no place other than its main office, a branch office or, in the case of electronic accounting records or files, the location at which such accounting records or files are ordinarily hosted, provided that: <ul style="list-style-type: none"> <li>○ In the case of electronic accounting records or files hosted offsite, such records or files shall always be reasonably secured and shall remain immediately accessible to authorised persons from the office of the firm, and to the Council; and</li> <li>○ In the case of a branch office,</li> </ul> </li> </ul>	<p>The accounting records, files and documents may not be retained for the prescribed period as per the Rule.</p> <p>The retention of the accounting records, files and documents outsourced and kept at the computer bureau/service provider may be not done as prescribed by the Rule.</p>	<p>Discuss with management and inspect accounting records, files and documents to determine whether the accounting records are kept for a period of five years at least, at the firm's main office or/and branch office(s) as required.</p>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
		only insofar as they relate to any part of its practice conducted at that branch office.		
4	<b>Act s78(4)</b> Rule 35.9	<p><b><u>Updating of accounting records</u></b></p> <p>A firm shall update and balance its accounting records monthly and shall be deemed to comply with this rule if, <i>inter alia</i>, its accounting records have been written up by the last day of the following month.</p>	<p>The firm may fail to promptly update accounting records and to write them up as required by the Rule and this may lead to delays in the engagement performance and a potential scope limitation.</p> <p>This also applies to the business accounting records.</p>	<p>Obtain an understanding and document the key controls relating to the control objectives listed below in respect of the accounting records and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Accounting records are timeously updated (accuracy); and</li> <li>• Review the accounting records to determine whether they are written up monthly (i.e. last day of the following month).</li> </ul> <p>If reliance is not placed on controls, select on a test basis a sample of the trust accounting records and confirm that they are written up monthly (i.e. last day of the following month).</p>
5	Rule 35.13.1 to 35.13.6	<p><b><u>Accounting Requirements – Trust Account Transactions</u></b></p> <p>A firm shall maintain its accounting records in terms of the Act and these rules.</p> <p>A firm shall report to the society forthwith in writing any loss, theft or destruction of</p>	<p>The firm may fail to maintain accounting records in a manner required by the Act and the Rules, and this may lead to the attorney's trust accounts transactions being incomplete and</p>	<p>Obtain an understanding and document the key controls relating to the control objectives listed below in respect of the accounting records and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Accounting records are accurate</li> </ul>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
		<p>any such records.</p> <p>A firm shall, in the case of accounting records being computerised, make monthly backups which shall be kept in a safe, fireproof place remote from the firm or, in the case of accounting records being in the form of manual books of account, by ensuring that, outside normal business hours, such records are kept in a safe place.</p> <p>If the firm keeps any of its accounting records in electronic form, the firm shall:</p> <ul style="list-style-type: none"> <li>• Provide adequate precautions against loss of the records as a result of damage to or failure of the media in which the records are maintained; and</li> <li>• Ensure that the records are at all times capable of being retrieved to a readable and printable form, including by converting the records from legacy to later systems or software from time to time.</li> </ul> <p>A firm shall, where the firm utilises electronic banking in respect of payments from the trust account, keep a proper audit trail, which shall include verification of the payee's banking account details.</p>	<p>inaccurate.</p>	<p>(accuracy); and</p> <ul style="list-style-type: none"> <li>• Loss of the accounting records is prevented (completeness).</li> </ul> <p>Inquire from management as to whether any loss, theft or destruction of any accounting records occurred. If so, confirm through inspecting the correspondence that this has been reported to the Law Society.</p> <p>Document controls implemented by the attorney regarding backups of computerised records, safekeeping of manual records and retrieval of these records, and determine whether they operated effectively throughout the period under review, if reliance is placed on the control.</p> <p>If reliance is not placed on controls, perform substantive procedures comprising, as may be appropriate, the inspection of records, observation of procedures or processes, and inquiries of management and relevant accounting and information system staff, to obtain sufficient appropriate evidence regarding backups of computerised records, safekeeping of manual records and the retrieval of</p>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
		<p>The firm's accounting records shall not, save with the prior written consent of Council or under lawful authority, and except for electronic records in terms of Rule 35.13.2 and backups of computerised records, be maintained at any place other than its main office or branch office, but in the latter instance, only insofar as they relate to any part of its practice conducted at that branch.</p>		<p>these records.</p> <p>For EFT payments, refer to step 15 and obtain evidence that management has established the ownership of the recipient's bank account.</p> <p>Determine whether the accounting records are held in compliance with the rules.</p>
6	<p><b>Act s78(1)</b> <b>Rule 35.10</b></p>	<p><b><u>Trust money to be kept separate from other money</u></b></p> <p>Trust money shall in no circumstances be deposited in or credited to a business banking account. Money other than trust money found in a trust banking account at any time shall be transferred to a business banking account without undue delay. A firm shall be deemed to have complied sufficiently with this rule if it makes transfers from its trust banking account to its business banking account at least once a month</p>	<p>Trust money must be kept separate from other money.</p> <p>Not keeping trust money separate may lead to misappropriation of the trust money, which may go undetected.</p> <p>Money other than trust money was not transferred to the business banking account at least once a month.</p>	<p>On a test basis, agree receipts and payments reflected in the business bank account with the business client (debtor) ledger, in order to ascertain whether any trust account items have been erroneously dealt with as a business transaction.</p> <ul style="list-style-type: none"> <li>• Inspect the business debtors to identify credit balances, and inquire whether they should be trust creditors; and</li> <li>• On a test basis, select reverse transfer journals from business to trust accounts discuss with management and corroborate with supporting evidence.</li> </ul>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
7	<p><b>Act s78(4) and s78(6)</b>                      Rule 35.10.1 to 35.10.2.3</p>	<p><b><u>Transfer from trust banking account</u></b>                      When making a transfer from its trust banking account to its business banking account, a firm shall ensure that:</p> <ul style="list-style-type: none"> <li>• The amount transferred is identifiable with and does not exceed the amount due to it;</li> <li>• The trust creditor from whose account the transfer is made is identified; and</li> <li>• The balance of any amount due to it remaining in its trust banking account is capable of identification, with corresponding entries appearing in its trust ledger.</li> </ul>	<p>Transfers from the trust banking account may not be in compliance with the provisions of the Rules.                      This may lead to irreconcilable differences in the trust banking account and debit balances.</p>	<p>Obtain an understanding and document the key controls relating to the control objectives listed below in respect of the transfers from the trust banking account and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Transfers from the trust banking account are properly authorised (validity);</li> <li>• The amount transferred is correct (accuracy); and</li> <li>• Transfers are recorded in the correct accounting period (cut-off).</li> </ul> <p>On a test basis, select individual transfers, other than those related to fees or expenses, from the trust banking account to the business banking account and inspect supporting documentation to establish that the amount transferred is valid.</p> <p>On a test basis, select individual transfers from the trust banking account which relate to fees and expenses and test to ensure that:</p> <ul style="list-style-type: none"> <li>• The fees or expenses are due; and</li> <li>• That the fee has been raised in the</li> </ul>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
				<p>business books before the transfer is effected; or</p> <ul style="list-style-type: none"> <li>• The transfer is in respect of a valid expense relating to the specific creditor and trace payment to the creditor's account.</li> </ul> <p>Scrutinise all rounded amounts transferred.</p> <p>Inspect the total as per the transfer listing and ensure that:</p> <ul style="list-style-type: none"> <li>• It agrees to the amount deposited/EFT transfer into the business bank account; and</li> <li>• The deposit/EFT transfer was made without undue delay.</li> <li>• Confirm that the transfers were not made into bank accounts other than the firm's business bank account.</li> </ul>
8	Rule 35.11	<p><b><u>Accounting to clients</u></b></p> <p>Every firm shall, within a reasonable time after the performance or earlier termination of any mandate, account to its client in writing and retain a copy of each such account for not less than five years; each account shall contain details of:</p>	Non-disclosure to clients.	<p>For the sample of matter files selected for detail testing (refer responses to No. 29), obtain written evidence of the firm's accounting to its clients and determine whether the accounting to the firm's clients includes the following:</p> <ul style="list-style-type: none"> <li>• Details of amounts received by the firm from its respective clients and</li> </ul>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
		<ul style="list-style-type: none"> <li>• All amounts received by it in connection with the matter concerned, appropriately explained;</li> <li>• All disbursements and other payments made by it in connection with the matter;</li> <li>• All fees and other charges charged to or raised against the client and, where any fee represents an agreed fee, a statement that such fee was agreed upon and the amount so agreed;</li> <li>• The amount owing to or by the client.</li> </ul>		<p>that these amounts are appropriately explained;</p> <ul style="list-style-type: none"> <li>• Disbursements made by the firm are included;</li> <li>• Fees and other charges charged to or raised against the client are included; and</li> <li>• The amount owed to or by the client is clearly shown.</li> </ul> <p>Determine, by inspection, whether the supporting documentation referred to above is properly authorised and relates to disbursements relative to the mandate of the client.</p>
9	<p><b>Act s78(1)</b> Rule 35.13.7.1.5</p>	<p><b><u>Prompt depositing of trust monies</u></b> A firm shall ensure that all money received by it on account of any person is deposited intact into its trust banking account on the date of its receipt or the first banking day following its receipt on which it might reasonably be expected that it would be banked.</p>	<p>Trust money may not be promptly deposited and this may lead to trust money going missing or being used for purposes for which it was not intended.</p>	<p>Obtain an understanding and document the key controls relating to the control objectives listed below in respect of the deposit of trust money and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Trust money is deposited intact (any misappropriations of trust moneys are identified) (accuracy)</li> <li>• Deposits are recorded in the correct</li> </ul>



