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**Attorneys' Trust Audits**

**Introduction:-**

- Each person practicing as an attorney is subject to the provisions of the Attorneys Act, 1979
- Every practitioner should be a member of the Law Society in the province where he practices
- Each Law Society determines and implements rules and regulations to deal with its own matters

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**Attorneys' Trust Audits**

**Business formats for the exercising of an attorneys practice:-**

- An attorney's practice can take the following formats:
  - A sole proprietor
  - A partnership
  - A company
- When an attorney's practice takes the form of a company, it is important to note it can only be done as an incorporated company according to section 53 (b) of the Companies Act.
- Section 53(b) makes provision for the establishment of a company, which by means of its Memorandum of Association stipulates that the directors of the company will be liable collectively and individually for the company's debt incurred during their terms of office.
- The characteristics of such a company can be summarized as follows:
  - Each shareholder or director must be a practitioner (attorney);
  - Each shareholder must be a director of the company;
  - The company enjoys all the benefits of a legal entity, except for the fact that the shareholders do not enjoy the benefits of limited liability;
  - Even if a special decision is taken to amend the Memorandum of Association with reference to the terms of section 53(b) of the Companies Act, the Court will not approve such an amendment;
  - The company's name must end with the word "incorporated"; and
  - A statutory audit regarding the company must be conducted over and above the audit regarding the trust account of the practice

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**Attorneys' Trust Audits**

- **The Attorney's Fidelity Fund:-**
  - The Attorney's Fidelity fund is a public body that reimburses members of the public for losses suffered as a result of the misappropriation and theft of trust moneys by practitioners and their staff.
  - An attorney may not practice or act as a practitioner if he is not in possession of a fidelity guarantee certificate. The fidelity guarantee certificate is issued to the practitioner on application at a specific Law Society after:
    - The practitioner supplied complete details of his trust bank accounts and trust investment accounts; and
    - Made his initial contribution.
  - The above certificate is valid until **31 December** of the year of issue.
  - Apart from the initial contribution made by the practitioner, the fidelity guarantee fund is further financed by:
    - Interest revenue on the attorney's current trust bank account and surplus fund investments
    - Annual contributions by practitioners, if requested by the Law Society. (Annual contributions are only required when the fund is not sufficiently financed by interest revenue)

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**Attorneys' Trust Audits**

- **Trust monies:-**
  - Any practicing attorney must open and have a separate bank account at an acknowledged financial institution, in which he deposits money kept on account or received from someone.
  - Trust money therefore is money which the attorney holds or receives on account of anybody. This includes:
    - Expenses to be incurred by the practice for the person;
    - Expenses for which no corresponding debit entry was thus far entered into the accounting records; and
    - Future services to be rendered, in other words, moneys received by the attorney from his client for services of which the amount cannot accurately be determined in advance.
  - Examples of trust money are deposits in the process of a property transaction or the purchase of a business, or money collected in a litigation process, or during the winding up of an estate.
  - Trust moneys are NOT part of the practitioner's assets therefore cannot be attached by a creditor of the practice.
  - The following are guidelines for the maintaining of separate bank accounts:
    - The bank account must be opened at an acknowledged commercial bank in the Republic;
    - This bank account is opened in the name of the practice and the words "trust bank account" must form part of the account's name; and
    - The separate trust bank account may only be used for trust moneys and no business funds may flow through this account.

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**Attorneys' Trust Audits**

- **Appointment of an auditor:-**
  - Section 269 of the Companies Act requires every company to appoint an auditor and section 300 sets out the auditor's duties as to the financial statements and other matters.
  - It is required by the Law Society in South Africa that all attorneys' trust accounts be subjected to an annual audit.
  - Even though unincorporated firms of attorneys are not subject to a general audit requirement, they still have a duty to have their trust accounts audited.
  - The audit report for the preceding 12 months should reach the Law Society within six months after the financial year end.
  - An unqualified report gives the attorney the right to operate for the following year until the next audit report is due.
  - A Fidelity Fund Certificate will be issued to the attorney which will entitle the attorney to practice in the following year
  - The auditor has to comply with the codes of professional conduct issued by SAICA and the PAAB which state that:
    - The auditor must comply with the ethical principles relating to integrity and objectivity; and
    - The engagement is to be staffed by personnel that have attained and maintained the technical standards and professional competence required to enable them to fulfill their responsibilities with due care, and who have complied with the continuing professional educational requirements for auditors engaged to perform audits of attorneys trust accounts.
  - The auditor must conduct the engagement in accordance with the statement of South African Auditing Standards on Special Purpose Audit Engagements (SAAS 800) and in accordance with the terms of the engagement.

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**Attorneys' Trust Audits**

- Scope of an Attorney's Trust account audit engagement:-
- The Guideline for the Audit of Attorney's Trust accounts sets out the minimum procedures to be performed by an auditor engaged to perform an audit of an attorneys trust account in Appendix V. These procedures have been discussed with the Provincial Law Societies and the AFT (Attorney's Fidelity Fund). The auditor may perform additional procedures if deemed necessary, based on the auditor's professional judgment.
- Special Purpose Audit Report:-
- The Special Purpose Audit Report is drafted by the Law Society and is completed by the auditor on completion of the assignment. It must be submitted to the Law Society.
- No extensions for lodging returns are granted. If the report is not lodged timeously, the practitioner may apply to the Law Society for condonation and in most instances will be required to pay a disciplinary fine.
- The report is addressed to the attorney, the Provincial Law Society and the Attorneys Fidelity Fund.
- The audit report is sent to the attorney by the Law Society.
- This report is of a standard format and requires the auditor to insert the relevant information and to note any exceptions identified.
- Appendix I of the Guideline issued by SAICA contains the report to be used from 2005

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**Attorneys' Trust Audits**

- Implications of a Qualified Audit Report:-
- Where a qualified report is submitted to the relevant Law Society, the practitioner will NOT receive a certificate (Fidelity Fund Certificate) to operate for the next year.
- The practitioner will have to submit details to the Law Society.
- From this a disciplinary enquiry will follow with an inspector sent out to the practitioner to investigate.
- The practitioner is allowed to respond and have legal representation at the disciplinary enquiry.
- If it is a serious offence, the Law Society will report to the courts to have the practitioner stricken off the roll.

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**Attorneys' Trust Audits**

- Legislation and disciplines:-
- The legislation applicable to the audit and accounting procedures of the trust accounts of attorney's are contained in:
  - Section 78 (subsections (1) and (6)) of the attorney's Act No.53 of 1979; and
  - The applicable rules of the four provincial Law Societies which are:
    - Rule 13 of the CLS
    - Rule 16 of the OFS
    - Rule 20 of the KZN
    - Rule 68, 69 & 70 of the LSNP

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**Attorneys' Trust Audits**

- Dates relevant to Trust accounts:-
  - An attorney should keep his accounting records for a period of 5 years;
  - The attorneys' accounting records must be recorded monthly;
  - List of trust creditors must be compiled at least once every three months and be compared to the total trust funds held by the attorney;
  - Trust moneys received must be deposited on the date of receipt, or on the first bank day after receipt;
  - The auditor should, according to rule 70, file his report within 6 months after the date of the firm's year end;
  - With regard to a new practice, the auditor must, according to rule 70, report within six months, with reference to the first three months of business; and
  - Interest revenue on trust moneys must be paid over to the Law society at least annually, by the end of May

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**Attorneys' Trust Audits**

- Records and documentation:-
  - The following records and documents should be maintained by an attorney:
    - Bank accounts, including bank statements, deposit slips and cheques
    - Trust ledger, consisting of trust creditors
    - Journals, including transfer journals
    - Separate interest received account in the general ledger
    - Quarterly reconciliations of trust funds to trust creditors
    - Investment register
    - Supporting documentation e.g. legal agreements, authorization forms from clients, etc.

