

Guide

March 2014



Guide for Registered Auditors

Engagements on Attorneys Trust Accounts

Independent Regulatory Board for Auditors

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Johannesburg

This 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 February 2014 and replaces the previous SAICA Guide – “*Guidance for Auditors: The Audit of Attorneys’ Trust Accounts in terms of the Attorneys Act, No 53 of 1979, and applicable Rules of the Provincial Law Societies*” that has been withdrawn.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 Rules of the relevant Provincial Law Society (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 accounts is for the auditor to evaluate the compliance of attorneys trust accounts with the Act and Rules. Accordingly the Guide contains special considerations applicable to fraud and theft in the circumstances of engagements on attorneys trust accounts.

The Attorney’s Annual Statement on Trust Account contains the attorney’s compliance representations to the relevant Provincial Law Society, and information extracted from the trust accounting records previously dealt with in the auditor’s report. The Attorney’s Annual Statement on Trust Accounts is to accompany the auditor’s report.

The Guide for Registered Auditors: *Engagements on Attorneys Trusts* may be downloaded free-of-charge in both Word and PDF Format from the IRBA website: www.irba.co.za.

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ENGAGEMENTS ON ATTORNEYS TRUST ACCOUNTS**
(Effective for engagements commencing on or after 1 March 2014)

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This *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 Accounting Rules of the relevant Provincial Law Society.

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 Accounting Rules of the relevant Provincial Law Society (Law Society) (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 present Rules of each Law Society¹ and will be updated when the Law Society of South Africa's proposed *Uniform Rules* are approved and issued.
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 Rules. Accordingly the Guide contains special 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, *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 report as required.

¹ Namely, the Cape Law Society; the Kwazulu-Natal Law Society; the Law Society of the Free State; or the Law Society of the Northern Provinces

9. The auditor is also required to read the attorney's representations and 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 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, *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (ISAE 3000). Although ISAs and ISREs do not apply to engagements covered by ISAEs, they may nevertheless provide guidance to an auditor² in this engagement. The auditor is not required to express an assurance opinion on the Attorney's Annual Statement on Trust Accounts.

Effective date

11. This Guide is effective for engagements commencing on or after 1 March 2014.

Definitions

12. 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 – is the assurance report contemplated in ISAE 3000, 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.³
 - 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) Firm or practice - The incorporated company, partnership or sole practitioner in which an attorney practises.
 - g) 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.⁴
 - h) Fraud risk factors - Events or conditions that indicate an incentive or pressure to commit fraud or provide an opportunity to commit fraud.⁵

² ISAE 3000 *Assurance Engagements Other Than Audits or Reviews of Historical Financial Information* (ISAE 3000), paragraph 3

³ Attorneys Act No. 53 of 1979.

⁴ ISA 240, *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements* - paragraph 11(a).

⁵ ISA 240 paragraph 11(b).

- i) Management - The attorney(s) and other persons responsible for the conduct of the attorney's firm's operations.
- j) 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.
- k) 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.
- l) Registered auditor - A registered auditor as defined in the Auditing Profession Act, 2005 (Act No. 26 of 2005) referred to as the 'auditor'.
- m) *Rules* - The Accounting Rules of the relevant Provincial Law Society.
- n) *Rules Regarding Improper Conduct* - The IRBA *Rules Regarding Improper Conduct*.
- o) Service activities – The transactions of an attorney's practice, including those relating to conveyancing, estates, commercial affairs, litigation, investments, criminal proceedings, administrations, personal accident matters, collections, matrimony, sequestration and intellectual property or any activity which falls within the scope of an 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.
- p) Trust accounts - In relation to an attorney, 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.
- q) Trust account transactions – The transactions in an attorney's trust accounts, comprising receipts, payments and transfers, non-recurring, unusual transactions or adjustments, in accordance with the terms of the client mandate relating to each transaction.
- r) Trust account balance(s) – The balance(s) due to trust creditors after recording the trust account transactions.

The Act and Rules⁶

13. 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

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

is required to report to the Council of the relevant Law Society in accordance with the duties assigned to the auditor.⁷

14. 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.
15. 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

16. 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.
17. 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 incorrectly reflected in the trust creditors' ledger.
18. 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.
19. An attorney's financial statements are prepared from the transactions which pass through the attorney's business and trust accounts. However, as the trust bank accounts and the trust balances are not the respective assets and liabilities of the attorney, there is no disclosure of those balances in the attorney's financial statements, nor is there disclosure of transactions, including interest earned on balances in trust bank accounts, payable to the Attorneys Fidelity Fund. Accordingly, the auditor's engagement on an attorney's financial statements only covers the attorney's trust accounts to the extent that these may affect the auditor's opinion on the financial statements, while the auditor's engagement on an attorney's trust accounts only covers the attorney's financial statements to the extent that these may affect the auditor's opinion on whether or not 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 Society and the Attorneys Fidelity Fund. A copy signed by the attorney accompanies the auditor's report.

⁷ Law Society of the Northern Provinces Rule 70.1; KwaZulu-Natal Law Society Rule 21A(1); Law Society of the Free State Rule 16B1; and Cape Law Society Rule 13.17.

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 applicable Rules and whether trust account transactions were in accordance with the client mandate, including whether transactions were supported by adequate documentation or explanation; and
 - b) 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.⁸

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 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. 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 Rules.
27. An auditor accepting an engagement to report on attorneys trust accounts obtains an understanding of the Act and the Rules and the engagement circumstances.⁹ 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 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 entity¹⁰ comprises an ISAE 3000 reasonable assurance engagement on which an opinion (as opposed to

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

⁹ Paragraph 15 of ISAE 3000

¹⁰ Section 44(1)(a) of the Auditing Profession Act, 2005

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.

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 control as the attorney determines is necessary to maintain the integrity of the trust accounts in accordance with the relevant client mandates, including such controls as the attorney determines is necessary to prevent and detect fraud and theft. The attorney is also responsible for the preparation of the Attorney's Annual Statement on Trust Accounts.

Auditor

31. The auditor is responsible for expressing a reasonable assurance opinion on the compliance of the attorneys trust accounts, in all material respects, with the Act and Rules, based on the auditor's procedures performed, and to report the auditor's findings on the Attorney's Annual Statement on Trust Accounts.
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.

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 or not to accept the auditor's report in support of the decision to issue an annual Fidelity Fund Certificate.

Law Society of South Africa

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 Fund¹¹, 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 (other than funds held by an attorney under investment mandates).

Internal control

38. There is no specific requirement in the Act and the Rules for the auditor to report on material deficiencies in internal control that have come to the auditor's attention in the course of the auditor's engagement on an attorney's trust accounts.
39. The auditor does not express an opinion on the attorney's internal control relevant to the application of the Rules. The auditor draws from ISA 260 *Communication with Those Charged with Governance* and ISA 265 *Communicating Deficiencies in Internal Control to Those Charged with Governance and Management*, that 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 material inquiries regarding its trust accounting records which the auditor has raised with the firm, have not been dealt with to the auditor's satisfaction. This includes inquiries regarding deficiencies in internal control.