No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
				<p>accounting period (cut-off); and</p> <ul style="list-style-type: none"> <li>• All trust money or EFTs<sup>26</sup> received are accounted for and allocated to the correct trust account.</li> </ul> <p>If reliance is placed on the controls, select on a test basis a sample of receipts and inspect the corresponding bank-stamped deposit slips to determine whether the key controls have been implemented and operated effectively throughout the period under review.</p> <p>If reliance is not placed on controls, select on a test basis a sample of receipts and inspect the corresponding bank-stamped deposit slips to determine whether:</p> <ul style="list-style-type: none"> <li>• the trust money was promptly deposited into the trust bank account;</li> <li>• deposits were recorded in the correct period; and</li> <li>• All trust money/EFTs<sup>27</sup> received are accounted for and allocated to the correct trust account</li> </ul>

<sup>26</sup> Electronic fund transfers between banking accounts done electronically on-line.

<sup>27</sup> Electronic fund transfers between banking accounts done electronically on-line.

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
				<p>Inspect the receipt book and ensure that it is sequentially pre-numbered. Using the sample selected above, determine whether the receipts:</p> <ul style="list-style-type: none"> <li>• Are issued in duplicates; and</li> <li>• Provide the details as required by the Rule.</li> </ul> <p>Where funds have been received via EFT, inspect evidence that the details as required by the Rule have been recorded.</p>
10	<p><b>Act s78(1), s78(2)(a) and (b)</b>  <b>Rule 35.13.7.1.6</b></p>	<p><b><u>Transfers for trust investment account</u></b>                      A firm shall ensure, unless the firm has received written authorisation for the payment of any guarantees issued by a bank on the strength of a trust investment, that any amount withdrawn by it from a trust investment account is deposited promptly by it in its trust banking account.</p>	<p>Transfers from a trust investment account to a trust banking account may not be in accordance with the Rule, resulting in some trust moneys not being appropriately accounted for.</p>	<p>Obtain an understanding and document the key controls relating to the control objectives listed below in respect of the transfers from the trust investment account and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Transfers from the trust investment account are properly authorised and are made to the trust banking account (unless written authorisation has been received for the payment of any guarantees issued by a bank on the strength of a trust investment) (validity);</li> <li>• The amount transferred is correct</li> </ul>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
				<p>(accuracy); and</p> <ul style="list-style-type: none"> <li>• Transfers are recorded in the correct accounting period (cut-off).</li> </ul> <p>On a test basis, select a sample of transfers made from the trust investment account and determine whether the amounts transferred to the trust bank account, except for written authorisation for payment of any guarantees issued by a bank, are recorded in the correct accounting period.</p> <p>For each selected transfer made to the trust bank account, inspect the client mandate to determine whether the amount is authorised and accurate.</p> <p>For each selected transfer made for a payment of any guarantees issued by a bank, inspect the written authorisation to determine whether the payment is authorised and accurate.</p>
11	<p><b>Act s78(1) and s78(2A)</b>  <b>Rule 35.13.8 and 35.13.9 and 35.13.12</b></p>	<p><b><u>Trust balances not to exceed trust moneys (creditors).</u></b>  <b><u>Trust accounts not to be in debit.</u></b>  <b><u>Transfer from trust bank account to business bank account</u></b>                      A firm shall ensure that the total amount of money in its trust banking account,</p>	<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</p>	<p>At the reporting dates (i.e. at the year end and one other test date) obtain an independent external written (or electronic) confirmation of the balance of the trust banking account and trust investment account from the financial institutions with which these accounts</p>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
		<p>trust investment account and trust cash at any date shall not be less than the total amount of the credit balances of the trust creditors shown in its accounting records.</p> <p>A firm shall ensure that no account of any trust creditor is in debit.</p> <p>A firm shall employ and maintain a system to ensure that the requirements of these rules are not infringed when amounts are transferred from its trust banking account to its business banking account.</p>	<p>creditors.</p> <p>This may bring about unreconciled differences in the trust accounting records.</p> <p>Individual trust creditors may not go into debit.</p>	<p>are held.<sup>28</sup></p> <p>At the reporting dates (i.e. at the year-end and one other test date), agree the total of the trust ledger credit balances with the aggregate of:</p> <ul style="list-style-type: none"> <li>• Balances in trust bank accounts;</li> <li>• Balances in savings accounts in terms of sections 78(2)(a) and 78(2A); and</li> <li>• Trust cash on hand.</li> </ul> <p>Inspect the above reconciliations for evidence of review by a senior official.</p> <p>Obtain the bank reconciliations at both reporting dates, for the trust banking account, trust investment account and trust cash, and test the reconciliation as follows:</p> <ul style="list-style-type: none"> <li>• Compare the balances on the reconciliation to the cashbook, bank statements and bank confirmation balances, respectively; and</li> <li>• Re-perform all casts on the reconciliation and at the same time, test the logic of the reconciliation,</li> </ul>

<sup>28</sup> Refer to SAAPS 6, *External Confirmations from Financial Institutions*, for external confirmation requests issued on or after 1 October 2013.

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				<p>e.g. outstanding cheques have been added to, not subtracted from, the cashbook balance.</p> <p>On a test basis, select a sample of receipts and payments from the cashbook and by inspection determine whether they appear as entries:</p> <ul style="list-style-type: none"> <li>• Recorded in the bank statements prior to the respective reporting dates; or</li> <li>• They appear in the reconciliation as outstanding cheques or deposits/EFTs.</li> </ul> <p>Determine through inspection whether the outstanding cheques and deposits reflected on the reconciliation appear in:</p> <ul style="list-style-type: none"> <li>• The cash book prior to the reconciliation date; and</li> <li>• In the bank statement after reconciliation date.</li> </ul> <p>Inquire about any long outstanding deposits and long outstanding cheques that should possibly be written back.</p> <p>Obtain an explanation from management and follow up on any unusual reconciling items by reference</p>

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				<p>to supporting documentation.</p> <p>On a test basis, select a sample of receipts and payments close to the reporting dates (i.e. at the year-end and one other test date) and confirm by inspection that they appear as entries recorded in the cash book prior to the reporting dates.</p> <p>Examine the bank statements of the attorney's firm subsequent to the reporting dates (i.e. year-end and one other test date – being not less than one week) to identify any negotiable instruments that were deposited in the trust banking account, but had not been met.</p> <p>Inspect documentary evidence showing results of the trust cash count held at the reporting dates (i.e. year-end and one other test date) and agree the amount to the reconciliation.</p> <p>Agree the total amount on the reconciliation at the reporting dates (i.e. year-end and one other test date) to the total of the trust creditors at the reporting dates (i.e. year-end and one other test date) and determine whether the total amount on the reconciliation is</p>

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				not less than the total of the trust creditors. Scrutinise the trust creditor accounts to identify any trust creditor balance which is in debit. Obtain an explanation of the reason for the debit balance and corroborate with supporting evidence.
12	Rule 35.13.10 and 35.13.11	<p><b><u>Reports to Society of non-compliance</u></b></p> <p>A firm shall immediately report in writing to the Society should the total amount of money in its trust bank accounts and money held as trust cash be less than the total amount of credit balances of the trust creditors shown in its accounting records, together with a written explanation of the reason for the debit and proof of rectification.</p> <p>A firm shall immediately report in writing to the Society should an account of any trust creditor be in debit, together with a written explanation of the reason for the debit and proof of rectification.</p>	Reports may not be made timeously or at all in terms of trust deficits or trust creditors being in debit.	Inquire of management as to whether any reports have been made to the Society during the period under review or while conducting the assurance engagement. On a test basis, select a sample of instances of non-compliance identified by management to verify that a report has been made by the firm in compliance with the Rules, and document the rectification of the non-compliance by the firm. Where other instances of non-compliance have been identified during the course of the engagement, verify that a report has been made by the firm in compliance with the Rules, and document the rectification of the non-compliance by the firm.
13	Act s78(1)	<p><b><u>Deposits on account of charges</u></b></p> <p>Amounts received by a firm in advance to</p>	Amounts received in advance may be	Obtain receipt books and a list of EFTs. On a test basis, trace a sample of