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**Attorneys' Trust Audits**

- Sections in the Act dealing with documents and records:-
  - Section 78(1) – refers to a normal trust bank account. The attorney deposits funds received into the normal trust bank account. Trust moneys received from clients must be deposited directly into the practitioner's separate trust bank account, with a corresponding entry against the specific trust creditor's account.
  - Section 78(2)(a) – refers to general investments / savings accounts. Any excess funds can be transferred to the general investments / savings accounts.
  - Section 78(2A) – refers to a specific investment account. A fund specifically invested on written instruction of a client must be deposited into a specific investment account. The amount of the trust creditor is not reduced with such investment. The amount of the investment is transferred from the trust bank account to the clients investment account, which specifically refers to section 78(2A) of the Attorney's Act.
  - Accounts opened in terms of section 78(2)(a) and section 78(2A) must reflect a reference to such section of the Act on all bank documentation, for example Section 78(2)(a) investment account.
  - The term "trust funds" refers to all of the above-mentioned accounts.

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**Attorneys' Trust Audits**

- **Interest and Bank charges:-**
  - Interest received on section 78(1) and 78(2)(a) accounts must be credited to an interest received account which is separately identifiable from the practice account e.g. the account could be called "interest received – trust accounts".
  - Interest received on section 78(2A) accounts must be credited to the trust ledger account of the client concerned
  - Bank charges on section 78(1) and section 78(2)(a) accounts must be charged by the banking institution directly to the practice bank account.
  - Bank charges on section 78(1) and section 78(2)(a) accounts must be debited to a bank charges account, which is separately identifiable from the practice account e.g. the accounts could be called "bank charges – trust account"
  - Bank charges on section 78 (1) and section 78(2)(a) accounts are recoverable by the attorney against the interest received which is payable to the Fidelity Fund.
  - Bank charges on section 78(2A) accounts must be debited to the trust ledger account of the client concerned.

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**Attorneys' Trust Audits**

- **Payment to the Law Society:-**
  - Section 78(3) states that interest earned in respect of accounts opened in terms of section 78(2)(a) must be paid across to the Fidelity Fund.
  - Part of this fund is used for paying the independent auditors their examination fees in respect of trust account audits.
  - All interest credited to the interest received account is payable to the Law Society Fidelity Fund within 3 months after the end of the financial period.
  - The attorney may, however, deduct the total of the bank charges incurred on the trust accounts from the interest received, before payment is made to the Law Society.
  - The paying over of the net interest must be accompanied by a certificate from the auditor confirming that the bank charges are in accordance with the accounting records (and relate to the trust account only).
  - Because only net interest is paid over to the Fidelity Fund the practitioner may not recover any bank charges from their clients.

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**Attorneys' Trust Audits**

- **Refunds to Practitioners:-**
  - Practitioners are entitled to reclaim from the Fund (via their Law Society) their trust account bank charges and the cost of their trust audit fees.
  - The extent of the refund is based on a formula which will differ depending on the province in which the practitioner is based.
  - Practitioners are entitled a 100% refund of their trust account bank charges subject to:
    - Compliance with the preferential banking arrangements for trust current accounts,
    - Sufficient trust interest being generated by a firm to defray such bank charges.
  - For the twelve-month period ended 28 February 2002 a more restrictive refund formula applies. It has the effect that some practitioners may only receive a 90% refund of their bank charges despite having generated sufficient interest to defray the full amount of bank charges.
  - The following comments are made to assist practitioners in obtaining their refunds without undue delay.
    - Claim forms may be obtained from the Law Societies or downloaded from the Fund's website.
    - Completed claims must be submitted to the relevant Law Society
    - Ensure that the correct supporting documentation accompanies the claim form. The auditor's invoice must specify that the fee is in respect of the trust audit, and specify the period audited.
    - The Fund will pay electronically (where the business account banking details section of the claim form has been completed) and confirm payment by e-mail or fax. In all other instances payment will be effected by cheque.
    - The Fund has a turnaround time of five working days following receipt of approved claims from the law societies.

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**Attorneys' Trust Audits**

- Trust current bank accounts – special arrangements:-
  - Trust current account banking is regulated by section 78(1) of the Attorneys Act 53 of 1979.
  - The Attorneys Fidelity Fund ("the Fund") and the profession have negotiated special arrangements on a national basis with most of the commercial banks.
  - Practitioners should ensure that the applicable interest rates and bank service fee structures are correctly applied to their trust current accounts.
  - If practitioners find that their existing arrangements provide a better return, they should endeavour to maintain those arrangements.
  - NB: Practitioners are urged to seriously consider electronic payment systems as costs can be significantly reduced in this way.

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**Attorneys' Trust Audits**

- Appropriation of Trust money:-
  - All payments from the trust bank account should be done by a cheque made out to a specific beneficiary.
  - No "cash" or "bearer" cheques may be drawn on a trust bank account.
  - Moneys can be drawn in the following instances from the trust bank account:
    - In accordance with the attorney's direct instruction to the trust client, or on behalf of the client to someone else, or
    - With regard to an amount due to the attorney for which a legitimate debit entry was entered after services were rendered and / or expenses were paid.
  - The amount withdrawn from the trust bank account regarding a specific client may NOT exceed the credit on the client's account.
  - In other words, a trust creditor can NEVER have a debit balance – the total of the trust money's held, must always be more or equal to the total of all trust creditors.

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**Attorneys' Trust Audits**

- Transfer Trust money:-
  - During the management of a case / matter for a client, expenses are incurred and fees become due to the practitioner.
  - As and when these expenses are incurred and/or fees become due, a transfer can be made from the trust bank account to the business bank account.
  - This involves the drawing of a cheque in favour of the business bank account, the issuing of a business receipt and the depositing of the money into the business bank account.
  - The following guidelines are important with regard to the above transfer of trust money:
    - The transfer regarding a specific client may not exceed the credit on this client's account in the trust's creditors ledger;
    - The transfer may also not exceed the debit on this client's account in the debtors ledger;
    - The transfer must be in accordance with the instruction by the client or with his knowledge;
    - A transfer regarding a specific client must refer to the case / matter for which the initial deposit was received – therefore if more than one case is being handled on behalf of a client, it is good practice to open a trust creditor's account for each case;
    - To manage each transfer separately is tedious and for this reason a single amount is periodically transferred from the trust bank account to the business bank account.
    - A transfer journal is used to bring about the individual transfers against the trust creditors accounts; and
    - A transfer regarding a specific client should never be made sooner than at least one week after the deposit was made. The reason being that the cheque might be dishonoured.

