
SAICA COMMUNICATION

Reasonable assurance engagement on the compliance of the Attorneys' Trust Account with the Attorneys Act, 53 of 1979 and the Rules for the Attorneys' Profession, as well as the Legal Practice Act, 28 of 2014 and Legal Practice Council Rules

Please note:

- *Every effort has been made to ensure that the information in this document is complete and accurate. Nevertheless, information is given purely as guidance with respect to the subject matter and SAICA will have no responsibility to any person for any claim of any nature whatsoever which may arise out of or related to the contents of this document.*
- *The information provided in this document does not constitute legal advice and should be read in that context.*
- *Where the document suggests a particular view, such a view is based on SAICA's interpretation at that point in time, of the relevant laws, regulations, standards, codes and related pronouncements. Although SAICA has consulted widely, it is possible that a different view may ultimately be followed in practice.*
- ***The annexed report has not been updated for the Independent Regulatory Board for Auditors' Code of Professional Conduct for Registered Auditors (Revised November 2018) (Revised IRBA Code). The provision of guidance on how auditors should update the auditor's report in terms of the Revised IRBA Code is beyond the scope of this communication.***

1. Introduction

The Legal Practice Act, 28 of 2014 (the LPA) was enacted on 22 September 2014 (Government Gazette No 38022). The remaining chapters of the LPA were implemented on 1 November 2018 (Government Gazette No 42003), thereby replacing the Attorneys Act 53, 1979 (the AA) in its entirety (with some exclusions). The final South African Legal Practice Council Rules (the LPC Rules) made under the authority of Section 95(1), 95(3) and 109(2) of the LPA was gazetted on 20 July 2018 (Government Gazette No 41781), which replaced the Rules for the Attorneys' Profession (Uniform Rules).

The Legal Practice Council (the LPC) assumes regulation over all legal practitioners, attorneys and advocates as defined in the LPA.

2. Impact of the LPA and LPC Rules on the independent auditor's engagement on the Related Trust Accounts

The implementation of the LPA and LPC Rules on 1 November 2018 has resulted in the auditor having two sets of criteria against which to evaluate the underlying subject matter. These criteria are the AA and the Uniform Rules up to 31 October 2018 and then the LPA and LPC Rules from 1 November 2018 to the relevant year end.

As a transitional arrangement, the LPC has issued the annexed illustrative auditor's report, which effectively requires the auditor to report on the compliance with the related sections of both the AA and the Uniform Rules, as well as the LPA and LPC Rules for the respective period. This transitional arrangement applies for financial years where both the AA and LPA were effective. In issuing this clarity, the LPC has made it clear that the scope of the audit will not result in any duplication of testing.

The purpose of this SAICA communication is to inform members of the transitional arrangements determined by the LPC. The annexed illustrative auditor's report is a replica of that contained in the notification received by SAICA from the LPC and has not been modified in anyway. To this end, we draw members' attention to the fact that the *Basis for Opinion* paragraph has not been updated for the Revised IRBA Code. As indicated above, the provision of guidance on how auditors should update the auditor's report in terms of the Revised IRBA Code is beyond the scope of this communication. Auditors are referred to South African Auditing Practice Statement (SAAPS) 3, Illustrative Reports (Revised May 2019) for further guidance on this.

ANNEXURE A

Illustrative auditor's report on a reasonable assurance engagement on the compliance of the Attorneys' Trust Account with the Attorneys Act, 53 of 1979 and the Rules for the Attorneys' Profession, as well as the Legal Practice Act, 28 of 2014 and Legal Practice Council Rules

The Illustrative auditor's report assumes the following circumstances:

- ISAE 3000 (Revised) reasonable assurance engagement;
 - Compliance of the attorneys' trust accounts with the Attorneys Act, 53 of 1979 and the Rules for the Attorneys' Profession, as well as the Legal Practice Act, 28 of 2014 and Legal Practice Council 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.
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Please note: This illustrative auditor's report has not been updated for the Independent Regulatory Board for Auditors' Code of Professional Conduct for Registered Auditors (Revised November 2018).

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

To the <Practitioner/Partners/Directors¹> (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 Attorneys Act), and the Rules² of the Attorneys' Profession (the Rules) for the <period from <insert date> to 31 October 2018, as well as sections 86, 87(1), 87(3) and 87(4) of the Legal Practice Act, 28 of 2014 (the LPA³), and Rules 54 and 55 made under the authority of sections 95(1), 95(3) and 109(2) of the Legal Practice Act, 28 of 2014 (as amended), (LPC Rules⁴) for the period from 1 November 2018 to <insert date>> /<year ended <insert date>.

¹ Throughout the report - delete whichever: "proprietor/partners/directors" is "not applicable"

² Rules: 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.

³ Section 86(5)(b) is only effective from 1 March 2019

⁴ LPC Rules: 54.6; 54.7; 54.8; 54.9; 54.10; 54.11; 54.12; 54.13; 54.14.1; 54.14.2; 54.14.3; 54.14.4; 54.14.5; 54.14.6; 54.14.7.2; 54.14.7.3; 54.14.8; 54.14.9; 54.14.10; 54.14.11; 54.14.12; 54.14.13; 54.14.14; 54.14.15; 54.14.16; 54.15; 54.16; 54.17; 54.18; 54.19; 54.31; 54.32; 54.33; 54.34 and 55

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 the attorneys' trust accounts are maintained in compliance with the Attorneys' Act, Rules, LPA and LPC 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 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 preparing the attached Annual Statement on Trust Accounts of the firm/practitioner and for 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)⁵.

(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 Attorneys Act, Rules, LPA and LPC Rules, based on our assurance

⁵ This section has not been updated for the Independent Regulatory Board for Auditors' Code of Professional Conduct for Registered Auditors (Revised November 2018).

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 ISAE 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 Attorneys' Act, Rules, LPA and LPC 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 firm) for the period/year ended <insert date> were maintained, in all material respects, in compliance with the Attorneys' Act and Rules until 31 October 2018 as well as the LPA and the LPC Rules from 1 November 2018 to <insert date>>/<year ended <insert date>>

Report on Attorney's Annual Statement on Trust Accounts⁶

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.>⁷

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

Auditor's Signature

Name of 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)

⁶ 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.

⁷ 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.