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
	Rule 35.13.13	cover a prospective liability for services rendered or to be rendered or for disbursements (including counsel's fees) to be made must be deposited forthwith to the credit of its trust banking account.	inappropriately accounted for, resulting in misappropriations of the trust funds.	receipts to the trust banking account to determine whether these moneys are appropriately accounted for.
14	Act s78(1) Rule 35.13.14	<p><b><u>Withdrawals from trust banking account</u></b></p> <p>Withdrawals from a firm's trust banking account shall be made only:</p> <ul style="list-style-type: none"> <li>• To or for a trust creditor, or</li> <li>• As transfers to the firm's business banking account, provided that such transfers shall be made in respect of money due to the firm; and provided that no transfer from its trust banking account to its business banking account is made in respect of any disbursement (including counsel's fees or fees of the firm) unless: <ul style="list-style-type: none"> <li>○ The disbursements have actually been made and debited by the firm; or</li> <li>○ A contractual obligation has arisen on the part of the firm to pay the disbursement; or</li> <li>○ Fees and disbursements have been correctly debited in its</li> </ul> </li> </ul>	Withdrawals from the trust banking account may not be made in accordance with the Rule, which could lead to misappropriation of the trust funds.	<p>Obtain an understanding and document the key controls relating to the control objectives listed below in respect of the withdrawals from the trust banking account and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Withdrawals from the trust banking account are properly authorised (validity);</li> <li>• The amount withdrawn is correct (accuracy); and</li> <li>• Withdrawals are recorded in the correct accounting period (cut-off).</li> </ul> <p>If reliance is placed on the controls, select on a test basis a sample of withdrawals from the trust banking account bank statements and determine by inspecting supporting documentation whether the key controls have been implemented and operated effectively throughout the period under review,</p>



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		accounting records.		<p>If reliance is not placed on controls, select on a test basis a sample of withdrawals from the trust banking account and determine by inspecting supporting documentation whether:</p> <ul style="list-style-type: none"> <li>• Withdrawals from the trust banking account are properly authorised;</li> <li>• The amount withdrawn is correct; and</li> <li>• Withdrawals are recorded in the correct accounting period.</li> </ul>
15	<p><b>Act s78(1)</b>                      Rule 35.13.15.1 to 35.13.15.3</p>	<p><b><u>Payments from trust banking account</u></b>                      Any cheque drawn on a firm's trust banking account shall be made payable to or to the order of a payee specifically designated.                      Payments from the trust banking account of a firm shall only be by cheque or electronic transfer.                      No withdrawals from the trust banking account of a firm may be made by way of cellular and telephone transacting (telebanking).</p>	<p>In the case where cheques are issued to effect payments, trust cheques may be issued irresponsibly.                      Un-issued cheques may not be subject to strong stationery controls.                      In the case of EFT payments, there may be weak or no controls over EFT payments.                      All the above circumstances may lead to misappropriation of trust</p>	<p><b><u>Cheque payments and EFTs</u></b>                      On a test basis, select a sample of cheque and EFT payments from the trust bank statements and perform the following:  <b>Cheque payments:</b></p> <ul style="list-style-type: none"> <li>• Determine whether the paid cheques were made to or to the order of a payee specifically designated and are relevant to the client's matter;</li> <li>• Agree to supporting documentation;</li> <li>• Peruse the cashbook for any evidence of cash cheques; and</li> <li>• Determine by inquiry of</li> </ul>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
			funds.	<p>management and inspection of the cheque book whether cheques are issued in strict numerical sequence.</p> <p>Using the sample selected above, determine whether:</p> <ul style="list-style-type: none"> <li>• Cheques are signed in accordance with the bank mandate;</li> <li>• Payments to business are to reimburse a disbursement or fees already debited; and</li> <li>• Un-issued cheques are subject to strict stationery controls.</li> </ul> <p><b>Electronic Funds Transfer:</b></p> <ul style="list-style-type: none"> <li>• Inspect the signature of the senior accounts official (e.g. Head of Department) on the supporting documentation as evidence that the EFT payment was authorised after scrutiny of supporting documentation (validity);</li> <li>• Inspect the EFT supporting documentation for evidence that computations were checked prior to authorising the payment (accuracy);</li> <li>• Determine by inquiry and observation whether EFT payments are made and released in</li> </ul>

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				<p>accordance with the attorney's bank mandate;</p> <ul style="list-style-type: none"> <li>• Inquire of management and inspect reports regarding security violations;</li> <li>• Inspect the EFT audit trail for evidence that it was reviewed by senior personnel;</li> <li>• Obtain evidence that management has established the ownership of the recipient's bank account; and</li> <li>• Inquire from management that cellular/telephone banking for the trust bank account has not been used.</li> </ul>
16	Rule 35.14.1 to 35.14.3	<p><b><u>Lists of balances</u></b>                      Every firm shall extract at intervals of not more than three calendar months, and in a clearly legible manner, a list showing all persons on whose account money is held or has been received and the amount of all such moneys standing to the credit of each such person, who shall be identified therein by name, and shall total such list and compare the said total with the total of the balance standing to the credit of the firm's trust banking account, trust</p>	<p>The list of trust creditors may be inaccurate or incomplete.</p>	<p>Obtain an understanding and document the key controls relating to the control objectives listed below in respect of the extraction of lists of trust creditors and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Information on the lists of trust creditors is correct (accuracy);</li> <li>• Loss of extracted lists of trust creditors is prevented (completeness);</li> </ul> <p>Determine whether the key controls</p>

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		<p>investment account and amounts held by it as trust cash, in order to ensure compliance with Rule 35.13.7.</p> <p>The balance listed in respect of each such account shall also be noted in some permanent, prominent and clear manner in the ledger account from which that balances was extracted.</p> <p>Each such list shall be part of the accounting records of the firm to be retained for the five-year period referred to in rule 35.8.</p>		<p>have been implemented and operated effectively throughout the reporting period under review, if reliance is placed on the controls.</p> <p>If reliance is not placed on controls, select on a test basis a sample from the trust creditor lists and agree the details to that of the trust creditor accounts in the underlying trust accounting records (accuracy).</p> <p>Inspect whether all trust creditor lists that should have been extracted for the period under review are available (completeness).</p> <p>Obtain the extracted lists of trust creditors for the reporting period under review and perform the following procedures:</p> <ul style="list-style-type: none"> <li>• Determine whether the firm has extracted the lists of trust creditors at least quarterly during the period;</li> <li>• Cast the lists to ensure that they have been totalled correctly;</li> <li>• Inspect the list for evidence of having been agreed or reconciled to the total of trust funds;</li> <li>• Inspect the extracted lists and confirm that trust creditors are</li> </ul>

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				<p>identified by name;</p> <ul style="list-style-type: none"> <li>• By inquiry of management and reference to lists from prior periods, determine whether the lists are retained for a period of five years; and</li> <li>• At the reporting dates (i.e. the closing date and at least one other date), agree on a test basis the individual balances from the trust ledgers with the quarterly balance book or quarterly schedules, ensuring that the selected balances are clearly indicated in each ledger account.</li> </ul> <p>Scrutinise the lists of trust ledger balances at the reporting dates (i.e. at year-end and one other test date), inquire into any ledger accounts in the name of the firm, suspense accounts and unidentified deposits.</p> <p>Review activity (transactions, transfers, unusual entries or balances) for unusual or abnormal items. On a sample basis, test any unusual or abnormal items identified.</p>
17	Rule 35.15	<b><u>Notification of trust banking account</u></b>	The firm may not promptly notify the Council of the	Using the independent external confirmations obtained from the

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		<p>Every firm shall:</p> <ul style="list-style-type: none"> <li>• Immediately notify the Society in writing of the name and address of the bank or banks at which its trust banking account or accounts are kept and shall thereafter notify the Council immediately of any change in the name and address of such bank or banks;</li> <li>• Whenever so required by the Council, to furnish the Council within ten days, or such longer period as the Council may stipulate, a signed statement issued by the bank or banks with which it keeps its trust banking account or accounts and a signed statement issued by the bank with which the firm keeps any trust investment account, certifying the amount of the balance of such trust banking account or accounts or trust investment account at such date or dates as may be specified by the Council.</li> </ul>	<p>firm's banking particulars and some bank accounts may not be shown in the firm's records.</p>	<p>financial institutions, as required under illustrative procedure No. 11 above:</p> <ul style="list-style-type: none"> <li>• Compare the details to the accounting records of trust bank accounts to ensure that the bank balances agrees to the bank reconciliation (accuracy and existence);</li> <li>• Compare the number and type of bank accounts (sections 78(1) and 78(2)(a)) held during the current reporting period and at the current year-end to those held during the previous reporting period and at the previous year-end and follow up on accounts closed (completeness);</li> <li>• Inspect minutes of meeting for any new bank accounts opened during the year (completeness); and</li> <li>• Note the date on which each trust bank account (sections 78(1) and 78(2)(a)) was opened and inspect correspondence with the relevant Law Society's Council to determine whether the Council was promptly notified of the opening of the firm's new trust bank account.</li> </ul>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
18	<p><b>Act s78(2A)</b> Rule 35.16 and 35.17</p>	<p><b><u>Trust account investments in terms of Section 78(2A)</u></b> A member who invests funds on behalf of any person shall, in addition to all other requirements applicable to the holding or investment of trust money:</p> <ul style="list-style-type: none"> <li>• Not invest such funds other than in a trust savings or other interest-bearing trust account with a bank;</li> <li>• Obtain that person's written confirmation of the investment as soon as is reasonably possible, or notify him forthwith thereof in writing; and</li> <li>• Forthwith cause the relevant trust savings or other interest-bearing account to be endorsed in terms of Section 78(2A) of the Act.</li> </ul> <p>A member shall not, in connection with any mandate which the member has accepted to invest trust funds, agree or arrange to receive from a bank any commission, fee or other reward without having disclosed such commission, fee or reward to the client in writing.</p>	<p>Investments may be made in contravention of the Rule and this could lead to a client's moneys being used for other purposes other than what was intended.</p>	<p>Obtain an understanding and document the key controls relating to the control objectives listed below in respect of the investments made on behalf of clients and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Investments are properly authorised (validity); and</li> <li>• Accounting records are accurate (accuracy).</li> </ul> <p>If reliance is placed on the controls, select on a test basis a sample of trust investments to determine whether the key controls have been implemented and operated effectively throughout the period under review, and that trust investments are in terms of Section 78(2A).</p> <p>If reliance is not placed on controls, select on a test basis a sample of trust investments and ensure, through inspection of the investment mandate, that:</p> <ul style="list-style-type: none"> <li>• Investments are properly authorised; and</li> <li>• Clients' trust investments are in</li> </ul>