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**Attorneys' Trust Audits**

- The Audit Process:-
- Defining the terms of the engagement:-
- Before undertaking a special purpose audit engagement, the auditor must ensure that there is agreement as to the exact nature of the engagement, and the form and content of the report to be issued.
- Appendix III of the guideline contains a specimen engagement letter.
- Business accounting records:-
- While the report deals mainly with the audit of trust accounting records, the auditor should have access to the business accounting records as well.
- Auditor's should not accept an engagement on trust accounting records alone, but must insist on the engagement covering the business accounting records as well.
- This requirement must be included in the engagement letter.




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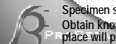
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**Attorneys' Trust Audits**

- The Audit Process:-
- Planning the audit:-
- The auditor plans the work so that the engagement will be performed in an effective manner to meet the objective of the engagement.
- Obtain sufficient knowledge of the business and document this:-
- The auditor should obtain knowledge of the attorney's practice sufficient to enable the auditor to identify and understand the events, transactions and practices that may have a significant effect on the engagement.
- The understanding is usually acquired through experience with the client or from enquiry of the client's staff and will normally include an understanding of:
  - The attorney's business and operations:
    - Particular factors relating to the industry in which it operates;
    - The form of the accounting records;
    - The qualifications of the accounting personnel;
    - The accounting policies to be applied;
    - Changes in relevant legislation affecting the industry;
    - Changes in Rules of the Law Society;
    - Offices opened or closed since the last report;
    - Any changes in partnerships / directorships;
    - Use of electronic banking facilities;
  - Specimen signatures of new partners and other authorised signatories; and
- Obtain knowledge of management's understanding of how the accounting and internal control systems in place will prevent and detect error and fraud.




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**Attorneys' Trust Audits**

- The Audit Process:-
- Planning the audit:-
- Understanding the accounting and internal control systems:-
- A general understanding of the accounting and internal control system must be obtained for all audits. The Internal Control Questionnaire in Appendix II of the SAICA Guideline should be completed by the auditor, in consultation with management, and attached to the Special Purpose Audit report.
- Document considerations of laws and regulations and fraud and error:-
- When planning the engagement the auditor is to consider the risk of fraud and error. The following procedures should be followed with regards to fraud and error:
  - The auditor should perform his / her audit with an attitude of "professional skepticism" meaning that the auditor makes a critical assessment, with a questioning mind, of the validity of evidence obtained, and is alert to evidence that contradicts or brings into question the reliability of documents or management representations. In planning and performing the engagement, the auditor neither assumes that management is dishonest nor assumes unquestioned honesty. Accordingly, representations from management are not a substitute for obtaining sufficient appropriate audit evidence to be able to report;
  - Obtain an understanding of managements assessment of the risk of fraud and the accounting and control systems in place to prevent and detect fraud and error;
  - Assess management's understanding of the accounting and internal control systems in place to prevent and detect fraud and error;
  - Determine whether management is aware of any known fraud that has affected the practice or suspected fraud that the practice is investigating; and
  - Determine whether management has discovered any material errors




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**Attorneys' Trust Audits**

- The Audit Process:-
- Planning the audit:-
- Perform and document risk assessment:-
- Before any audit procedures can be defined it is absolutely essential and fundamental to assess the risk.
- Attorney's trust accounts have a HIGH inherent risk, because the opportunity exists for the attorney to misappropriate these funds.
- Assess and document materiality in order to determine sample size:-
- Certain errors have to be reported to the Law Society, even though the amounts involved may be minor.
- A R 1 trust shortfall is irregular and may require additional procedures to be followed and testing to be done. Refer to SAAS 320.
- Prepare an audit program:-
- The audit program to be followed is based on SAICA's Guidelines. It is advisable to use it, but tailoring it where necessary.




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**Attorneys' Trust Audits**

- The Audit Process:-
- Planning the audit:-
- Management representation letters:-
- In terms of the Guideline issued by SAICA the auditor needs to obtain a management representation letter.
- Appendix IV of the Guidelines contains a specimen letter.
- The possibility of misunderstandings between the auditor and management is reduced when management confirms oral representations in writing.
- The auditor is to regard these representations with professional skepticism.
- The following points should be included in the management representation letter:
  - The Internal Control Questionnaire reflects the true status of the internal control systems;
  - All clients files, financial and accounting records and related data have been made available to the auditors;
  - Accounting records have been kept as required by the rules of the relevant Law Society;
  - All trust money received has been promptly banked in properly designated separate trust banking accounts;
  - Money has only been transferred from the trust banking account to the business banking account in respect of fees and disbursements due and only when permitted, in terms of the rules of the Law Society;
  - At no stage during the year under review, did the total amount of trust creditor's exceed the total amount of money in trust banking accounts, trust investment accounts and trust cash;
  - The firm complied with all the rules relating to investment practices;
  - All interest received has been properly accounted for and paid over to the relevant Law Society;
  - A separate system of accounting for deceased and insolvent estates was maintained;
  - The disclosure of facts relating to any known frauds or possible frauds that may have affected the practice; and
  - Any changes that occurred in the composition of the firm during the year under review.




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**Attorneys' Trust Audits**

- Case Study 1
- Case Study 2
- Questions




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# AUDITING OF ATTORNEYS' TRUST ACCOUNTS

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## INTRODUCTION

### OBJECTIVES

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To enable audit firms, through the use of trainee accountants to better understand and effectively audit trust accounts held by their attorney clients.

### MATERIAL REQUIRED

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- Pens, paper and calculator

# AUDITING OF ATTORNEYS' TRUST ACCOUNTS

## EXPECTED OUTCOMES:

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### AFTER COMPLETING THIS MODULE YOU SHOULD BE ABLE TO:

- Define an attorneys' trust account
- Understand why we audit attorneys' trust accounts
- Know the scope of an attorneys' trust account audit engagement
- Understand what are the accounting records and supporting documentation which comprise attorneys' trust accounts
- Preparing the audit plan of attorneys' trust accounts
- Discuss the significant fundamentals in the audit of attorneys' trust accounts
- Understand how to use the audit programme effectively
- Completing the audit report
- Discuss the issues surrounding management representation letters

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## INTRODUCTION

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Each person practicing as an attorney is subject to the provisions of the Attorneys Act No 53 of 1979, irrespective of whether the person practices independently or in any other capacity. Each practitioner should be a member of the Law Society in the province where he practices.

The main objective of the Association of Law Societies is the co-ordination of the general interest of the members of attorneys, notaries and conveyances on national level, to arrange the practice of the profession of attorneys.

Separate Law Societies exists for the various provinces. Each Law Society determines and implements rules and regulations to deal with its own matters.