Nature and extent of the auditor's work

40. 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 material 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 paragraphs 73 and 74).
41. 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 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, testing of internal control and transactions covers all significant trust account activities, such as Road Accident Fund and conveyancing transactions (which by their nature may be high risk if not homogenous).
42. 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.
43. 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

¹¹ Refer to the Act, section 26 for the responsibilities of the Attorneys Fidelity Fund.

any material inconsistencies with the auditor's knowledge, obtained in the course of the compliance engagement on attorneys trust accounts.

Materiality

44. The auditor's determination of materiality is a matter of professional judgement. In the context of an engagement on attorneys trust accounts there is 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. Consequently, 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 reported that have been resolved should be indicated accordingly.

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*, and 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. The auditor is also required to implement quality control procedures that are applicable to this engagement in accordance with 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*.

Agreeing the terms of the engagement

47. 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

48. The professional competencies of an auditor who accepts an engagement to report on attorneys trust accounts, and the auditor's staff assigned to the engagement, includes knowledge of the Act and the Rules sufficient to enable the auditor to conduct the engagement, including an ability to evaluate whether there has been compliance with the Act and Rules, and an understanding of the risks of fraud and theft, relative to an attorney's trust accounts. If the auditor does not have the professional competencies the auditor should not accept the engagement.

Emphasis on professional scepticism

49. 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.
50. 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.

Emphasis on special considerations applicable to fraud and theft

51. The guidance in International Standard on Auditing (ISA) 240, *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 in identifying and assessing fraud risk factors and further examples that may be encountered in engagements on attorneys trust accounts (refer paragraph 56).
52. The auditor's inquiries include obtaining knowledge of the attorney's understanding regarding the accounting and internal control systems in place to prevent and detect 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.
53. The nature, extent and frequency of the attorney's assessment of the risk of fraud and error are relevant to the auditor's understanding of the control environment. When the attorney has not made an assessment of the risk of fraud and error it may be indicative of the lack of importance attached by that attorney to internal controls.
54. When an attorney places strong 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 not only to misappropriate funds with alacrity and ease, but also to cover their tracks to avoid detection.
55. In addition to enquiries of the attorney, the auditor makes inquiries of internal audit (if applicable), and employees within the firm, to determine whether they have any knowledge of any actual, suspected or alleged fraud affecting the firm. It should be noted that, although the auditor's inquiries of the attorney may provide useful information concerning the risks of misappropriations from the 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.

56. 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;
 - Sole partners or sole practitioners lacking financial and administration skills, or not having the time to perform the control functions, for which they are responsible;
 - Failure to distinguish between trust monies and business monies;
 - Failure to keep accounting records properly, which includes proper narrative for each transaction (so that transactions and balances may be identified by persons not familiar with the transactions);
 - Poor state of firm's financial position, financial performance and cash flows as reflected in the financial statements;
 - Financial statements not completed at the time of the engagement on compliance of the trust accounts with the Act and 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;¹²
 - 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);

¹² 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 Conveyancing and personal accident service activities of firms are reported as the largest contributors to claims paid.

- 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);
 - 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.
57. 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.
58. The auditor may consider inquiring from the relevant Law Society and/or the Attorneys Fidelity Fund regarding any complaints which may have been received in respect of the management of trust monies by the firm.
59. 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

60. 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.
61. As part of obtaining an understanding of the entity and its environment, the auditor¹³ 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.¹⁴
62. 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.

¹³ Including the engagement team

¹⁴ ISA 250, paragraph 12, A7-A8 and, A9 in particular, regard being had to the 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.

63. If the auditor becomes aware of information concerning an instance of non-compliance or suspected non-compliance with the Act and Rules and other laws and regulations, the auditor obtains:
- (a) An understanding of the nature of the non-compliance and the circumstances in which it has occurred; and
 - (b) Further information to evaluate the possible effect on fund transactions reflected in the attorney's trust account.
64. 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;
 - 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 off-shore 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 by accident, fails to provide an adequate audit trail or sufficient evidence;
 - Unauthorised transactions or improperly recorded transactions;
 - Adverse media comment.

Written representations by an attorney

65. 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. Appendix 3 contains an illustrative representation letter.

Subsequent events

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

Auditor's documentation

67. The auditor records matters that are significant in providing evidence that supports the auditor's report.¹⁵ 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.
68. The auditor documents work performed on opening trust balances in both initial and continuing engagements.

Auditor reporting

Assurance report content

69. The auditor's assurance report content follows the guidance in paragraphs 49 and 50 of ISAE 3000.
70. In order 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 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 circumstances of the engagement. Our reasonable assurance engagement included the following procedures:

 - a) Considering, and applying when considered applicable in the engagement circumstances, the guidance in this 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; and
 - 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

¹⁵ ISAE 3000 paragraphs 42 to 44.

- 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.”¹⁶

Illustrative reasonable assurance reports

71. 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 Rules.
72. Appendix 5 contains an illustrative report in respect of a qualified opinion when the auditor has concluded that the contraventions of the Act and Rules identified were material. The auditor discloses, in the basis for qualified opinion paragraph of the auditor’s report, details of contraventions of the Act and Rules in sufficient detail to enable the relevant Law Society to pursue its own investigations should it wish to do so.
73. 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).
74. In such circumstances the auditor adapts the guidance on the layout and wording from the appropriate illustrative reports in ISA 705, *Modifications to the Opinion in the Independent Auditor’s Report*.

Report on Attorney’s Annual Statement on Trust Accounts

75. The auditor reports separately on the information extracted from the trust accounting records and reflected in the Attorney’s Annual Report on Trust Accounts in a paragraph following the assurance opinion.
76. The auditor also reads the Attorney’s Annual Report 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 our engagement and also 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 Report on Trust Accounts the auditor does not express an opinion thereon.
77. 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 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 Report 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.

¹⁶ See SAAPS 6, *External Confirmations from Financial Institutions*.

Report on other legal and regulatory requirements

78. 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 certain unlawful acts or omissions committed by <practitioner/partners/directors> responsible for the attorney’s trust accounts of <insert the name of the attorney’s firm> which constitute reportable irregularities in terms of the Auditing Profession Act, and have reported such matters to the Independent Regulatory Board for Auditors. The reportable irregularity/ies is/are as follows: <describe....>.

Other reporting responsibilities

79. 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 ISA 260, *Communications with Those Charged with Governance*, and ISA 265, *Communicating Deficiencies in Internal Control to Those Charged with Governance and Management*.
80. “*Governance*” describes the role of persons entrusted with the supervision, control and direction of a responsible party. Those charged with governance ordinarily are accountable for ensuring that an entity achieves its objectives and for reporting to interested parties.