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				<p>terms of Section 78(2A).                      For the sample selected above, ensure that the investment balance per the trust accounting records agrees to the investment bank statement or external bank confirmation and ensure that savings or other interest-bearing accounts are designated properly to comply with the Act, namely, “(the firm name) – Trust account – Section 78(2)(a) or Section 78(2A), Act 53 of 1979”.</p> <p>Inquire of management as to whether any form of arrangement to receive from a bank any commission, fee or other reward exists.</p> <p>In cases where such bank arrangements exist, for the sample selected above, inspect the arrangement with the bank to verify the terms of the arrangement, and ensure, through inspection of disclosed commission, fee or reward, communication to the client in writing.</p>
19	Rule 36.4	<p><b><u>Investment practice - Mandates</u></b>                      A firm carrying on an investment practice shall obtain an investment mandate from each client before or as soon as possible</p>	An investment mandate may not exist, resulting in clients' moneys being used for other purposes	Obtain an understanding and document the key controls relating to the control objectives listed below in respect of the investments made on



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		<p>after investing funds for that client. The form of the investment mandate shall be substantially in the form of the Fifth Schedule to these rules, and shall contain a statement that the client acknowledges that moneys so invested do not enjoy the protection of the Fund.</p>	<p>than otherwise intended.</p>	<p>clients' behalf and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Investments are properly authorised (validity);</li> <li>• Inspect the list of trust creditors and identify those for which the firm is carrying on an investment practice;</li> <li>• Inspect the investment mandate for a sample of clients to determine whether the key controls have been implemented and operated effectively throughout the reporting period under review;</li> <li>• For the sample selected above, confirm that investment mandates were received before or as soon as possible after investing funds for that client; and</li> <li>• For the sample selected above, ensure through inspection that the investment mandate includes a statement that the client acknowledges that moneys so invested do not enjoy the protection of the Fund.</li> </ul> <p>If reliance is not placed on controls:</p>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
				<ul style="list-style-type: none"> <li>• Inspect the list of trust creditors and identify those for which the firm is carrying on an investment practice;</li> <li>• Select on a test basis a sample of investment mandates and determine by inspection that the investments are properly authorised and that the investment mandates were received before or as soon as possible after investing funds for that client; and</li> <li>• For the sample selected above, ensure through inspection that the investment mandate includes a statement that the client acknowledges that moneys so invested do not enjoy the protection of the Fund.</li> </ul>
20	Rule 36.5	<p><b><u>Report to clients</u></b></p> <p>Every firm carrying on an investment practice shall report to its client in writing in terms of the client's investment mandate at least once every twelve months on income earned and capital movements during the period of the report.</p> <p>That report shall reflect all commission earned or other charges made by the</p>	<p>The firm may not submit an annual report to the client regarding the status of the investments held on behalf of the client, and this may lead to misappropriation of a client's moneys.</p>	<p>Obtain an investment register and select a sample at the reporting date &lt;i.e. at year end and the other test date&gt; to determine by inspection of the schedule that was submitted by the firm to the client whether the firm has accounted to all its clients regarding the status of the clients' investments within the period prescribed by the Rule.</p>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
		member in carrying out the mandate.		
21	Rule 36.6 to 36.8	<p><b><u>Accounting records for investment practices</u></b></p> <p>Every firm carrying on an investment practice shall, in addition to its normal accounting records, also keep a separate trust account record and supporting documents in respect of each client, which record shall reflect:</p> <ul style="list-style-type: none"> <li>• Payments of all monies entrusted to it from time to time by the client for investment pursuant to the mandate granted by the client in terms of Rule 36.4;</li> <li>• Payments of all monies invested by it on the client's behalf;</li> <li>• Payments of all amounts, both capital and income, derived from investments and received for the client's account;</li> <li>• All payments made by it to the client in respect of the client's investments; and</li> <li>• All charges paid to the firm in respect of services rendered by it to the client pursuant to the client's mandate in terms of Rule 36.4.</li> </ul>	<p>The accounting records may not exist or may be incomplete, and this may lead to questions about the accuracy and completeness of the client's investments.</p>	<p>Obtain an understanding and document the key controls relating to the control objectives listed below in respect of the accounting records and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Accounting records are accurate (accuracy); and</li> <li>• Accounting records are in terms of Rules 36.6 to 36.8 (complete and accurate).</li> </ul> <p>Select a sample of investment matters in the accounting records and by inspection and observation, determine whether the key controls have been implemented and operated effectively throughout the reporting period under review, if reliance is placed on the control.</p> <p>On a test basis, select a sample of investment practice matters in the accounting records and perform the following procedures:</p> <ul style="list-style-type: none"> <li>• Ensure there is a mandate signed by the client;</li> <li>• Agree the amount of the investment</li> </ul>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
		<p>The accounting records and other supporting documents referred to in Rule 36.6 shall be retained by the firm in such manner as to enable it to furnish each client upon request with all current details of the client's investments as recorded in Rule 36.6.</p> <p>Such accounting records, other supporting documents and systems shall be maintained in sufficient detail and be cross-referenced to the trust account records retained in respect of each client, in such a way as to provide an adequate and appropriate audit trail which will enable a particular transaction to be identified at any time and traced through the accounting records to the client.</p> <p>The system shall collect the information in an orderly manner and the accounting records and other supporting documents shall be properly arranged, filed and indexed so that any particular record can be promptly accessed.</p> <p>Where accounting records are maintained by means other than on paper, adequate facilities shall exist for such records to be reproduced in printed form.</p>		<p>to the trust records; and</p> <ul style="list-style-type: none"> <li>• Agree the amount of the investment to the supporting investment bank statement or bank confirmation.</li> </ul> <p>Discuss with management to determine whether the investment practice accounting records and other supporting documentation are retained for at least five years.</p>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
		<p>All accounting records required to be retained in terms of this rule 36.6 and copies of all reports dispatched in terms of Rule 36.7 shall be retained for at least five years, unless there is statutory provision to the contrary, from the date of the last entry recorded in each particular book or other document of record and shall be held at the same office as the firm's other accounting records.</p>		
22	Rule 36.9 and 36.10	<p><b><u>Pooling of investments</u></b>                      No firm may mix deposits in a pooled account or make other money market investments in any manner otherwise than by accepting funds as agent for each participating client and placing such funds with a bank in a savings account or on the money market on behalf of the client. The firm shall obtain from the bank an acknowledgement of receipt of each deposit or money market investment and such written receipts shall be retained by the firm as part of its accounting records.                      All monies received by a firm for investment with a bank shall be paid to such bank as soon as reasonably possible after receipt by the firm, having regard to matters such as whether a</p>	<p>Investments and money market transactions may not be in terms of the Rules.</p>	<p>Through inquiry of management and throughout the performance of the assurance engagement, determine whether all money market transactions are in terms of the Rules.</p>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
		payment made by cheque has been cleared with the issuing bank.		
23	Rule 36.11	<p><b><u>Restrictions applicable to certain investments</u></b></p> <p>A firm shall not invest on behalf of a client:</p> <ul style="list-style-type: none"> <li>• In shares or debentures in any company which is not listed on a licensed securities exchange in the Republic, unless it is a subsidiary of a listed company; or</li> <li>• In loans in respect of which, in the firm's reasonable opinion at the time of making the investment, there is no adequate security, unless the client's specific written authorisation of each such investment has first been obtained.</li> </ul>	Investments may be made in contravention of the Rule and this may lead to clients' moneys being used for other purposes than otherwise intended.	<p>Discuss with management, and be alert throughout the performance of the assurance engagement, whether the firm invested its clients' monies:</p> <ul style="list-style-type: none"> <li>• In shares or debentures in any company that is not listed on a licensed securities exchange in the Republic, unless it is a subsidiary of a listed company; or</li> <li>• In loans in respect of which, in the firm's reasonable opinion at the time of making the investment, there is no adequate security.</li> </ul> <p>Select a sample of investments that are made in:</p> <ul style="list-style-type: none"> <li>• Shares or debentures in any company which is not listed on a licensed securities exchange in the Republic, unless it is a subsidiary of a listed company; or</li> <li>• Loans without adequate security:</li> </ul> <p>Inspect the client's mandate (written authorisation) to determine whether specific authorisation was obtained from the client before the investment</p>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
				was made.
24	Act s78(1), s78(2) and s78(3) Rule 35.13.16	<b><u>Interest accrued on trust banking account</u></b> The trust interest earned on a firm's trust banking account shall be paid over to the Attorneys Fidelity Fund or its nominee at such time and in such manner as shall be prescribed.	General: Interest on money deposited and due to the Attorneys Fidelity Fund may not be paid over at the prescribed time or in the prescribed manner, in contravention of the Rule.	Inspect the trust account bank statements (sections 78(1) and 78(2)(a) for the whole reporting period and identify all interest credited to the account/s. Determine by inspection of evidence, whether 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. Where the Attorneys Fidelity Fund or its nominee has exempted the attorney from the requirement above, verify the exemption through inspecting the supporting documentation. In addition, consider the reasonableness of the interest rate, i.e. whether the rate is market related. <sup>29</sup> (Note: If the interest rate is not considered reasonable, point out to the client that his/her refund of trust account bank charges and audit fees from the Attorneys Fidelity Fund will be affected detrimentally).
25	Rule 35.12	<b><u>Payment to clients</u></b>	Payments to clients may	Obtain an understanding and