### BUSINESS FORMATS FOR THE EXERCISING OF AN ATTORNEYS PRACTICE

**An attorney's practice can take the following formats:**

- A sole proprietor
- A partnership
- A company

When an attorney's practice takes the form of a company, it is important to note it can only be done as an incorporated company according to section 53 (b) of the Companies Act.

Section 53(b) makes provision for the establishment of a company, which by means of its Memorandum of Association stipulates that the directors of the company will be liable collectively and individually for the company's debt incurred during their terms of office.

**The characteristics of such a company can be summarized as follows:**

- Each shareholder or director must be a practitioner (attorney);
- Each shareholder must be a director of the company;
- The company enjoys all the benefits of a legal entity, except for the fact that the shareholders do not enjoy the benefits of limited liability;
- Even if a special decision is taken to amend the Memorandum of Association with reference to the terms of section 53(b) of the Companies Act, the Court will not approve such an amendment;

- The company's name must end with the word "incorporated"; and
- A statutory audit regarding the company must be conducted over and above the audit regarding the trust account of the practice.

## THE ATTORNEY'S FIDELITY FUND

The Attorney's Fidelity fund is a public body that reimburses members of the public for losses suffered as a result of the misappropriation and theft of trust moneys by practitioners and their staff.

An attorney may not practice or act as a practitioner if he is not in possession of a fidelity guarantee certificate. The fidelity guarantee certificate is issued to the practitioner on application at a specific Law Society after:

- The practitioner supplied complete details of his trust bank accounts and trust investment accounts; and
- Made his initial contribution.

The above certificate is valid until 31 December of the year of issue.

Apart from the initial contribution made by the practitioner, the fidelity guarantee fund is further financed by:

- Interest revenue on the attorney's current trust bank account and surplus fund investments
- Annual contributions by practitioners, if requested by the Law Society. (Annual contributions are only required when the fund is not sufficiently financed by interest revenue)

## TRUST MONEYS

Any practising attorney must open and have a separate bank account at an acknowledged financial institution, in which he deposits money kept on account or received from someone.

Trust money therefore is money which the attorney holds or receives on account of anybody. This includes:

- Expenses to be incurred by the practice for the person;
- Expenses for which no corresponding debit entry was thus far entered into the accounting records; and
- Future services to be rendered, in other words, moneys received by the attorney from his client for services of which the amount cannot accurately be determined in advance.

Examples of trust money are deposits in the process of a property transaction or the purchase of a business, or money collected in a litigation process, or during the winding up of an estate.

Trust moneys are not part of the practitioner's assets therefore cannot be attached by a creditor of the practice.

**The following are guidelines for the maintaining of separate bank accounts:**

- The bank account must be opened at an acknowledged commercial bank in the Republic;
- This bank account is opened in the name of the practice and the words "trust bank account" must form part of the account's name; and
- The separate trust bank account may only be used for trust moneys and no business funds may flow through this account.

## **APPOINTMENT OF AN AUDITOR**

Section 269 of the Companies Act requires every company to appoint an auditor and section 300 of the Act sets out the auditor's duties as to the financial statements and other matters.

It is required by the Law Society in South Africa that all attorneys' trust accounts be subjected to an annual audit.

Even though unincorporated firms of attorneys are not subject to a general audit requirement, they still have a duty to have their trust accounts audited.

The audit report for the preceding 12 months should reach the Law Society within six months after the financial year end. An unqualified report gives the attorney the right to operate for the following year until the next audit report is due. A Fidelity Fund Certificate will be issued to the attorney which will entitle the attorney to practice in the following year

The auditor has to comply with the codes of professional conduct issued by SAICA and the IRBA which state that:

- The auditor must comply with the ethical principles relating to integrity and objectivity; and
- The engagement is to be staffed by personnel that have attained and maintained the technical standards and professional competence required to enable them to fulfil their responsibilities with due care, and who have complied with the continuing professional educational requirements for auditors engaged to perform audits of attorneys trust accounts.

The auditor must conduct the engagement in accordance with the statement of International Standards on Auditing (ISA 800 series) and in accordance with the terms of the engagement.

## SCOPE OF AN ATTORNEY'S TRUST ACCOUNT AUDIT ENGAGEMENT

The Guideline for the Audit of Attorney's Trust accounts sets out the minimum procedures to be performed by an auditor engaged to perform an audit of an attorneys trust account in **Appendix V**. These procedures have been discussed with the Provincial Law Societies and the AFT (Attorney's Fidelity Fund). The auditor may perform additional procedures if deemed necessary, based on the auditor's professional judgement.

## SPECIAL PURPOSE AUDIT REPORT

The Special Purpose Audit Report is drafted by the Law Society and is completed by the auditor on completion of the assignment. It must be submitted to the Law Society.

No extensions for lodging returns are granted. If the report is not lodged timeously, the practitioner may apply to the Law Society for condonation and in most instances will be required to pay a disciplinary fine.

The report is addressed to the attorney, the Provincial Law Society and the Attorneys Fidelity Fund.

The audit report is sent to the attorney by the Law Society.

This report is of a standard format and requires the auditor to insert the relevant information and to note any exceptions identified.

**Appendix I** of the Guideline issued by SAICA contains the report to be used from 2005

## IMPLICATIONS OF A QUALIFIED AUDIT REPORT

Where a qualified report is submitted to the relevant Law Society, the practitioner will not receive a certificate (Fidelity Fund Certificate) to operate for the next year. The practitioner will have to submit details to the Law Society. From this a disciplinary enquiry will follow with an inspector sent out to the practitioner to investigate. The practitioner is allowed to respond and have legal representation at the disciplinary enquiry.

If it is a serious offence, the Law Society will report to the courts to have the practitioner stricken off the roll.

## LEGISLATION AND DISCIPLINES

The legislation applicable to the audit and accounting procedures of the trust accounts of attorney's are contained in:

- Section 78 (subsections (1) and (6)) of the attorney's Act No.53 of 1979; and
- The applicable rules of the four provincial Law Societies which are:

- Rule 13 of the CLS
- Rule 16 of the OFS
- Rule 20 of the KZN
- Rule 68, 69 & 70 of the LSNP

## DATES RELEVANT TO TRUST ACCOUNTS

- An attorney should keep his accounting records for a period of **5 years**;
- The attorneys' accounting records must be recorded **monthly**;
- List of trust creditors must be compiled at least **once every three months** and be compared to the total trust funds held by the attorney;
- Trust moneys received must be deposited on the date of receipt, or on the first bank day after receipt;
- The auditor should, according to rule 70, file his report **within 6 months** after the date of the firm's year end;
- With regard to a new practice, the auditor must, according to rule 70, report within **six months**, with reference to the first three months of business; and
- Interest revenue on trust moneys must be paid over to the Law society at least annually, **by the end of May**



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## DOCUMENTATION AND RECORDS

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### RECORDS AND DOCUMENTATION

The following records and documents should be maintained by an attorney:

- Bank accounts, including bank statements, deposit slips and cheques
- Trust ledger, consisting of trust creditors
- Journals, including transfer journals
- Separate interest received account in the general ledger
- Quarterly reconciliations of trust funds to trust creditors
- Investment register
- Supporting documentation e.g. legal agreements, authorisation forms from clients, etc.