Appendix 1: Rule requirements, identified assurance engagement risk and illustrative responses to assessed assurance engagement risk

Note: Some firms accounting systems may be fully computerised, in which case, auditors are advised to adapt the following procedures accordingly. The illustrative 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 ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
1	C: 13.5 KZN: 20.1(a) FS: 16.1 NP: 68.1.3 Act s78(6)	<p><u>Accounting records</u></p> <p>A firm shall keep in an official language of the Republic²⁰ such accounting records as are necessary to represent fully and accurately in accordance with generally accepted accounting practice the state of affairs and business of the firm and to explain the transactions and financial position of the firm including and without derogation from the generality of this rule:</p> <ul style="list-style-type: none"> Records showing its assets and liabilities; Records containing entries from day to 	<p>The firm may fail to keep accounting records in a manner required by the Rules, and this may lead to the attorney's trust accounts transactions being incomplete and inaccurate. This applies equally to the business' accounting books and records, especially if they have not been kept up to date.</p>	<p>Document the key controls identified by the attorney that address each of the control objectives listed below in respect of the accounting records:</p> <ul style="list-style-type: none"> Accounting records are accurate (accuracy); and Loss of the accounting records is prevented (completeness). <p>Inspect the accounting records to ensure that they comply with the Rule and to establish whether or not the accounting records maintain separately the records</p>

¹⁷ For purposes of this Guide, the Rules reflected in this Table refer to those of each Provincial Law Society. They will be updated with the references to the relevant Uniform Rules once approved by the respective Provincial Law Societies and issued by the Law Society of South Africa.

¹⁸ These are risks that have been identified as typically present in attorneys trust accounts engagements in relation to the relevant Law Society's Accounting Rules.

¹⁹ The auditor exercises judgement in the circumstances of the engagement at the attorney's firm, and adapts the illustrated 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.

²⁰ The Republic of South Africa

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
		<p>day of all moneys received and paid by it on its own account; and</p> <ul style="list-style-type: none"> • Records containing particulars and information of all moneys received, held and paid by it for and on account of any person as well as of all moneys invested by it in terms of section 78(2)(a) or section 78 (2A) of the Act and of any interest referred to in section 78(3) of the Act which is paid over or credited to it, as well as any interest credited to or on any separate trust savings or other interest-bearing account referred to in section 78(2A). 		<p>of:</p> <ul style="list-style-type: none"> • The firm’s financial transactions relating to its practice; • The particulars and information of trust account transactions: <ul style="list-style-type: none"> ○ All moneys received, held or paid by the attorney for the account of any person; ○ All money invested by the attorney in a trust savings account or other interest bearing account; and ○ All interest on money so invested that is paid over or credited to the attorney; • The firm’s assets and liabilities; and • That the records are maintained in an official language of the Republic.
2	<p>C: 13.7 KZN: 20.3 FS: 16.3 NP: 68.3 Act s78(1)</p>	<p><u>Distinction between trust account and business account transactions</u></p> <p>The accounting records shall distinguish in readily discernible form between business account transaction 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 ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
3	C: 13.8 KZN: 20.4 FS: 16.4 NP: 68.4 Act s78(6)	<p><u>Retention of accounting records</u></p> <p>A firm shall retain accounting records:</p> <ul style="list-style-type: none"> For at least five years from the date of the last entry recorded in each particular book or other document of record; Save with the prior written consent of the council, or when removed there from under other lawful authority, at no place other than its main office or a branch office but, in the latter case, only in so far as they relate to any part of its practice conducted at that branch office. 	<p>The accounting records may not be retained for a period as prescribed by the Rules.</p> <p>The accounting records may be outsourced and kept at the computer bureau / service provider.</p>	<p>Discuss with management and inspect accounting records to determine whether the accounting records are kept for a period of 5 years at least, at the firm's head office or branch office(s) as required.</p>
4	C: 13.9 KZN: 20.5 FS: 16.5 NP: 68.5 Act s78(4)	<p><u>Updating of accounting records</u></p> <p>A firm shall regularly and promptly update its accounting records and shall be deemed not to have complied with this rule, inter alia, if its accounting records have not been written up for more than one month and have not been balanced within two months after each date on which the trust creditor's lists are to be extracted.</p>	<p>The firm may fail to promptly update accounting records and to write them up as required by the Rules and this may lead to delays in the engagement performance and a potential scope limitation.</p> <p>This also applies to the business accounting records</p>	<p>Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the accounting records:</p> <ul style="list-style-type: none"> Accounting records are timeously updated (accuracy); and Review the accounting records to determine whether they are written up monthly and balanced within two months after each quarter.
5	C: 13.10 KZN: 20.6 (a) FS: 16.6 NP: 68.6.1	<p><u>Trust money to be kept separate from other money</u></p> <p>Trust money shall in no circumstances be deposited in or credited to a business</p>	<p>Trust money must be kept separate from other money.</p> <p>This may lead to misappropriation of the trust</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</p>

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
	Act s78(1)	banking account, while money other than trust money at any time found in a trust banking account shall be transferred to a business account without undue delay: provided that a firm which: <ul style="list-style-type: none"> • Makes transfers from its trust banking account to its business banking account at least once a month; and • Ensures that each such transfer covers the total amount due to it and debited as at that date of transfer; • Shall be deemed to have complied with this Rule. 	money, which may go undetected.	trust account items have been erroneously dealt with as a business transaction. <ul style="list-style-type: none"> • Inspect the business debtors to identify credit balances, and inquire whether they should be trust creditors; and • On a test basis, select reverse transfer journals from business to trust accounts discuss with management and corroborate with supporting evidence.
6	C:13.10.1-13.10.3.2 KZN: 20.6(b) FS: 16.7 NP: 68.6.2 Act s78(4) and s78(6)	<p><u>Transfer from trust banking account</u></p> When making a transfer from its trust banking account to its business banking account, a firm shall ensure that: <ul style="list-style-type: none"> • The amount transferred is identifiable with and does not exceed the amount due to it; and • The balance of any amount due to its remaining in its trust banking account is capable of identification with corresponding entries appearing in its trust ledger. 	Transfers from the trust banking account may not be in compliance with the provisions of the Rules. This may lead to irreconcilable differences in the trust banking account and debit balances.	Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the transfers from the trust banking account: <ul style="list-style-type: none"> • Transfers from the trust banking account are properly authorised (validity); • The amount transferred is correct (accuracy); and • Transfers are recorded in the correct accounting period (cut-off). Select a sample of transfers from the trust banking account to the business banking

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
				<p>account and inspect supporting documentation to establish that the amount transferred is valid.</p> <p>Select a sample of individual transfers which relate to fees and expenses and test to ensure that:</p> <ul style="list-style-type: none"> • The fees or expenses are due; and • That the fee has been raised in the business books before the transfer is effected; or • The transfer is in respect of a valid expense relating to the specific creditor and trace payment to the creditor's account. <p>Scrutinise all rounded amounts transferred.</p> <p>Inspect the total per the transfer listing and ensure that:</p> <ul style="list-style-type: none"> • It agrees to the amount deposited into the business bank account; and • The deposit was made within 2 working days. <p>(Note: Transfers may not be made into bank accounts other than firm's business bank account).</p>
7	<p>C: 13.11 KZN: 20.7</p>	<p><u>Accounting to clients</u> Every firm shall within a reasonable time</p>	<p>Non-disclosure to clients.</p>	<p>For the sample of matter files selected for detail testing (refer responses to No. 25),</p>