<sup>29</sup> This can be compared to rates information available on the AFF's website at [www.fidfund.co.za](http://www.fidfund.co.za).

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
		A firm shall, unless otherwise instructed, pay any amount due to a client within a reasonable time.	be made in contravention of the Rule. Surplus trust funds may be misappropriated.	<p>document the key controls relating to the control objectives listed below in respect of payments to clients (part of withdrawals from the trust banking account):</p> <ul style="list-style-type: none"> <li>• Withdrawals from the trust banking account are properly authorised (validity);</li> <li>• The amount withdrawn is correct (accuracy); and</li> <li>• Withdrawals are recorded in the correct accounting period (cut-off).</li> </ul> <p>If reliance is placed on the controls, select on a test basis a sample of payments to clients from the matter files and determine by inspecting supporting documentation whether the key controls have been implemented and operated effectively throughout the period under review.</p> <p>If reliance is not placed on controls, select on a test basis a sample of payments to clients and determine by inspecting supporting documentation whether:</p> <ul style="list-style-type: none"> <li>• Withdrawals from the trust banking account are properly authorised;</li> </ul>



No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
				<ul style="list-style-type: none"> <li>• The amount withdrawn is correct; and</li> <li>• Withdrawals are recorded in the correct accounting period.</li> </ul> <p>(Note: The above test can be combined with the test performed in relation to No. 14 above, but ensure that payments to clients receive sufficient coverage for purposes of testing compliance with Rule 35.12.)</p> <p>For the selected matter files, ensure through inspection of supporting documentation that the payment due to the client took place within a reasonable time.</p>
26	Rule 35.30 to 35.31	<p><b><u>Closure of a firm</u></b></p> <p>A member who practices for his or her own account and who intends to cease practising shall, before the member so ceases to practice, provide the Society, in writing, with the following information:</p> <ul style="list-style-type: none"> <li>• Notice of the member's intention to cease practising for his or her own account;</li> <li>• The member's future contact particulars, being his or her residential and business address, fax,</li> </ul>	<p>Closure of a practice by a member may not be performed correctly by the member and can result in trust creditors' records and moneys being misappropriated or incorrectly accounted for.</p>	<p>Inspect the notice by the member to the Society of the intention to cease practising and ensure the details as required by the Rule are contained in the notice.</p> <p>In preparing the final auditor's report to the Society:</p> <ul style="list-style-type: none"> <li>• Obtain a bank confirmation showing the trust account to be nil and confirm the date of closure of the account;</li> <li>• Confirm that all trust creditors have</li> </ul>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
		<p>e-mail and telephone details;</p> <ul style="list-style-type: none"> <li>• The steps to be taken to satisfy the Society that provision has been made for the effective winding up of the member's practice, both in respect of current files and archived files and in respect of accounting records;</li> <li>• The name, address and telephone number of the member's bookkeeper;</li> <li>• The status of the writing up of the member's accounting records by providing the Society with a copy of the latest trust reconciliation;</li> <li>• The name of the auditor or inspector who will be submitting the final report; and</li> <li>• Updated contact particulars for as long as the member remains on the roll.</li> </ul> <p>A member shall be required to submit, within three months of the date that such member ceases to practise:</p> <ul style="list-style-type: none"> <li>• An audit or inspector's report for any period for which an audit or review is outstanding, up to the date of closure of the trust banking account;</li> <li>• A final list of trust creditors as at the</li> </ul>		<p>been paid, if not being transferred to another firm, by inspecting supporting documentation;</p> <ul style="list-style-type: none"> <li>• If the trust creditors are to be transferred to another firm, obtain confirmation that the other firm has accepted liability for any claims of the trust creditors and that the firm has received the funds for these creditors.</li> </ul>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
		<p>date on which the member ceased to practise;</p> <ul style="list-style-type: none"> <li>• Confirmation from the auditor or inspector that all trust creditors have been paid;</li> <li>• In the event of trust creditors being taken over by another firm, a list of trust creditors, signed by the member, after the auditor or inspector confirms that that list is correct, and signed by or on behalf of the partners of the firm taking over the trust creditors, confirming that they accept liability for claims of the trust creditors listed and that they have received the funds;</li> <li>• A certificate of nil balance from the member's bank confirming that the trust banking account was closed.</li> </ul>		
27	Rule 35.33 and 35.34	<p><b><u>Opening of practice</u></b></p> <p>An office opened by a firm, which for the first time opens a practice within the jurisdiction of the Society, shall be designated as a main office of the firm in that jurisdiction, and the firm shall ensure that:</p> <ul style="list-style-type: none"> <li>• Banking accounts for the firm are</li> </ul>	Opening of a practice by a member may not be performed correctly.	Inspect the notice by the member to the Society of the intention of opening a practice and ensure the details as required by the Rule are contained in the notice.

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
		<p>opened in that jurisdiction;</p> <ul style="list-style-type: none"> <li>• The trust interest on those accounts is paid to the Society;</li> <li>• A separate set of books is kept for the office;</li> <li>• An audit or inspector's report for that firm is submitted to the Society.</li> </ul> <p>The Council may at any time inspect or cause to be inspected the accounting records of any firm to satisfy itself that the provisions of Section 78(5) of the Act, read with these rules, have been or are being complied with. Such inspection may be conducted by the Council, or by an auditor or suitably qualified inspector appointed by the Council, or by the Fund at the request of the Council.</p>		
28	Accounting records	<b><u>Journals</u></b>	General: To be identified by the auditor, based on the understanding of the attorney's practice and service activities and internal controls.	<p>Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the journals:</p> <ul style="list-style-type: none"> <li>• Journals are accurate (accuracy);</li> <li>• Journals are authorised (validity);</li> <li>• Journals are allocated to the correct trust creditor (classification, rights and obligations);</li> <li>• Journals are recorded in the correct</li> </ul>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
				<p>period (cut-off);</p> <ul style="list-style-type: none"> <li>• All journals are accounted for (completeness); and</li> <li>• Journals are supported by valid supporting documents (occurrence).</li> </ul> <p>If reliance is placed on the controls, select on a test basis a sample of journals and inspect evidence to determine whether the key controls operated effectively throughout the reporting period under review.</p> <p>If reliance is not placed on controls, select on a test basis a sample of journals and through the inspection of supporting documentation verify that:</p> <ul style="list-style-type: none"> <li>• The amount is accurate;</li> <li>• Journals were authorised;</li> <li>• Journals are correctly recorded and allocated to the correct trust creditor; and</li> <li>• Journals were recorded in the correct accounting period.</li> </ul> <p>Irrespective of reliance on controls or not, select a sample of trust general journals and trace to supporting evidence, and corroborate with</p>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
				<p>management's explanation.</p> <p>From the supporting documentation, select a sample of journals and confirm that these were accounted for.</p> <p>Review accounting records for unusual transactions, e.g. cash cheques journalised and transfers between two different trust creditor's accounts.</p> <p>Trace to supporting evidence and corroborate with management's explanation.</p>
29(a)	Accounting records	<b><u>Client's files</u></b>	General	<p><b>Select a sample of motor vehicle accident (MVA)/third party claims at the reporting dates (i.e. at year-end and one other test date):</b></p> <ul style="list-style-type: none"> <li>• Ensure that the accounting statement to the client indicates capital proceeds of claims received and cost contributions from the Road Accident Fund (RAF).</li> <li>• Agree the documentation, referred to above, with documentation from the RAF respondent, e.g. the discharge document from the RAF.</li> <li>• Inspect vouchers in support of disbursements, e.g. police report, ambulance report, payments to the</li> </ul>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
				<p>doctor, etc.</p> <ul style="list-style-type: none"> <li>• Inspect documentation supporting the attorney's fees. If a contingency fee arrangement exists, the contingency agreement should be inspected.</li> <li>• Inspect documentation to support the payment to the client, e.g. paid cheques, ensuring that cheques were not paid to bearer or cash. In the case of electronic fund transfers, inspect payment instructions from the client and compare with the details of the account to which the funds were transferred.</li> </ul>
29(b)	Accounting records	<b><u>Client's files (Continued)</u></b>	General	<p><b>Select a sample of conveyancing matter files at the reporting dates (i.e. at year-end and one other test date):</b></p> <ul style="list-style-type: none"> <li>• Inspect the original deed of sale to understand the terms and conditions of the transactions, and check compliance with the terms and conditions of the transaction.</li> <li>• Inspect that the pro forma costs, e.g. VAT, transfer duty, and attorney's fee, have been deposited</li> </ul>