### SECTIONS IN THE ACT DEALING WITH DOCUMENTS AND RECORDS

- Section 78(1) – refers to a normal trust bank account. The attorney deposits funds received into the normal trust bank account. Trust moneys received from clients must be deposited directly into the practitioner's separate trust bank account, with a corresponding entry against the specific trust creditor's account.
- Section 78(2)(a) – refers to general investments/savings accounts. Any excess funds can be transferred to the general investments / savings accounts.
- Section 78(2A) – refers to a specific investment account. A fund specifically invested on written instruction of a client must be deposited into a specific investment account. The amount of the trust creditor is not reduced with such investment. The amount of the investment is transferred from the trust bank account to the clients investment account, which specifically refers to section 78(2A) of the Attorney's Act.

Accounts opened in terms of section 78(2)(a) and section 78(2A) must reflect a reference to such section of the Act on all bank documentation, for example Section 78(2)(a) investment account.

The term **"trust funds"** refers to all of the above-mentioned accounts.

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## INTEREST AND BANK CHARGES

Interest received on section 78(1) and 78(2)(a) accounts must be credited to an interest received account, which is separately identifiable from the practice account e.g. the account could be called "interest received – trust accounts".

Interest received on section 78(2A) accounts must be credited to the trust ledger account of the client concerned

Bank charges on section 78(1) and section 78(2)(a) accounts must be charged by the banking institution directly to the practice bank account.

Bank charges on section 78(1) and section 78(2)(a) accounts must be debited to a bank charges account, which is separately identifiable from the practice account e.g. the accounts could be called "bank charges – trust account"

Bank charges on section 78 (1) and section 78(2)(a) accounts are recoverable by the attorney against the interest received which is payable to the Fidelity Fund.

Bank charges on section 78(2A) accounts must be debited to the trust ledger account of the client concerned.

**Appendix VI** details the bank charges, which the Law Society will refund.

## PAYMENT TO THE LAW SOCIETY FIDELITY FUND

Section 78(3) states that interest earned in respect of accounts opened in terms of section 78(2)(a) must be paid across to the Fidelity Fund. Part of this fund is used for paying the independent auditors their examination fees in respect of trust account audits.

All interest credited to the interest received account is payable to the Law Society Fidelity Fund within 3 months after the end of the financial period. The attorney may, however, deduct the total of the bank charges incurred on the trust accounts from the interest received, before payment is made to the Law Society.

The paying over of the net interest must be accompanied by a certificate from the auditor confirming that the bank charges are in accordance with the accounting records (and relate to the trust account only).

Because only net interest is paid over to the Fidelity Fund the practitioner may not recover any bank charges from their clients.

## REFUNDS TO PRACTITIONERS

Practitioners are entitled to reclaim from the Fund (via their Law Society) their trust account bank charges and the cost of their trust audit fees. The extent of the refund is based on a formula which will differ depending on the province in which the practitioner is based.

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Practitioners are entitled a 100% refund of their trust account bank charges subject to:

- Compliance with the preferential banking arrangements for trust current accounts,
- Sufficient trust interest being generated by a firm to defray such bank charges.

For the twelve-month period ended 28 February 2002 a more restrictive refund formula applied. It has the effect that some practitioners may only receive a 90% refund of their bank charges despite having generated sufficient interest to defray the full amount of bank charges.

The following comments are made to assist practitioners in obtaining their refunds without undue delay.

- Claim forms may be obtained from the Law Societies or downloaded from the Fund's website.
- Completed claims must be submitted to the relevant Law Society.
- Ensure that the correct supporting documentation accompanies the claim form. The auditor's invoice must specify that the fee is in respect of the trust audit, and specify the period audited.
- The Fund will pay electronically (where the business account banking details section of the claim form has been completed) and confirm payment by e-mail or fax. In all other instances payment will be effected by cheque.
- The Fund has a turnaround time of five working days following receipt of approved claims from the law societies.

## TRUST CURRENT BANK ACCOUNTS – SPECIAL ARRANGEMENTS

Trust current account banking is regulated by section 78(1) of the Attorneys Act 53 of 1979. The Attorneys Fidelity Fund ("the Fund") and the profession have negotiated special arrangements on a national basis with most of the commercial banks.

Practitioners should ensure that the applicable interest rates and bank service fee structures are correctly applied to their trust current accounts. If practitioners find that their existing arrangements provide a better return, they should endeavour to maintain those arrangements.

NB: Practitioners are urged to seriously consider electronic payment systems as costs can be significantly reduced in this way.

## APPROPRIATION OF TRUST MONEY

All payments from the trust bank account should be done by a cheque made out to a specific beneficiary. No "cash" or "bearer" cheques may be drawn on a trust bank account.

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Moneys can be drawn in the following instances from the trust bank account:

- In accordance with the attorney's direct instruction to the trust client, or on behalf of the client to someone else, or
- With regard to an amount due to the attorney for which a legitimate debit entry was entered after services were rendered and/or expenses were paid.

The amount withdrawn from the trust bank account regarding a specific client may not exceed the credit on the client's account. In other words, a trust creditor can never have a debit balance – the total of the trust money's held, must always be more or equal to the total of all trust creditors.

## TRANSFER OF TRUST MONEYS

During the management of a case/matter for a client, expenses are incurred and fees become due to the practitioner. As and when these expenses are incurred and/or fees become due, a transfer can be made from the trust bank account to the business bank account. This involves the drawing of a cheque in favour of the business bank account, the issuing of a business receipt and the depositing of the money into the business bank account.

The following guidelines are important with regard to the above transfer of trust money:

- The transfer regarding a specific client may not exceed the credit on this client's account in the trust's creditors ledger;
- The transfer may also not exceed the debit on this client's account in the debtors ledger;
- The transfer must be in accordance with the instruction by the client or with his knowledge;
- A transfer regarding a specific client must refer to the case/matter for which the initial deposit was received – therefore if more than one case is being handled on behalf of a client, it is good practice to open a trust creditor's account for each case;
- To manage each transfer separately is tedious and for this reason a single amount is periodically transferred from the trust bank account to the business bank account. A transfer journal is used to bring about the individual transfers against the trust creditors accounts; and
- A transfer regarding a specific client should never be made sooner than at least one week after the deposit was made. The reason being that the cheque might be dishonoured.

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## THE AUDIT PROCESS

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### DEFINING THE TERMS OF THE ENGAGEMENT

Before undertaking a special purpose audit engagement, the auditor must ensure that there is agreement as to the exact nature of the engagement, and the form and content of the report to be issued. **Appendix III** of the guideline contains a specimen engagement letter.

### BUSINESS ACCOUNTING RECORDS

While the report deals mainly with the audit of trust accounting records, the auditor should have access to the business accounting records as well.

Auditor's should not accept an engagement on trust accounting records alone, but must insist on the engagement covering the business accounting records as well.

This requirement must be included in the engagement letter.

### PLANNING THE AUDIT

The auditor plans the work so that the engagement will be performed in an effective manner to meet the objective of the engagement.