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
	FS: 16.8 NP: 68.7	after the performance or earlier termination of any mandate, account to its client in writing. Each account shall contain: <ul style="list-style-type: none"> • Details of all amounts received by it in connection with the matter concerned, appropriately explained; • Particulars of all disbursements and other payments made by it in connection with the matter; • Fees and other charges charged to or raised against the client and, where any fee represents an agreed fee, a statement that such fee was agreed upon and the amount so agreed; and • The amount due to or by the client; and the firm shall retain a copy of each such account for not less than five years. 		obtain written evidence of the firm's accounting to its clients and determine whether the accounting to the firm's clients include the following: <ul style="list-style-type: none"> • Details of amounts received by the firm from its respective clients and these amounts are appropriately explained; • Disbursements made by the firm are included; • Fees and other charges charged to or raised against the client are included; and • The amount owing to or by the client is clearly shown. Determine, by inspection, whether the supporting documentation referred to above is properly authorised and relates to disbursements relative to the mandate of the client.
8	C: 13.13.1 KZN: 21.1 a-c FS: 16A.1 NP: 69.1 Act s78(1)	<u>Prompt deposit of trust money</u> A firm shall, promptly on the date of its receipt, or the first banking day following its receipt on which it might reasonably be expected that it would be banked, deposit in its trust banking account all money received by it on account of any person.	Trust money may not be promptly deposited and this may lead to trust money going missing or being used for the purposes which it is not intended.	Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the deposit of trust money: <ul style="list-style-type: none"> • Trust money is deposited intact (any misappropriations of trust monies are identified) (accuracy)

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
				<ul style="list-style-type: none"> • Deposits are recorded in the correct accounting period (cut-off); and • All trust money/EFTs²¹ received is accounted for, and allocated to the correct trust account. <p>Select a sample of receipts and inspect the corresponding bank stamped deposit slips to determine whether the key controls have been implemented effectively and whether they operated effectively throughout the period under review.</p> <p>Using the sample selected above, determine whether the receipts:</p> <ul style="list-style-type: none"> • Are pre-numbered; • Are issued in duplicates; and • Provide the details as required by the Rule. <p>Where funds have been received by EFT, inspect evidence that the details as required by the Rule have been recorded.</p>
9	C: 13.13.3 KZN: 21.2 FS: 16A.2 NP: 69.2	<p><u>Transfer from trust investment account to trust banking account</u></p> <p>Any amount withdrawn by a firm from a trust investment account shall promptly be</p>	<p>Transfers from trust investment account to trust banking account may not be in accordance with the</p>	<p>Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the transfers from the trust investment</p>

²¹ Electronic fund transfers between banking accounts done electronically on-line

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
	<p>Act s78(1), s78(2)(a) and (b)</p>	<p>deposited by it in its trust banking account.</p>	<p>Rules, resulting in some trust moneys not being appropriately accounted for.</p>	<p>account:</p> <ul style="list-style-type: none"> • Transfers from the trust investment account are properly authorised (validity); • The amount transferred is correct (accuracy); and • Transfers are recorded in the correct accounting period (cut-off). <p>Select a sample of transfers made from the trust investment account and determine whether the amounts transferred to the trust bank account are recorded in the correct accounting period.</p> <p>For each transfer made to the trust bank account, inspect the client mandate to determine whether the amount is authorised and is accurate.</p>
<p>10</p>	<p>C: 13.13.4 KZN: 21.3 FS: 16A.3 NP: 69.3 Act: s78(1) and s78(2A)</p>	<p><u>Trust balances not to exceed trust moneys and trust accounts not to be in debit.</u></p> <p>A firm shall:</p> <ul style="list-style-type: none"> • Ensure that the total amount of money in its trust banking account, trust investment account and trust cash at 	<p>The total amount of money in the firm's trust banking account, trust investment account and trust cash may be less than the total amount of credit balances of the trust creditors.</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 are</p>

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
		<p>any date shall not be less than the total amount of the credit balances of its trust creditors;</p> <ul style="list-style-type: none"> • Ensure that no account of any trust creditor is in debit; and • Employ and maintain a system to ensure that the above requirements are not infringed when amounts are transferred from its trust banking account to its business banking account. 	<p>This may bring about un-reconciled differences in the trust accounting records. Individual trust creditors may not go into debit.</p>	<p>held²².</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"> • Balances in trust bank accounts; • Balances in savings accounts in terms of section 78(2)(a) and 78(2a); and • Trust cash on hand. <p>Inspect the above reconciliations for evidence of review by a senior official. 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"> • Compare the balances on the reconciliation to the cashbook, bank statements and bank confirmation balances, respectively; and • Re-perform all casts on the reconciliation and at the same time, test the logic of the reconciliation e.g. outstanding cheques have been added

²² Refer to SAAPS 6 *External Confirmations from Financial Institutions* for external confirmation requests issued on or after 1 October 2013.

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
				<p>to, not subtracted from, the cashbook balance.</p> <p>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"> • Recorded in the bank statements prior to the respective reporting dates; or • They appear in the reconciliation as outstanding cheques or deposits/EFTs. <p>Determine through inspection whether the outstanding cheques and deposits reflected on the reconciliation appear in:</p> <ul style="list-style-type: none"> • The cashbook prior to the reconciliation date; and • In the bank statement after reconciliation date. <p>Enquire about any long outstanding deposits and long outstanding cheques which should possibly be written back.</p> <p>Obtain an explanation from management and follow up on any unusual reconciling items, by reference to supporting documentation.</p> <p>Select a sample of receipts and payments close to the reporting dates <i.e. at the year end, and the other test date> and</p>

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
				<p>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 the 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 the other test date> to the total of the trust creditors at the reporting dates <i.e. year end and on the other test date> and determine whether the total amount on the reconciliation is not less than the total of the trust creditors.</p> <p>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.</p>

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
11	C: 13.13.6 KZN: 21.4 FS: 16A.4 NP: 69.4 Act: s78(1)	<p><u>Amounts received in advance</u></p> <p>A firm shall ensure that amounts received in advance to cover a prospective liability for service rendered or to be rendered or disbursements (including counsel’s fees) to be made are deposited forthwith to the credit of its trust banking account.</p>	<p>Amounts received in advance may be inappropriately accounted for, resulting in misappropriations of the trust funds.</p>	<p>Obtain receipt books and list of EFTs and trace a sample to the trust banking account to determine whether these moneys are appropriately accounted for. This applies to all trust receipts.</p>
12	C: 13.13.7 KZN: 21.5 FS: 16A.5 NP: 69.5 Act: s78(1)	<p><u>Withdrawals from trust banking account</u></p> <p>A firm shall ensure that withdrawals from its trust banking account are made only:</p> <ul style="list-style-type: none"> • To or for or on behalf of a trust creditor; or • As transfers to its business banking account, provided that such transfers shall be made only in respect of money claimed to be due to the firm. 	<p>Withdrawals from the trust banking account may not be made in accordance with the Rules, which could lead to misappropriation of the trust funds.</p>	<p>Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the withdrawals from the trust banking account:</p> <ul style="list-style-type: none"> • Withdrawals from the trust banking account are properly authorised (validity); • The amount withdrawn is correct (accuracy); and • Withdrawals are recorded in the correct accounting period (cut-off). <p>Select a sample of withdrawals from the trust banking account bank statements and determine by inspecting supporting documentation whether the key controls have been implemented effectively and whether they operated effectively throughout the period under review.</p>