No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
				<p>in the trust account.</p> <ul style="list-style-type: none"> <li>• Inspect that the attorney's fees are only raised in the accounting records on the date of registration.</li> <li>• Inspect that disbursements have been made in accordance with statutory requirements.</li> <li>• Confirm that VAT or transfer duty was paid to SARS.</li> <li>• Inspect that proper accounting to both buyer and seller took place, including any interest on trust investments.</li> <li>• Inspect paid cheques to buyer and/or seller or in case of an EFT, inspect EFT supporting transfer documentation.</li> </ul>
29(c)	Accounting records	<b><u>Client's files (Continued)</u></b>	General	<p><b>Select a sample from the remaining trust creditors' balances at year-end and one other test date:</b></p> <ul style="list-style-type: none"> <li>• Inspect client's files for supporting documentation and compare evidence of the transactions filed with those transactions recorded in the trust creditors' ledger.</li> <li>• Inspect postings to or transactions recorded in the trust ledger from all</li> </ul>



No	Rule <sup>22</sup> /Act reference	Rule requirement	Identified assurance engagement risk <sup>23</sup>	Illustrative procedures/responses <sup>24</sup>
				<p>sources, scrutinising the ledger account tested, ensuring that entries therein appear to be relevant.</p> <ul style="list-style-type: none"> <li>• For suspense, sundry and miscellaneous accounts or accounts in the name of the firm, select material entries and trace to supporting documentation to ensure that there are valid reasons for these entries.</li> <li>• For all matter files selected above, cast the accounts in the trust ledgers to ensure they have been totalled correctly.</li> </ul>

## Appendix 2: Illustrative engagement letter

### (Auditor's letterhead)

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

(Address)

(Date)

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

### Independent Auditor's Reasonable Assurance Engagement on Attorneys' Trust Accounts<sup>30</sup>

You have requested that we undertake a reasonable assurance engagement on compliance of 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<sup>31</sup> of the Attorneys' Profession (the Rules) 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 reasonable assurance engagement we are required to agree the information extracted from the accounting records and included in the 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 the Rules that will accompany our assurance report to be submitted to the <*insert relevant*> Provincial Law Society and report thereon. We are also required to read your representations and the other disclosures in your Attorney's Annual Statement on Trust Accounts, for the purpose of identifying material inconsistencies based on our knowledge obtained in our engagement on the compliance of your attorneys' trust accounts with the Act and the Rules and report thereon.

<*Practitioner/Partners'/Director's/ 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 those trust accounts in accordance with the relevant client mandates, including such controls as you determine are necessary to prevent and detect fraud and theft. You are also responsible for preparing the Attorney's Annual Statement on Trust Accounts and for the financial information and declarations contained therein and to provide us with:

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<sup>30</sup> This illustrative engagement letter is based on the guidance in ISA 210 (Revised), *Agreeing the Terms of Audit Engagements* applied to an engagement of this nature. It should be adapted as necessary to accommodate individual firm's terms and conditions for such assurance engagements.

<sup>31</sup> Rules effective 1 March 2016: 35.5; 35.6; 35.7; 35.8; 35.9; 35.10; 35.11; 35.12; 35.13.1 - 35.13.6; 35.13.7.1.5 - 35.13.7.1.6; 35.13.8 - 35.13.16; 35.14; 35.15; 35.16; 35.17; 35.30; 35.31; 35.32; 35.33; 35.34; 35.35; 36.4; 36.5; 36.6; 36.7; 36.8; 36.9; 36.10; 36.11.

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

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

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

#### *Our independence and quality control*

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

*(Name of firm) / (The firm)* applies the International Standard on Quality Control 1 and accordingly maintains a comprehensive system of quality control including documented policies and procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

#### *Auditor's responsibility*

Our responsibility is to express a reasonable assurance opinion on the compliance of your attorneys' trust accounts with the Act and the Rules, based on our assurance procedures performed, and to report as required on the Attorney's Annual Statement on Trust Accounts.

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

A reasonable assurance engagement in accordance with ISAE 3000 (Revised) involves performing procedures to obtain evidence about the compliance of attorneys' trust accounts with the Act and the 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 engagement in order to design procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal control. Our engagement will include the following procedures:

- Considering, and applying when applicable in the engagement circumstances, the guidance in the *Revised Guide for Registered Auditors: Engagements on Attorneys' Trust Accounts* issued by the Independent Regulatory Board for Auditors.
- Making 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;
  - Deposits and withdrawals from the trust bank account were to, or for, a trust creditor; and
  - Transfers to the attorney's business account were only in respect of moneys claimed to be due to the attorney; and
- 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.

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

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

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

#### *Other matters*

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

#### *Our report*

We expect to issue a report containing an opinion that the attorneys' trust accounts of (*insert the name of the attorney's firm*) for the period/year ended *<insert date>* were maintained, in all material respects, in compliance with the Act and the Rules. However, should our evidence obtained not support that opinion, we are obliged by ISAE 3000 (Revised) to

modify our opinion, listing exceptions and instances of non-compliance identified, or giving an explanation for reporting non-compliance.

*Report on Attorney's Annual Statement on Trust Accounts*

As part of our engagement, 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 compliance of the attorney's trust accounts with the Act and the Rules.

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

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

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

*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.

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

*Restriction on use and distribution of our report*

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

Please sign and return the attached copy of this letter to indicate your acknowledgement of, and agreement with, the arrangements for our reasonable assurance engagement on compliance of your trust accounts with the Act and the Rules and to report as required on the Attorney's Annual Statement on Trust Accounts, including our respective responsibilities.

*Registered Auditor's Signature*

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<Name of individual registered auditor responsible for the engagement>

<IRBA registration number of firm and/or auditor>

<Registered audit firm>

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

Yours faithfully

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

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Date:

## Appendix 3: Illustrative representation letter

### (Attorney's letterhead)

(To the Registered Auditor)

(Address)

(Date)

Dear Sir(s)

### Engagement on Attorneys' Trust Accounts

This representation letter is provided in connection with your engagement on attorneys' trust accounts of <insert the name of the attorney's firm> ('the 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 Attorneys Act ('the Act') and in terms of the Rules<sup>32</sup> of the Attorneys' Profession (the Rules) for the period <insert date> to <insert date> 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 to the underlying records that were the subject of your engagement on the compliance of the attorneys trust accounts with the Act and the Rules, and also for reporting thereon.

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

We also confirm to the best of our knowledge and belief, the following representations made to you during the performance of your engagement for the purposes of reporting to the <relevant> Law Society in terms of the Rules 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: business accounting records, clients' files, trust accounting records and underlying data;
  - Additional information that you have requested from us for the purpose of the engagement; and
  - Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.
- Accounting records have been kept as required by the Act and the Rules.
- All transactions have been recorded and are reflected in the trust accounts.
- All trust money received has been promptly banked in properly designated separate trust bank accounts.

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<sup>32</sup> Rules effective 1 March 2016: 35.5; 35.6; 35.7; 35.8; 35.9; 35.10; 35.11; 35.12; 35.13.1 - 35.13.6; 35.13.7.1.5 - 35.13.7.1.6; 35.13.8 - 35.13.16; 35.14; 35.15; 35.16; 35.17; 35.30; 35.31; 35.32; 35.33; 35.34; 35.35; 36.4; 36.5; 36.6; 36.7; 36.8; 36.9; 36.10; 36.11.

- Money has only been transferred from the trust banking account to the business banking account in respect of fees and disbursements due and only when permitted, in terms of the Rules.
- At no stage during the year under review, did the total amount of money in trust bank accounts, trust investment accounts and trust cash not equal the total amount of trust creditors, other than fees that were transferable, but have not yet been transferred.
- The firm complied with all the Rules relating to investment practices.<sup>33</sup>
- 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 to design, implement and maintain internal controls 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, regulators or others.
- All known instances of non-compliance or suspected non-compliance with laws and regulations, the effects of which should be considered when preparing the trust account records have been disclosed to you.
- All events occurring subsequent to the date of the report which may affect the trust accounts and the appropriateness of your conclusion have been disclosed to you.

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<sup>33</sup> If relevant to the attorneys practice.



- 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

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<Practitioner/Senior Partner/Director>

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Date

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<Senior Financial Officer>

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Date

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

### Circumstances

- Compliance of attorneys' trust accounts with the Act and the 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 Auditor's Reasonable Assurance Report on Attorneys' Trust Accounts

To the <Practitioner/Partners/Directors<sup>34</sup>> (insert the name of the attorney's firm)

#### **Report on Compliance of the Attorneys Trust Accounts with the Act and the Rules**

We have undertaken a reasonable assurance engagement on the compliance of 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<sup>35</sup> of the Attorneys' Profession (the Rules) for the <period from <insert date> to <insert date>> /<year ended <insert date>.