Obtain sufficient knowledge of the business and document this

The auditor should obtain knowledge of the attorney's practice sufficient to enable the auditor to identify and understand the events, transactions and practices that may have a significant effect on the engagement.

The understanding is usually acquired through experience with the client or from enquiry of the client's staff and will normally include an understanding of:

- The attorney's business and operations;
- Particular factors relating to the industry in which it operates;
- The form of the accounting records;
- The qualifications of the accounting personnel;
- The accounting policies to be applied;

- Changes in relevant legislation affecting the industry;
- Changes in Rules of the Law Society;
- Offices opened or closed since the last report;
- Any changes in partnerships/directorships;
- Use of electronic banking facilities;
- Specimen signatures of new partners and other authorised signatories; and
- Obtain knowledge of management's understanding of how the accounting and internal control systems in place will prevent and detect error and fraud.
- Assess the level of risk for the business (**Appendix VII**)

#### **Understanding the accounting and internal control systems**

A general understanding of the accounting and internal control system must be obtained for all audits. **The Internal Control Questionnaire in Appendix II** of the SAICA Guideline should be completed by the auditor, in consultation with management, and attached to the Special Purpose Audit report.

#### **Document considerations of laws and regulations and fraud and error**

When planning the engagement the auditor is to consider the risk of fraud and error. The following procedures should be followed with regards to fraud and error:

- The auditor should perform his/her audit with an attitude of "professional scepticism" meaning that the auditor makes a critical assessment, with a questioning mind, of the validity of evidence obtained, and is alert to evidence that contradicts or brings into question the reliability of documents or management representations. In planning and performing the engagement, the auditor neither assumes that management is dishonest nor assumes unquestioned honesty. Accordingly, representations from management are not a substitute for obtaining sufficient appropriate audit evidence to be able to report;
- Obtains an understanding of management's assessment of the risk of fraud and the accounting and control systems in place to prevent and detect fraud and error;
- Assess management's understanding of the accounting and internal control systems in place to prevent and detect fraud and error;

- Determine whether management is aware of any known fraud that has affected the practice or suspected fraud that the practice is investigating; and
- Determine whether management has discovered any material errors

#### **Perform and document risk assessment.**

Before any audit procedures can be defined it is absolutely essential and fundamental to assess the risk.

Attorney's trust accounts have a **HIGH** inherent risk, because the opportunity exists for the attorney to misappropriate these funds.

#### **Assess and document materiality in order to determine sample size**

Certain errors have to be reported to the Law Society, even though the amounts involved may be minor. A R 1 trust shortfall is irregular and may require additional procedures to be followed and testing to be done. Refer to SAAS 320.

#### **Prepare an audit programme.**

The audit programme to be followed is based on SAICA's Guidelines. It is advisable to use it, but tailoring it where necessary.

#### **Management representation letters**

In terms of the Guideline issued by SAICA the auditor needs to obtain a management representation letter. **Appendix IV** of the Guidelines contains a specimen letter.

The possibility of misunderstandings between the auditor and management is reduced when management confirms oral representations in writing. The auditor is to regard these representations with professional scepticism.

The following points should be included in the management representation letter:

- The Internal Control Questionnaire reflects the true status of the internal control systems;
- All clients files, financial and accounting records and related data have been made available to the auditors;
- Accounting records have been kept as required by the rules of the relevant Law Society;
- All trust money received has been promptly banked in properly designated separate trust banking accounts;

- Money has only been transferred from the trust banking account to the business banking account in respect of fees and disbursements due and only when permitted, in terms of the rules of the Law society;
- At no stage during the year under review, did the total amount of trust creditor's exceed the total amount of money in trust banking accounts, trust investment accounts and trust cash;
- The firm complied with all the rules relating to investment practices;
- All interest received has been properly accounted for and paid over to the relevant Law Society;
- A separate system of accounting for deceased and insolvent estates was maintained;
- The disclosure of facts relating to any known frauds or possible frauds that may have affected the practice;  
and
- Any changes that occurred in the composition of the firm during the year under review.



## CASE STUDY 1

Jan Steyn and Co: have just started an attorneys' practice in a small town in the country. On 16 February 2007 Jan received his Fidelity Guarantee Certificate and started his business operations on 20 February 2007 after depositing R 40 000 cash into the business bank account of the practice. Jan Steyn & Co: are not registered for Vat.

The following transactions took place during February, March and April 2007

**20 February 2007:** Jan purchased the following goods for his practice:

● Computer with printer	R 8 000.00
● For desk with chairs	R 4 380.00
● Stationery cupboard	R 812.00
● Stationery	R 2 172.00

**21 February 2007:** Mr. Z approaches Jan to handle his divorce and hands over an amount of R 7 000 to Jan to keep in trust.

**26 February 2007:** Six months ago Mrs. J inherited a piece of land when her husband passed away. She approached Jan Steyn & Co: to subdivide the land on her behalf into twelve smaller stands. Jan stipulated that Mrs. J pay in an amount of R 30 000 in this regard.

**28 February 2007:** Mrs. J hands over a cheque for R 30 000 to Jan with written instructions to invest any money on her behalf, which, according to Jan's judgement, is not immediately required.

**2 March 2007:** Jan invested an amount of R 20 000 on behalf of Mrs. J at Nesbank Limited.

**5 March 2007:** Pays DKL courier services an amount of R 267.00, being documents regarding Mr. Z's divorce to be delivered to his wife.

**11 March 2007:** Purchase of revenue stamps of R 1 550.00.

**14 March 2007:** Meets with Mr. Z, his wife and her attorney. After the meeting, Jan takes Mr. Z to lunch in order to further discuss certain aspects. The lunch amounts to R 130.00.

**31 March 2007:** Jan prepares bank reconciliations for all bank accounts and identifies the following transactions to be recorded:

	Bank charges	Interest received
● Trust bank account	40.50	112.00
● Business bank account	10.65	421.20
● Investment in Nesbank	-	231.33

31 March 2007: Jan issues the following debit notes for services rendered:

	Stationery	Services	Total
● Mr. Z	75.00	2 400.00	2 475.00
● Mrs. J	130.00	4 000.00	4 130.00

2 April 2007: Rent paid of R 7 450.00

8 April 2007: Jan transfers R 6 500 of trust money to the business bank account and decides to invest R 2 500 being surplus trust funds in a savings account at Sub-Bank.

14 April 2007: Pays ABC Surveyors R 16 437.80 regarding the subdivision of Mrs. J's land after R 12 000 of the investment at Nesbank Ltd was transferred to the trust's bank account.

14 April 2007: Both Jan's cases are completed and he issues the following debit notes:

	Stationery	Services	Total
● Mr. Z	145.0	5 250.00	5 395.00
● Mrs. J	225.00	7 500.00	7 725.00

14 April 2007: As the two cases (Z and J) are completed, Jan decides to realise all the investments made by him. Details are as follows:

● Nesbank	R 8 430 .10
● Sub-Bank	R 2 525.16

30 April 2007: Jan transfers R 11 000.00 of trust money to the business bank account.

Required:

Account for the above transactions in the books of Jan Steyn and Co. (only journal entries are required)

## CASE STUDY 2

You have been appointed to audit the trust account of Sleaze, Ball and Associates (SBA) a Houghton firm of attorneys which has been operating for several years but only started accepting trust monies from 6 February 2007. The firm's financial year-end is 28 February.