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
13	<p>C: 13.13.9 KZN: 21.6 FS: 16A.6 NP: 69.6 Act: s78(1)</p>	<p><u>Trust cheques</u> Trust cheques to be made payable to or to order of designated payee and no transfers to be made to business banking accounts until disbursements made or liability incurred and fee debited:</p> <ul style="list-style-type: none"> • Any cheque drawn on a firm’s trust banking account shall be made payable to or to the order of a payee specifically designated; • No transfer from its trust banking account to its business banking account shall be made in respect of any disbursement (including counsel’s fees) or fees of the firm until: <ul style="list-style-type: none"> ○ The disbursement has actually been made by the firm; ○ A contractual obligation has arisen on the part of the firm to pay the disbursement; and ○ The fee or disbursement has been correctly debited in its accounting records. 	<p>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 funds.</p>	<p><u>Cheque payments and EFTs</u> Select a sample of cheque and EFT payments from the trust bank statements and perform the following: Cheque payments:</p> <ul style="list-style-type: none"> • Determine whether the paid cheques were made to or to the order of a payee specifically designated and are relevant to the clients matter; • Agree to supporting documentation; • Peruse the cashbook for any evidence of cash cheques; and • Determine by inquiry of management and inspection of the cheque book whether cheques are issued in strict numerical sequence. <p>Using the sample selected above determine whether the following:</p> <ul style="list-style-type: none"> • Cheques are signed in accordance with the bank mandate; • Payments to business are to reimburse a disbursement already or fees already debited; and • Determine whether un-issued cheques are subject to strict stationery controls.

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
				<p>Electronic Funds Transfer:</p> <ul style="list-style-type: none"> • 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); • Inspect the EFT supporting documentation for evidence that computations were checked prior to authorising the payment (accuracy); • Determine by enquiry and observation whether EFT payments are made and released in accordance with the attorney’s bank mandate; • Determine by logging onto the EFT application whether the EFT application will automatically shut down after three unsuccessful attempts; • Enquire of management and inspect reports regarding security violations; • Inspect the EFT audit trail for evidence that it was reviewed by senior personnel; and • Obtain evidence that management has

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
				established the ownership of the recipient's bank account.
14	<p>C: 13.15 KZN: 21.8 FS: 16A.8 NP: 69.8</p> <p>(Note: The auditor is not required to report on these Rules)</p>	<p><u>Notification of trust banking accounts and the furnishing of particulars</u></p> <p>Every firm shall:</p> <ul style="list-style-type: none"> • Immediately notify the Council in writing of the name and address of the bank(s) at which the firm has kept its trust banking account or accounts and shall thereafter notify the Council immediately of any change in the name and address of such bank or banks; and • Whenever so required by the council, furnish to 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 financial institution with which the firm keeps any trust investment account setting out the balance at such date or dates as may be specified by the Council. 	<p>The firm may not promptly notify the Council of the firm's banking particulars and some bank accounts may not be shown in the firm's records.</p>	<p>Using the independent external confirmations obtained from the financial institutions, as required under illustrative procedure No. 10 above:</p> <ul style="list-style-type: none"> • Compare the details to the accounting records of trust bank accounts to ensure that all the bank accounts appear on the trust accounting records (completeness); • Compare the number and type of bank accounts (section 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; • Note the date on which each trust bank account (section 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.

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
15	C: 13.14 KZN: 21.7 FS: 16A.7 NP: 69.7	<p><u>Extracts of lists of trust creditors</u></p> <ul style="list-style-type: none"> • Every firm shall extract at intervals of not more than three calendar months in clearly legible manner a list of amounts then standing to the credit of any person, who shall be identified therein by name, in respect of all money held or received by it on account of such person and shall total such list and compare the said total with the total of the balance standing to the credit of the firm’s trust banking account, trust investment account and amounts held by it as trust cash. • The balance listed in respect of each such account shall also be noted in some permanent, prominent and clear manner in the ledger account from which that balances was extracted. • Each such list shall be part of the accounting records of the firm to be retained for the five year period. 	<p>The list of trust creditors may be inaccurate or incomplete.</p>	<p>Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the extraction of lists of trust creditors:</p> <ul style="list-style-type: none"> • Information on the lists of trust creditors is correct (accuracy); • Loss of extracted lists of trust creditors is prevented (completeness); <p>Determine whether the key controls have been implemented effectively and whether they operated effectively throughout the reporting period under review.</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"> • Determine whether the firm has extracted the lists of trust creditors at least quarterly during the period; • Cast the lists to ensure that they have been totalled correctly; • Inspect the list for evidence of having been agreed or reconciled to the total of trust funds; • By inquiry of management and reference to prior periods’ lists, determine whether the lists are retained for a period of 5 years.

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
				<ul style="list-style-type: none"> • 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. <p>Scrutinise the lists of trust ledger balances at the reporting dates <i.e. at year end and the other test date, enquire 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.</p>
16	C: 13.16 KZN: 21.9 FS: 16A.9 NP: 69.9 Act: s78(2A)	<p><u>Trust account investments in terms of Section 78(2A)</u></p> <p>A member who invests funds on behalf of any person without that person’s prior written instructions (specific or general) shall:</p> <ul style="list-style-type: none"> • Not invest such funds otherwise than in a trust savings or other interest bearing trust account with a banking institution or building society; 	<p>Investments may be made in contravention of the Rules and this could lead to client’s moneys being used for other purposes than otherwise they are intended for.</p>	<p>Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the investments made on behalf of clients:</p> <ul style="list-style-type: none"> • Investments are properly authorised (validity); • Accounting records are accurate (accuracy); and • Physical/ electronic loss of the

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
		<ul style="list-style-type: none"> Obtain that person’s written confirmation of the investment as soon as is reasonably possible or notify him or her forthwith thereof in writing; and Forthwith cause the relative trust savings or other interest bearing trust account to be endorsed in terms of section 78 (2a) of the act; 		<p>accounting records is prevented (completeness).</p> <p>Select a sample of trust investments and ensure, through inspection of the investment mandate, that clients’ trust investments are in terms of Section 78(2A).</p> <p>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>
17	<p>C: 20.3 KZN: 17.3 FS: 16C.3 NP: 77A.3</p>	<p><u>Mandates</u></p> <p>A firm carrying on an investment practice shall obtain an investment mandate from each client before investing funds for that client. The form of the investment mandate should be substantially in the form referred to in the Fourth Schedule to these rules.</p>	<p>An investment mandate may not exist, resulting in client’s moneys being used for other purposes than they are intended for.</p>	<p>Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the investments made on clients’ behalf:</p> <ul style="list-style-type: none"> Investments are properly authorised (validity); Inspect the list of trust creditors and identify those for which the firm is carrying on an investment practice; and