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

As part of our engagement, we are required to agree the information extracted from the accounting records and included in the accompanying Attorney's Annual Statement on Trust Accounts for the <period from <insert date> to <insert date> / <year ended <insert date>> to the underlying records that were the subject of our engagement on the compliance of attorneys' trust accounts with the Act and the 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 the compliance of attorneys' trust accounts with the Act and the Rules.

#### *<Practitioner's/Partners'/ Director's/Directors'> responsibility for the trust accounts*

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

<sup>34</sup> Throughout the report - delete whichever: "proprietor/partners/directors" is "not applicable

<sup>35</sup> Rules effective 1 March 2016: 35.5; 35.6; 35.7; 35.8; 35.9; 35.10; 35.11; 35.12; 35.13.1 - 35.13.6; 35.13.7.1.5 - 35.13.7.1.6; 35.13.8 – 35.13.16; 35.14; 35.15; 35.16; 35.17; 35.30; 35.31; 35.32; 35.33; 35.34; 35.35; 36.4; 36.5; 36.6; 36.7; 36.8; 36.9; 36.10; 36.11.

preparing the attached Attorney's Annual Statement on Trust Accounts and for the financial information and declarations contained therein.

*Our Independence and Quality Control*

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

(Name of firm) / (The firm) applies the International Standard on Quality Control 1 and accordingly maintains a comprehensive system of quality control including documented policies and procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

*Auditor's Responsibility*

Our responsibility is to express a reasonable assurance opinion on the compliance of attorneys' trust accounts with the Act and the Rules based on our assurance procedures performed, and to report as required on the accompanying Attorney's Annual Statement on Trust Accounts.

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

A reasonable assurance engagement in accordance with ISAE 3000 (Revised) involves performing procedures to obtain evidence about the compliance of attorneys' trust accounts with the Act and the 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 the Rules, whether due to fraud and error. In making those risk assessments we considered internal control relevant to the engagement in order to design procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal control. Our reasonable assurance engagement included the following procedures:

- Considering, and applying when considered applicable in the engagement circumstances, the guidance in the *Revised Guide for Registered Auditors: Engagements on Attorneys' Trust Accounts* issued by the Independent Regulatory Board for Auditors;
- Making inquiries of the attorney and the attorney's staff;
- Testing 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;
  - Deposits and withdrawals from the trust bank account were to, or for, a trust creditor; and
  - Transfers to the attorney's business account were only in respect of moneys claimed to be due to the attorney; and
- 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 the evidence we have 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 all material respects, in compliance with the Act and the Rules.

### **Report on Attorney's Annual Statement on Trust Accounts<sup>36</sup>**

As part of our engagement, on the compliance of attorneys' trust accounts with the Act and the Rules, we have agreed the information extracted from the trust accounting records included in the accompanying Attorney's Annual Statement on Trust Accounts for the *<period from (insert date) to (insert date)> /<year ended <insert date>>* to the underlying records that were the subject of our engagement. We have also read the Attorney's Annual Statement on Trust Accounts for the purpose of identifying whether the information contained therein is inconsistent with our knowledge obtained in the course of our engagement. The Attorney's Annual Statement on Trust Accounts is the responsibility of the attorney.

Based on our reading we have not identified any information contained in the Attorney's Annual Statement on Trust Accounts that is inconsistent with our knowledge obtained in the course of our engagement. However, our opinion on the attorneys trust accounts does not cover the Attorney's Annual Statement on Trust Accounts and accordingly we do not express an opinion thereon.

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

*<The form and content of this section of the auditor's report will vary depending on the nature of the auditor's other reporting responsibilities.><sup>37</sup>*

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

This report is for the purpose of meeting the auditor reporting requirements of the Act and the Rules and, as regards the accompanying Attorney's Annual Statement on Trust Accounts, the additional auditor reporting requirements of the relevant Law Society and the

<sup>36</sup> Refer to paragraphs 82-84 of the *Revised Guide for Registered Auditors: Engagements on Attorneys Trust Accounts* (the Guide) for guidance regarding the auditor's reporting responsibilities.

<sup>37</sup> Refer to paragraph 85 of the Guide for illustrative wording to insert as: *Report on Other Legal and regulatory requirements*, where a reportable irregularity has been reported.

Attorneys Fidelity Fund. Consequently it is not suitable for any other purpose. It is intended solely for the use of the <practitioner/partners/directors> of the firm, the relevant Law Society and the Attorneys' Fidelity Fund, and should not be distributed to other parties.

*Auditor's Signature*

Name of individual registered auditor

IRBA registration number of the firm and/or auditor

Registered audit firm

Date of auditor's report

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

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

### Circumstances

- Any non-compliance identified of attorneys' trust accounts with the Act and the 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 attorney's trust accounts.

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

To the <Practitioner/Partners/Directors<sup>38</sup>> (insert the name of the attorney's firm)

#### Report on Compliance of the Attorneys' Trust Accounts with the Act and the Rules

We have undertaken a reasonable assurance engagement on the compliance of 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<sup>39</sup> of the Attorneys' Profession (the Rules) for the <period from <insert date> to <insert date>> <year ended <insert date>>.

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

As part of our engagement, we are required to agree the information extracted from the accounting records and included in the accompanying Attorney's Annual Statement on Trust Accounts for the <period from <insert date> to <insert date>>/ <year ended <insert date>> to the underlying records that were the subject of our engagement on the compliance of the attorneys' trust accounts with the Act and the 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 the compliance of attorneys' trust accounts with the Act and the Rules.

<Practitioner's/Partners'/Director's/ Directors'> responsibility for the trust accounts

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

<sup>38</sup> Throughout the report - delete whichever: "proprietor/partners/directors" is "not applicable"

<sup>39</sup> Rules effective 1 March 2016: 35.5; 35.6; 35.7; 35.8; 35.9; 35.10; 35.11; 35.12; 35.13.1 - 35.13.6; 35.13.7.1.5 - 35.13.7.1.6; 35.13.8 - 35.13.16; 35.14; 35.15; 35.16; 35.17; 35.30; 35.31; 35.32; 35.33; 35.34; 35.35; 36.4; 36.5; 36.6; 36.7; 36.8; 36.9; 36.10; 36.11.

### *Our Independence and Quality Control*

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

*(Name of firm) / (The firm)* applies the International Standard on Quality Control 1 and accordingly maintains a comprehensive system of quality control including documented policies and procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

### *Auditor's Responsibility*

Our responsibility is to express a reasonable assurance opinion on the compliance of attorneys' trust accounts with the Act and the Rules, based on our assurance procedures performed, and to report as required on the accompanying *Attorney's Annual Statement on Trust Accounts*.

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

A reasonable assurance engagement in accordance with ISAE 3000 (Revised) involves performing procedures to obtain evidence about the compliance of attorneys' trust accounts with the Act and the 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 the Rules, whether due to fraud and error. In making those risk assessments we considered internal control relevant to the engagement in order to design procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal control. Our reasonable assurance engagement included the following procedures:

- Considering, and applying when considered applicable in the engagement circumstances, the guidance in the *Revised Guide for Registered Auditors: Engagements on Attorneys' Trust Accounts* issued by the Independent Regulatory Board for Auditors.
- Making inquiries of the attorney and the attorney's staff.
- Testing 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;

- Deposits and withdrawals from the trust bank account were to, or for, a trust creditor; and
- Transfers to the attorney's business account were only in respect of moneys claimed to be due to the attorney; and
- 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 the evidence we have 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 follows<sup>40</sup>;

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

*Qualified opinion*

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

**Report on Attorney's Annual Statement on Trust Accounts<sup>41</sup>**

As part of our engagement, on the compliance of attorneys' trust accounts with the Act and the Rules, we have agreed the information extracted from the trust accounting records included in the accompanying Attorney's Annual Statement on Trust Accounts for the <period from <insert date> to <insert date>>/<year ended <insert date>> to the underlying records that were the subject of our assurance engagement. We have also read the Attorney's Annual Statement on Trust Accounts for the purpose of identifying whether the information contained therein is inconsistent with our knowledge obtained in the course of our engagement. The Attorney's Annual Statement on Trust Accounts is the responsibility of the attorney.

Based on our reading we have not identified any information contained in the Attorney's Annual Statement on Trust Accounts that is inconsistent with our knowledge obtained in the course of our engagement. However, our opinion on the attorneys trust accounts does not cover the Attorney's Annual Statement on Trust Accounts and accordingly we do not express an opinion thereon.<sup>42</sup>

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<sup>40</sup> 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 Uniform Rules 35 and 36 identified in the course of the engagement relating to trust accounts in terms of the Rules is regarded as material and should be reported.

<sup>41</sup> Refer paragraphs 82-84 for guidance regarding the auditor's reporting responsibilities.