The two partners, Gerald Sleaze and Jan Ball have established a name for themselves as criminal lawyers over the years but have recently started doing some property transfers and, as a result, received deposits in trust. They have no interest in accounting and entrust all the administration to Lizelle Hattingh, Mr. Sleaze's daughter-in-law.

SBA is situated in Houghton, Johannesburg. Mr. Ball's wife, Veronica, has done bookkeeping up to Matric and she is responsible for the accounting records for SBA. The records are maintained on CaseWare. Because there are so few transactions, she only comes in at the beginning of each month to write up the records for the previous month and do the bank reconciliations.

When the practice decided to start operating trust accounts late in January 2007 Mrs. Ball had a brief telephone discussion with your audit partner about trust accounts. As a result of this, she decided to keep a separate CaseWare file for trust account transactions to try and keep the trust account transactions separate from the business account.

Besides Mr. and Mrs. Ball and Mr. Sleaze the only other employees are Lizelle, the receptionist/secretary and Daniel Bogopa, the messenger.

Daniel goes to the bank whenever Lizelle instructs him to and he collects the mail on his way back. Lizelle opens all the mail. When any cheques are received, she makes out a deposit slip and as soon as a few receipts have accumulated in her drawer she sends Daniel to the bank with the cheques and the deposit slip. All other correspondence is opened and handed to the partner whose client it relates to.

Banking is not done on a regular basis, but it should happen at least once a week. The duplicate stamped deposit slip is retained in the deposit book, which is Lizelle keeps in the strong room.

The firm has opened a separate bank account in the name of the trust with United Bank. Because Lizelle also prepares the firm's debit notes, she normally knows which receipts relate to fees and which should be allocated to the trust account. She doesn't issue any receipts; either on the trust account or on the business account, but when she thinks that a deposit relates to the trust account she makes a note on the deposit slip for Mrs. Ball's attention.

During February, the firm received a cheque from one of its largest clients, Joe's Ball Bearings (Pty) Limited, for R250 000 in lieu of a deposit on a property it bought from a deceased estate. Because of the amounts involved and the likelihood of a significant time delay before the transaction can be concluded, Mr. Sleaze instructed Lizelle to open a money market account

at Investec Bank to maximize the interest receivable. The client is aware of this arrangement and complimented Mr. Sleaze for his good business sense.

Lizelle also prepares the cheques, using a separate cheque book for the trust account. Both cheque books are kept in the strong room. Both partners must sign cheques, which is a problem whenever one of the partners is out of town for an extended period of time. In these cases, the partner in question just signs a few blank cheques and the second partner signs when the cheque has been completed. Returned cheques are kept in a box in the strong room.

No statements are ever sent to clients. Lizelle only lists her debit notes in a "fees book" and makes a note next to the name of the debtor when the amount has been paid off. Because they are primarily interested in fees written, the "fees book" is the only part of the accounting records that the partners understand and ever look at.

**The following documentation is provided on the following pages:**

- A blank audit report
- CaseWare general ledger for the trust
- Bank statements for February 2007 and March 2007.
- Deposit slips relating to trust account transactions for February.
- Returned paid cheques with disbursement vouchers.
- A bank reconciliation at 28 February 2007
- Required:
- Complete the audit of the Sleaze, Ball and Associates Trust Account
- Prepare the adjusting journal entries.
- Prepare a list of trust creditors at 28 February 2007
- Prepare the auditor's report.
- List the improvements to the internal control system that you would recommend in your management letter to the partners of SBA

**Report of the Independent Auditor to the Proprietor / Partners / Directors of (Insert the Name of Firm), The Law Society of (Insert Province) and The Attorney's Fidelity Fund**

We have audited the attorney's trust accounts of (insert the name of the attorney's firm) to determine whether those accounts were maintained in compliance with Section 78(1), 78(2), 78(2A), 78(3) and 78(4) of the Attorneys Act, No. 53 of 1979, and in terms of the Rules (insert specific rule numbers) of the (insert the relevant province) Law Society for the period from (insert date) to (insert date).

**Management's responsibility for the trust accounts**

The proprietor/partners/directors of (insert the name of the attorney's firm) is/are responsible for ensuring that the attorney's trust accounts are maintained in compliance with the provisions of the Attorneys Act, No. 53 of 1979 and the Rules of the (insert the relevant province) Law Society. The proprietor/partners/directors is/are also responsible for the implementation of accounting and internal control systems.

**Auditor's Responsibility**

Our responsibility is to express an opinion on whether the attorney's 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, No. 53 of 1979 and in terms of the Rules (insert specific rule numbers) of the (insert the relevant province) Law Society for the period (insert date) to (insert date) based on our audit.

Our audit was conducted in accordance with International Standards on Auditing, the guide issued by the South African Institute of Chartered Accountants, *Guidance for Auditors: The Audit of Attorneys' Trust Accounts in terms of the Attorneys Act, No 53 of 1979 and the Applicable Rules of the Provincial Law Societies*. This guide sets out the minimum audit procedures to be performed in evaluating an attorney's trust accounts and includes:

- examining, on a test basis, evidence supporting the amounts and disclosures in the trust accounts, and
- assessing the accounting principles used by management.

We have not performed any audit procedures on records or documents relating to accounting for deceased and insolvent estates and trusts. Accordingly, we do not express any opinion in this regard.

We believe our audit provides a reasonable basis for our opinion.

**Qualification**

The report is subject to the following qualifications (if none, state NIL)

.....  
(Any contravention of Sections 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Attorneys Act, No. 53 of 1979 and any contravention of the rules of the Law Society relating to trust accounts in terms of the Rules are regarded as material and should be reported. If the report is qualified then the next heading is to be changed to "Qualified opinion" and the wording is to change to "In our opinion, except as noted above, the ...")

**Opinion**

In our opinion, the attorney’s trust accounts of *(insert the name of the attorney’s firm)* for the period from *(insert date)* to *(insert date)* were maintained in compliance with Sections 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Attorneys Act, No. 53 of 1979 and in terms of the Rules *(insert specific rule numbers)* of the *(insert the relevant province)* Law Society. Our report covers the accounting records relating to the attorney’s trust accounts and does not extend to the financial statements of the business of *(insert the name of the attorney’s firm)* taken as a whole.

**Supplementary information**

Our audit procedures indicated that:

- 1 the attorney’s trust accounts for the period reported on have been updated monthly and balanced at least quarterly,
- 2 the firm complied/ has not complied with the service fee structure (including the cash deposit fee structure where applicable) and the credit interest rates, as amended from time to time, as nationally/provincially agreed upon between the Attorneys Fidelity Fund and the firm’s bank(s),
- 3 the attorney’s trust accounts for the period subsequent to the period being audited, was last inspected by us on *(insert date of last inspection)*, have been written up to *(insert date)* and the trial balance was last balanced at *(insert date)*, and the management provided us with the following changes in the composition of the firm which occurred during the period from *(insert date)* to *(insert date)*:

.....