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
				<ul style="list-style-type: none"> Inspect the investment mandate for a sample of clients to determine whether the key controls have been implemented effectively and they have been operating throughout the reporting period under review.
18	C: 20.4 KZN: 17.4 FS: 16C.4 NP: 77A.4	<u>Annual report to clients</u> <ul style="list-style-type: none"> Every firm carrying on an investment practice shall, not later than six months after the financial year end of such firm, supply every client from whom it is required to hold a mandate with a report reflecting all relevant details of such client's investments. The firm shall send such report by pre-paid post or shall deliver it by hand, in which latter case it shall obtain a written acknowledgement of receipt. A copy of such report shall also be made available at any other time upon the reasonable request of a client. 	The firm may not submit an annual report to the client regarding the status of the investments held on behalf of the client, and this may lead to misappropriation of client's moneys.	Obtain an investment register and, 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 client's investments within the period prescribed by the Rules.
19	C: 20.5 KZN: 17.5(a) FS: 16C.5 NP: 77A.5	<u>Accounting records – Investment practices</u> <ul style="list-style-type: none"> Every firm carrying on an investment practice shall, in addition to its normal accounting records, also keep proper 	The accounting records may not exist or may be incomplete, and this may lead to questions about the accuracy and completeness	Document the key controls identified by the attorney(s) that address each of the control objectives listed below in respect of the accounting records: <ul style="list-style-type: none"> Accounting records are accurate

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
		<p>accounting records and supporting documents in respect of the investments made by it or under its control.</p> <ul style="list-style-type: none"> • The accounting records and other supporting documents 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. • Such accounting records and other supporting documents shall be maintained in sufficient detail and be cross-referenced to the trust account records retained in respect of each client, in such a way as to provide an adequate and clear audit trail which will enable a particular transaction to be identified at any time and traced through the accounting records to the client. • The system shall collect the information in an orderly manner and the accounting records and other supporting documents shall be properly arranged, filed and indexed so that access may be gained promptly to any particular record. • Where accounting records are maintained by means other than on paper, facilities shall exist for such 	<p>of the client's investments.</p>	<p>(accuracy); and</p> <ul style="list-style-type: none"> • Physical/ electronic loss of the accounting records is prevented (completeness). <p>Select a sample of entries in the accounting records and by inspection and observation, determine whether the key controls have been implemented effectively, and whether they operated effectively throughout the reporting period under review.</p>

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
		<p>records to be reproduced in printed form.</p> <ul style="list-style-type: none"> All accounting records required to be retained in terms of this sub Rule and copies of all reports despatched shall be retained for at least five years from the date of the last entry recorded in each particular book or other document of record, unless there is statutory provision to the contrary, and shall be held at the same office as the firm's other accounting records. 		
20	<p>C: 20.5 KZN: Not applicable FS: 16C.6 NP: 77A.6</p>	<p><u>Investment register</u> Every firm carrying on an investment practice shall, in addition to its normal accounting records, also maintain an investment register containing at least the following information:</p> <ul style="list-style-type: none"> The names and addresses of the investors and the amounts invested; The names and addresses of the borrowers (where applicable) and the amounts borrowed (where applicable); The dates on which the loans are granted (where applicable) or investments made; 	<p>The firm may fail to keep an investment register or the investment register may be incomplete or incorrect, and this may cause uncertainty about the accuracy and completeness of the clients' investments.</p>	<p>Confirm by inspection of the investment register that the firm has kept an investment register for the funds which are invested on behalf of the clients, as required by the Rules.</p> <p>Inspect the investment register to confirm that the following details have at least been included therein:</p> <ul style="list-style-type: none"> The names and addresses of the investors and the amounts invested by each of them and the date of each investment; The names and addresses of the borrowers and the amounts borrowed by each of them as well as the date on

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
		<ul style="list-style-type: none"> • The period of the loan (where applicable); • The applicable interest rate; • The security and particulars of where the authority, the document denoting the debt and bonds or other documents are filed; • List of the total amounts received from investors; • A list of the total amounts invested with borrowers (where applicable); • A list of moneys invested with a financial institution in the interim with identification of which the money belongs to, the interest rate and where and how it was invested together with all other particulars; • A list of the moneys in the trust banking account pending registration of bonds or investment in any other medium; • An annual reconciliation of the lists; • A statement of whether the firm or any partner, director or employee of the firm, or any company, close corporation or other entity in which such partner, director or employee has an interest, has borrowed any moneys of the 		<p>which each loan was granted;</p> <ul style="list-style-type: none"> • Where applicable, the dates on which the loans are granted or investments made; • The period of each loan (where applicable); • The interest rate applicable to each investment; • Details of any security held and particulars of where the authority, the documents of title reflecting the debt and bonds or other documents are filed; • A list of the total amounts received from investors; • A list of moneys temporarily invested with a financial institution, indicating whom the monies belong to, the interest rate and where and how they invested together with all other particulars; • A list of the moneys in the trust banking account pending registration of bonds or investment in any other form; • An indication of whether the firm or any member thereof or any company,

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
		investors.		close corporation or other entity in which the firm or any member thereof has an interest, has borrowed any moneys from the investors.
21	C: 20.6 KZN: 17.6 FS: 16C.7 NP: 77A.7	<p><u>Money market transactions</u></p> <ul style="list-style-type: none"> No firm may syndicate deposits or other money market investments in any manner otherwise than by accepting funds as agent for each participating client and placing such funds with a deposit-taking institution on the money market in the name of the client. The deposit-taking institution shall acknowledge receipt of each deposit or money market investment and such written receipts shall be retained by the member as part of his or her accounting records. All moneys received by a firm for investment with a deposit-taking institution, shall be paid to such institution as soon as reasonably possible after receipt by the firm, having regard to matters such as whether a payment made by cheque has been cleared with the drawer's bank. For the purpose of this Rule "deposit-taking institution" shall mean any 	Money market transactions may not be in terms of the Rules.	Throughout the performance of the assurance engagement, determine whether all money market transactions are in terms of the Rules of the relevant Law Society.

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
		institution in terms of the Deposit-Taking Institutions Act, No. 94 of 1990.		
22	C: 20.7 KZN: 17.7 FS: 16C.8 NP: 77A.8	<p><u>Restrictions applicable to certain investments</u></p> <p>A firm may not invest on behalf of a client –</p> <ul style="list-style-type: none"> • In shares, or debentures in any company which is not listed on the Johannesburg Stock Exchange, unless it is a subsidiary of a listed company; or • In money market type investments, other than in the client’s name in a deposit-taking institution; or • In loans in respect of which, in the firm’s opinion, there is not adequate security; unless the client’s specific written authorisation for each such investment has first been obtained. 	<p>Investments may be made in contravention of the Rules and this may lead to client’s monies being used for other purposes than otherwise they are intended for.</p>	<p>In respect of the investments that are made in:</p> <ul style="list-style-type: none"> • Shares or debentures in any company other than a subsidiary of a listed company; or • Money market type of transactions; or • loans without adequate security, <p>Inspect the client’s mandate (written authorisation) to determine whether specific authorisation was obtained from the client before the investment was made.</p>
23	Act: s78(1), s78(2) and s78(3)	<p><u>Interest</u></p> <p>The interest, if any, on money deposited in terms of subsection (1) and the interest on money invested in terms of subsection (2) shall be paid over to the Attorneys Fidelity Fund by the practitioner concerned at the prescribed time and in the manner prescribed.</p>	<p>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 Rules.</p>	<p>Inspect the trust account bank statements (section 78(1) and 78(2)(a)) for the whole reporting period and identify all interest credited to the account/s.</p> <p>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. (Note that the Attorneys Fidelity Fund or its nominee</p>