<sup>42</sup> Refer to paragraph 84 of the *Revised Guide for Registered Auditors: Engagements on Attorneys Trust Accounts* (the Guide) for matters to be considered when inconsistencies are identified.



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

*<The form and content of this section of the auditor's report will vary depending on the nature of the auditor's other reporting responsibilities.>*<sup>43</sup>

***Restriction on distribution and use***

This report is for the purpose of meeting the auditor reporting requirements of the Act and the Rules and, as regards the accompanying Attorney's Annual Statement on Trust Accounts, the additional auditor reporting requirements of the relevant Law Society and the Attorneys Fidelity Fund. Consequently it is not suitable for any other purpose. It is intended solely for the use of the *<practitioner/partners/directors>* of the firm, the relevant Law Society and the Attorneys Fidelity Fund, and should not be distributed to other parties.

***Auditor's Signature***

Name of individual registered auditor

IRBA registration number of the firm and/or auditor

Registered audit firm

Date of auditor's report

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

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<sup>43</sup> Insert paragraph on *Report on Other Legal and regulatory requirements* where a reportable irregularity has been reported (refer to paragraph 85 of the Guide for illustrative wording).

## Appendix 6: Attorney's Annual Statement on Trust Accounts

(On an attorney's letterhead)

The Secretary

*Insert the name of the relevant Law Society*

Address

Date

### Attorney's Annual Statement on Trust Accounts<sup>44</sup>

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

#### 1. List of attorneys in firm/practice applying for an annual Fidelity Fund Certificate<sup>45</sup>

- 1.
- 2.

#### 2. Attorney's compliance representations

I/we confirm that I/we have maintained the necessary accounting records<sup>46</sup> as required in terms of sections 78(4) and 78(6) of the Attorney's Act, No. 53 of 1979 and the Rules for the Attorneys' Profession for the year/period ended <insert date>, inter alia:

- a) The firm's trust accounts have been updated monthly and balanced at least quarterly.
- b) The firm has complied/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).
- c) The ratio as a percentage of total bank charges (excluding VAT) incurred during the year/period to the total of interest earned during the year was <insert percentage>.
- d) The firm's trust accounts for the period subsequent to <insert year/period end date> have been written up to <insert date> and the trial balance was last balanced at <insert date> and in compliance with the provisions of <insert Rule X> read with <insert Rule X>.
- e) The following changes in the composition of the firm occurred during the year or period from <insert date> to <insert date>:

*<Insert changes>:*

<sup>44</sup> To be attached to the auditor's report on the Attorney's Trust Accounts to be submitted to the relevant Provincial Law Society.

<sup>45</sup> Attach separate list if there are numerous partners/directors in the attorney's firm or practice.

<sup>46</sup> 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.

- f) The firm was issued with a valid fidelity fund certificate for the calendar year ended *<insert financial period end>* (i.e. the calendar year preceding the financial period/year of this report in the name of *<insert the name of the attorney's firm>*), as required by the Act, *Prohibition of rendering of services as attorneys in certain circumstances*.
- g) The firm *<has/has not>* ensured that the trust funds were safeguarded through the design and implementation of adequate internal controls in compliance with Rule 35.13.7.1.1 - 35.13.7.1.4.
- h) The firm *<has/has not>* reported to the relevant Law Society any dishonesty or irregular conduct on the part of another practitioner in relation to the handling or accounting for trust money on the part of that other practitioner, as required in terms of Rule 35.35.
- i) The firm *<is/is not>* registered as an Accountable Institution, in accordance with Section 43B of the Financial Intelligence Centre Act, Act No. 38 of 2001, with an Org ID registration reference number *<insert number>* that was issued by the Financial Intelligence Centre.
- j) The firm *<has/has not>* complied with the requirements of Section 21 (of the Financial Intelligence Centre Act, Act No. 38 of 2001), with regard to the identification and verification of clients.
- k) The firm *<has/has not>* complied with the requirements of Section 22 of the Financial Intelligence Centre Act, Act No 38 of 2001, with regard to the keeping of records of business relationships and transactions.
- l) The firm *<has/has not>* reported *<insert number of transactions>* cash transactions (received or paid) above the prescribed limit to the Financial Intelligence Centre for the period reported on, in accordance with the requirements of Section 28 (of the Financial Intelligence Centre Act, Act No. 38 of 2001), in circumstances where the firm *<had/did not have>* an obligation to report *<insert number of transactions>* cash transactions.
- m) The firm *<has/has not>* reported *<insert number of reports>* property associated with terrorist and related activity reports to the Financial Intelligence Centre for the period, in accordance with the requirements of Section 28A of the Financial Intelligence Centre Act, Act No. 38 of 2001, in circumstances where the firm *<had/did not have>* an obligation to report *<insert number of transactions>* property associated with terrorist and related activity reports.
- n) The firm *<has/has not>* reported *<insert number of transactions>* suspicious and unusual transactions to the Financial Intelligence Centre for the period, in accordance with the requirements of Section 29 of the Financial Intelligence Centre Act, Act No. 38 of 2001, in circumstances where the firm *<had/did not have>* an obligation to report *<insert number of transactions>* suspicious and unusual transactions.
- o) The firm *<has/has not>* formulated and implemented internal rules in terms of Section 42 of the Financial Intelligence Centre Act, Act No. 38 of 2001.
- p) The firm *<has/has not>* appointed a compliance officer in terms of Section 43 of the Financial Intelligence Centre Act, Act No. 38 of 2001.

- q) The firm <has/has not> provided training to its employees in terms of Section 43 of the Financial Intelligence Centre Act, Act No. 38 of 2001.

**3. Places of practice**

At the date of this report, the firm's principal place of practice is that given in the letterhead and the firm's South African offices are situated at <insert full physical addresses<sup>47</sup>>:

<insert office addresses>

**4. Information extracted from the trust accounting records**

Reconciliation of interest earned on the firm's Section 78(1) and Section 78(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 year/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 year/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).	
(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 agree<sup>48</sup> 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.

<sup>47</sup> Attach as a separate list if the firm has multiple offices in South Africa.

<sup>48</sup> 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 annual statement).

(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>:

	A	B	C	D
<b>TOTAL TRUST CREDITORS/LIABILITIES</b>	<b>Local</b>	<b>Foreign<sup>49</sup></b>	<b>At period end<sup>50</sup></b>	<b>At year end (A+B)</b>
	R	R	R	R
<b>Trust creditors/liabilities</b>				
Trust creditors in terms of:				
- Section 78(1)				
- Section 78(2)(a)				
- Section 78(2A)				
- Interest				
Trust creditors in terms of estates <sup>51</sup>				
Trust creditors in terms of other entrusted assets <sup>52</sup>				
<b>TOTAL TRUST CREDITORS/LIABILITIES</b>				
<b>Trust funds available in terms of trust banking accounts:</b>				
- Section 78(1)				
- Section 78(2)(a)				
- Section 78(2A)				
- Trust cash on hand				

<sup>49</sup> Attach a detailed schedule of liabilities per foreign currency per category in the same format, and convert to rand at the reporting date.

<sup>50</sup> 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.

<sup>51</sup> 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 for which consent has been obtained from the Master of the High Court to deal with through the attorney's trust account.

<sup>52</sup> 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.

- Interest				
Trust funds and assets relating to estates				
Other entrusted assets <sup>53</sup>				
Debit balances in trust ledger <sup>54</sup>				
<b>TOTAL FUNDS</b>				
<b>TRUST SURPLUS/(DEFICIT)<sup>55</sup></b>				

**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> complied<sup>56</sup> in all respects with the provisions of <insert Rule><sup>57</sup> of the Rules; and
- (iii) <Is/is not> registered as a Financial Services Provider (FSP) with the FAIS Department of the Financial Services Board.

.....

**<Name of Attorney/s>**

**<Sole Practitioner/Partner/s/Director/s><sup>58</sup>**

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<sup>53</sup> Assets entrusted to the practitioner other than the trust fund items listed.  
<sup>54</sup> Details of debit balances in the trust ledger must be provided as an attachment to the report, providing reasons for the occurrence and how it was resolved.  
<sup>55</sup> 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.  
<sup>56</sup> 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 annual statement).  
<sup>57</sup> Applicable Rules relating to Investment Practices: Rule 36.1 - 36.11.2.  
<sup>58</sup> 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 from \_\_\_\_\_ to \_\_\_\_\_**

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

**Notes:**

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







## Appendix 7: Relevant Extracts from the Act and Summary of Rules Affecting Auditors' Appointment, Rights and Duties

### 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 person.*<sup>59</sup>
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 purpose.*<sup>60</sup>
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 him.*<sup>61</sup>
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 auditor<sup>62</sup>

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 rules.<sup>63</sup>

### 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 engagement.<sup>64</sup>
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.

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<sup>59</sup> Section 78(1) of the Act.

<sup>60</sup> Section 78(2)(a) of the Act.

<sup>61</sup> Section 78(4) of the Act.

<sup>62</sup> Rule 1.3 definition.

<sup>63</sup> Rule 35.19.

<sup>64</sup> Rule 35.21.

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 auditor<sup>65</sup>**

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 Rules;*

*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 or her satisfaction; and
- 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.

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<sup>65</sup> Rule 35.23.