- 4 the attorney’s principal place of practice *(insert full physical address)* is at:

.....

- 5 the attorney’s firm branch offices are at *(insert full physical addresses)*

.....

The following information was extracted from the audited trust accounts:

1. Reconciliation of interest earned on the Attorney’s Trust Accounts from beginning of the period *(insert date)* to the end of the period *(insert date)*:

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 is	
Amount earned during the current period on monies deposited in trust banking accounts in terms of section 78(1) and monies invested in trust investment accounts in terms of section 78(2)(a) of the Attorneys Act, No 53 of 1979 is	
Amount incurred during the current period in respect of refundable bank charges (excluding VAT) is	
Amount already paid over to the Attorneys Fidelity Fund during the period under review in terms of section 78(3) of the Attorneys Act, No. 53 of 1979 is	
Amount carried over to the next 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 is	

2. The ratio as a percentage of total bank charges (excluding VAT) incurred during the current period to the total of interest earned during the year was \_\_\_\_\_
3. Trust liabilities/creditors and trust funds available at the year end (insert date) and on one other date (insert date), were as follows:

	<b>At year end</b>	<b>Other date selected</b>
<b>Trust liabilities/creditors</b>	<b>xxxx</b>	<b>xxxx</b>
Trust funds available in terms of:		
Section 78(1) trust money	xx	xx
Section 78(2)(a) investments	xx	xx
Section 78(2A) investments	xx	xx
<b>Trust surplus/ (deficit)</b>	<b>xxxx</b>	<b>xxxx</b>

**Restriction on Distribution and Use of the report**

The layout and wording of our report is in compliance with the relevant sections of the Attorney’s Act and Rules of the <insert relevant province> Law Society and is intended solely for the use of proprietor/partners/directors of the attorney’s firm, the (insert the relevant province) Law Society and the Attorneys’ Fidelity Fund.

Name  
Registered Auditor  
Chartered Accountant (SA)  
Address  
Date



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**ATTORNEY'S TRUST ACCOUNT AUDITS**


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**RISK MATRIX**

<u>ACTIVITY</u>	<u>AUDIT RISK</u>	<u>TRUST CASH FLOW VOLUME</u>
Conveyancing	H	H
Personal accident claims	H	H
Intellectual property	L	L
Collections and administrations	H	H
High Court litigation	V	V
Magistrate's Court litigation	M	L
Commercial	V	V
Estates	V	V
Other	V	V

TABLE:-

H = High

M = Medium

L = Low

V = Variable depending on cash flow of trust moneys

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## BANK CHARGES FOR ATTORNEYS

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### 1. Monthly basic fee

Some banks charge a minimal monthly fee, sometimes described as an administrative fee. This fee is recoverable from the Attorney Fidelity Fund (AFF).

### 2. Cheque processing fee

Banks charge a fee for processing each cheque issued. The fee is a banded structure dependant upon the quantum of each cheque. This fee is recoverable from the AFF.

### 3. Electronic payment fee

The banks charge a fee for processing each electronic payment. The fee is a banded structure dependant upon the quantum of each payment. This fee is recoverable from the AFF.

### 4. Cheque books issued by banks

The cost of cheque books supplied by the banks is recoverable from the AFF.

### 5. Electronic payments systems - monthly subscriptions

The four large banks offer sophisticated electronic banking systems. In addition to the normal per item processing fee, clients are charged a monthly subscription. In many instances the banks levy a single subscription to cover services provided on both the trust and business banking accounts. To date, practitioners have been advised to do their own apportionment of the subscription based upon the respective volumes of trust and business transactions; the trust portion being recoverable from the AFF.

### 6. Unidentifiable deposits – tracing fees

Practitioners often experience a problem identifying deposits made over the counter into their trust accounts by unknown entities. The banks charge a fee when assisting practitioners to establish the source of these funds. Some banks offer a system which requires depositors to complete the reference section on the deposit slip correctly, for a monthly additional fee (payable by the recipient). This fee is recoverable from the AFF.

### 7. Drawer cheques

Dishonored cheques deposited in a trust account give rise to an R80 service fee charge to the recipient's trust account in each instance. This fee is recoverable from the AFF.

### 8. Bank guarantees

The banks charge for each guarantee issued. The established practice by business development staff is to advise practitioners that the cost of guarantees should be recovered from clients. This fee is NOT recoverable from the AFF.

### 9. Special clearance of cheques deposited

Practitioners wishing to pay out against the proceeds of cheques deposited to their trust accounts often instruct their bankers to "specially clear" certain deposits. This process enables practitioners to pay out against a deposit within a few days instead of having to wait for the normal period of 10 days. This fee is NOT recoverable from the AFF.

### 10. Bank charges specifically related to handling cash

During the past 3 years the banks have significantly increased their charges for transactions involving the handling of cash. This has had a significant impact upon certain practitioners who are obliged, because of the nature of their practices, to pay out and receive large amounts of cash. The reason advanced by the banks for these increased charges is that the cost of providing security arrangements has escalated dramatically. The banks' stated intention with regard to their charging structure is to match their charges as closely as possible with their expense structures. This fee is recoverable from the AFF.

## 11. Cash deposit fees

Cash deposits are expensive. For example, R10 000 cash deposited in certain banks' trust accounts will incur a fee of R59. There are reported instances of clients in conveyancing matters arriving with suitcases of money. It is arguable whether the cash deposit fee is incurred at the special instance of the client – cash is regarded as legal tender. On the other hand, the introduction of FICA money laundering legislation would support a view that cash should no longer be regarded as an acceptable payment medium for high value transactions.

A further factor to consider is that certain banks charge a "penalty" cash deposit fee if large volumes of cash are deposited without advance warning to the branch concerned.

Some practitioners have adopted a policy to advise clients that the firm does not carry a sufficient level of insurance cover to be able to receipt large amounts of cash. Clients are instructed to deposit the cash directly into the firm's trust account; the cash deposit fee to be paid separately over the counter by the client. Cash deposits are generally recoverable from the AFF.

## 12. Cheques cashed

Over the counter cash withdrawals incur a fee in addition to the normal cheque processing fee. A cheque cashed for R10 000 will incur a fee in the region of R90, as well as a cheque processing fee of R12.

Practitioners often need to cash cheques in situations where the client has no banking account. MVA matters are a good example. This fee is recoverable from the AFF. However, note that all Law Societies Rules prohibit the issue of trust cheques payable to cash.

## 13. Foreign Exchange Transactions

### (a) Commission on foreign exchange transactions

Banks charge a commission for converting currency to another denomination. This fee is NOT recoverable from the AFF.

### (b) Fees payable for foreign exchange applications

The Reserve Bank and the commercial banks may charge fees for processing applications for foreign exchange, in situations where funds are being remitted to a foreign payee. This fee is NOT recoverable from the AFF.