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
				<p>may in its discretion exempt an attorney from this obligation).</p> <p>If interest is not transferred monthly, as required above, determine whether the necessary exemption has been received.²³</p> <p>In addition, consider the reasonableness of the interest rate, i.e. whether or not the rate is market related.²⁴</p> <p>(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 Attorney's Fidelity Fund will be detrimentally affected.)</p>
24	Accounting records	Journals	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"> • Journals are accurate (accuracy); • Journals are authorised (validity); • Journals are allocated to the correct trust creditor (classification, rights & obligation);

²³ The AFF has granted a blanket exemption, to give attorneys an opportunity to comply and to give the banks an opportunity to refine their banking products, for the monthly interest payment. This exemption will be removed in due course.

²⁴ This can be compared to rates information available on the AFF's website at www.fidfund.co.za.

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
				<ul style="list-style-type: none"> • Journals are recorded in the correct period (cut-off); • All journals are accounted for (completeness); and • Journals are supported by valid supporting documents (occurrence). <p>Select a sample of journal entries in the accounting records and by inspection and observation:</p> <ul style="list-style-type: none"> • Evaluate whether key controls as designed by management are appropriate; • Inspect evidence they have been implemented as designed; and • Inspect evidence that they operated effectively throughout the reporting period under review. <p>Select a sample of trust general journals and trace to supporting evidence, and corroborate with management's explanation.</p> <p>Review accounting records for unusual transactions e.g. cash cheques journalised and transfers between two different trust creditor's accounts.</p>

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
25(a)	Accounting records	Client's files	General	<p>Select a sample of Motor vehicle accident (MVA)/third party claims at the reporting dates <i.e. at year end and the other test date>:</p> <ul style="list-style-type: none"> • Ensure that the accounting statement to the client indicates capital proceeds of claims received and cost contributions from the Road Accident Fund (RAF). • Agree the documentation, referred to above, with documentation from the RAF respondent, e.g. the discharge document from the RAF • Inspect vouchers in support of disbursements, e.g. police report, ambulance report, payments to the doctor, etc. • Inspect documentation supporting the attorney's fees. If a contingency fee arrangement exists, the contingency agreement should be inspected. • Inspect documentation to support the payment to the client, e.g. paid cheques, ensuring that cheques were not made paid to bearer or cash. In the case of electronic fund transfers, inspect payment instructions from the client and compare with the details of

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
				the account to which the funds were transferred.
25(b)	Accounting records	Client's files (Continued)	General	<p>Select a sample of Conveyancing matter files at the reporting dates <i.e. at year end and the other test date>:</p> <ul style="list-style-type: none"> • 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. • Inspect that the pro forma costs, e.g. VAT, transfer duty, and attorney's fee, etc. have been deposited in the trust account. • Inspect that the attorney's fees are only raised in the accounting records on the date of registration. • Inspect that disbursements have been made in accordance with statutory requirements • Inspect that proper accounting to both buyer and seller took place, including any interest on trust investments. • Inspect paid cheques to buyer and/or seller.

No	Rule ¹⁷ /Act reference	Rule requirement	Identified assurance engagement risk ¹⁸	Illustrative responses to assessed assurance engagement risk ¹⁹
25(c)	Accounting records	Client's files (Continued)	General	<p>Select a sample from the remaining trust creditors balances at year end and the other test date:</p> <ul style="list-style-type: none"> • Inspect client's files for supporting documentation and compare evidence of the transactions filed, with those transactions recorded in the trust creditors' ledger. • Inspect postings to/ transactions recorded in the trust ledger from all sources, scrutinising the ledger account tested, ensuring that entries therein appear to be relevant. • 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. • For all matter files selected above, cast the accounts in the trust ledgers to ensure they have been totalled correctly.

Appendix 2: Illustrative engagement letter

(Auditor's letterhead)

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

(Address)

(Date)

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

Engagement on Attorneys Trust Accounts²⁵

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 *(insert specific rule numbers²⁶)* ("the Rules") of the *<insert the name of the relevant Law Society>* for the *<period from (insert date) to (insert date)>* *<or year/period ended (insert date)>*.

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

As part of our assurance engagement we are required to agree the information extracted from the accounting records and included in the 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 attorney's trust accounts with the Act and the Rules that accompanies our assurance report 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 attorney's 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 is necessary to prevent and detect fraud and theft. You are also responsible for preparing the Attorney's Annual Statement on

²⁵ This illustrative engagement letter is based on the guidance in ISA 210 *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.

²⁶ Applicable Rules for the Provincial Law Societies:

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

Trust Accounts and for the financial information and declarations contained therein and to provide us with:

- 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.

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 International Standard on Assurance Engagements ISAE 3000, *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*. That standard requires that we comply with ethical requirements and 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 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 circumstances of the engagement but not for the purpose of expressing an opinion on the internal control. Our engagement will include the following procedures:

- Considering, and applying when applicable in the engagement circumstances, the guidance in the *Guide for Registered Auditors: Engagements on Attorneys Trust Accounts* issued by the Independent Regulatory Board for Auditors.
- 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; and
- 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.

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 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 as we have not undertaken an assurance engagement on the Attorney's Annual Statement on Trust Accounts we do not express an opinion thereon.

However, should our evidence obtained not support 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.

Restriction on use and distribution of our report

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

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.

Auditor's Signature

<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

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

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>* 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 *<insert specific rule numbers>* of the *<relevant>* Law Society ('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, 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.
 - Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.
- Accounting records have been kept as required by the Rules of the *<insert relevant>* Law Society.
- All transactions have been recorded and are reflected in the trust accounts.
- All trust money received has been promptly banked in properly designated separate trust bank accounts.
- Money has only been transferred from the trust banking account to the business banking account in respect of fees and disbursements due and only when permitted, in terms of the Rules of the relevant Law Society.

- At no stage during the year under review, did the total amount of money in trust bank accounts, trust investment accounts and trust cash not equal the total amount of trust creditors, other than fees that were transferable, but have not yet been transferred.
- The firm complied with all the Rules relating to investment practices.²⁷
- All interest received has been properly accounted for and paid over to the relevant Law Society for the account of the Attorney’s Fidelity Fund or the investor in terms of Sections 78(1), (2) and (2A) of the Attorneys Act, No. 53 of 1979.
- A separate system of accounting for deceased and insolvent estates was maintained.
- The disclosure of facts relating to any fraud or possible fraud known to us that may have affected the firm, involving:
 - Management.
 - Employees who have significant roles in internal control.
 - Others where the fraud could have a material effect on the trust accounts.
- We acknowledge that it is our responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud.
- We have disclosed to you the results of management’s assessment of the risk that the trust accounts may be materially misstated as a result of fraud or may have been misappropriated.
- We have disclosed to you our knowledge of any allegations of fraud, or suspected fraud, affecting the entity’s trust accounts communicated by employees, former employees, regulators or others.
- All known instances of non-compliance or suspected non-compliance with laws and regulations whose effects should be considered when preparing the trust account records have been disclosed to you.
- All events occurring subsequent to the date of the report which may affect the trust accounts and the appropriateness of your conclusion have been disclosed to you.
- The following changes occurred in the composition of the firm during the year under review:

<Insert list indicating names of partners/directors that joined the firm and names of partners/directors that resigned from the firm>

Yours faithfully

<Practitioner/Senior Partner/Director>

Date

<Senior Financial Officer>

Date

²⁷ If relevant to the attorneys practice

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 Registered Auditor's Report on Attorneys Trust Accounts

To the <Practitioner/Partners/Directors²⁸> (insert the name of the attorney's firm)

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 <insert specific rule numbers²⁹> (the Rules) of the <insert the name of the relevant Law Society> 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 with 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 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

²⁸ Throughout the report - delete whichever: "proprietor/partners/directors" is "not applicable"

²⁹ Applicable Rules for the Provincial Law Societies:

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

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

Auditor's responsibility

Our responsibility is to express a reasonable assurance opinion on 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 assurance engagement in accordance with the International Standard on Assurance Engagements ISAE 3000, *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*. That standard requires that we comply with ethical requirements and 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 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 circumstances of the engagement. Our reasonable assurance engagement included the following procedures:

- Considering, and applying when considered applicable in the engagement circumstances, the guidance in the *Guide for Registered Auditors: Engagements on Attorneys Trust Accounts* issued by the Independent Regulatory Board for Auditors;
- 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;
 - 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 our work performed and evidence obtained is sufficient and appropriate to provide a basis for our opinion.

Opinion

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

*Report on Attorney's Annual Statement on Trust Accounts*³⁰

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, we have not undertaken an assurance engagement on 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.>*³¹

Restriction on distribution and use

This report is for the purpose of meeting the auditor reporting requirements of 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 may not be 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 for firm and/or auditor

Registered audit firm

Date of report

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

³⁰ Refer paragraphs 75-77 for guidance regarding the auditor's reporting responsibilities.

³¹ Refer paragraph 78 for illustrative wording to insert as: *Report on Other Legal and regulatory requirements*, where a reportable irregularity has been reported.

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

Circumstances

- Certain non-compliance identified (rather than significant non-compliance) 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 Registered Auditor's Report on Attorneys Trust Accounts

To the <Practitioner/Partners/Directors³²> (insert the name of the attorney's firm)

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 <insert specific Rule numbers>³³ (the Rules) of the <insert the name of the relevant Law Society> 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 with 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 mandates, including such

³² Throughout the report - delete whichever: "proprietor/partners/directors" is "not applicable"

³³ Applicable Rules for the Provincial Law Societies:

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

controls as the <practitioner/partners/directors> determine(s) is also necessary to prevent and detect fraud and theft. The <practitioner/partners/directors> is/are responsible for the preparing the Attorney's Annual Statement on Trust Accounts and for the financial information and declarations contained therein.

Auditor's responsibility

Our responsibility is to express a reasonable assurance opinion on 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 assurance engagement in accordance with International Standard on Assurance Engagements ISAE 3000, *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*. That standard requires that we comply with ethical requirements and 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 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 circumstances of the engagement. Our reasonable assurance engagement included the following procedures:

- Considering, and applying when considered applicable in the engagement circumstances, the guidance in the *Guide for Registered Auditors: Engagements on Attorneys Trust Accounts* issued by the Independent Regulatory Board for Auditors.
- 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;
 - 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 our work performed and evidence obtained is sufficient and appropriate to provide a basis for our qualified opinion.

Basis for qualified opinion

The attorney's trust accounts were not maintained in compliance with the Act and the Rules, as follows³⁴;

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, attorney's 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*³⁵

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, we have not undertaken an assurance engagement on the Attorney's Annual Statement on Trust Accounts and accordingly we do not express an opinion thereon.³⁶

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.>³⁷

Restriction on distribution and use

This report is for the purpose of meeting the auditor reporting requirements of 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 may not be 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.

³⁴ Any contravention of Sections 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Act, and any instance of contravention of the rules of the <insert Province> Law Society identified in the course of the engagement relating to trust accounts in terms of the Rules is regarded as material and should be reported.

³⁵ Refer paragraphs 75-77 for guidance regarding the auditor's reporting responsibilities.

³⁶ Refer paragraph 77 for matters to be considered when inconsistencies are identified.

³⁷ Insert paragraph on *Report on Other Legal and regulatory requirements* where a reportable irregularity has been reported (refer paragraph 78 for illustrative wording).

Auditor's Signature

Name of individual registered auditor

IRBA Registration number of firm and/or auditor

Registered audit firm

Date of report

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

Appendix 6: Attorney's Annual Statement on Trust Accounts

(On attorney's letterhead)

The Secretary

Insert the name of the relevant Law Society

Address

Date

Attorney's Annual Statement on Trust Accounts³⁸

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

1. List of attorneys in firm / practice applying for annual Fidelity Fund Certificate³⁹

- 1.
- 2.

2. Attorney's compliance representations

I/we confirm that I/we have maintained the necessary accounting records⁴⁰ as required in terms of sections 78(4) and 78(6) of the Attorney's Act, No 53 of 1979 and the Rules and regulations of the relevant Provincial Law Society for the 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/ 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);
- 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 during the period from <insert date> to <insert date>:

<i><Insert changes></i> :

³⁸ To be attached to the auditor's report on the Attorney's Trust Accounts to be submitted to the relevant Provincial Law Society

³⁹ Attach separate list if there are numerous partners / directors in the attorney's firm or practice.

⁴⁰ 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 *<relevant Law Society's Rules....,> Prohibition of rendering of services as attorneys in certain circumstances*.
- g) The firm is registered as an Accountable Institution in accordance with the Financial Intelligence Centre Act, No 38 of 2001 *and the Reference No. of the firm is: <insert number>*.
- h) The firm *<has / has not>* reported cash transactions for the period reported on in accordance with the requirements of Section 28 (of the FICA), "Cash transactions above prescribed limit".
- i) The firm is registered as an Accountable Institution in accordance with section 43B of the Financial Intelligence Centre Act, Act No. 38 of 2001 with accountable institution registration reference number:*<insert number>* that was issued by the Financial Intelligence Centre.
- j) The firm *<has / has not>* reported *<insert number>* 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) FICA, "Cash transactions above prescribed limit".
- k) The firm *<has / has not>* reported *<insert number>* property associated with terrorist and related property 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. "Property associated with terrorist and related activities".
- l) The firm *<has / has not>* reported *<insert number>* 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. "Suspicious and unusual transactions".
- m) 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 which includes the requirement to report cash threshold transactions (section 28) and suspicious and unusual transactions (section 29) to the Financial Intelligence Centre.

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 addresses⁴¹>*:

<i><insert office addresses></i>
--

⁴¹ Attach as a separate list if the firm has multiple offices in South Africa.

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 agree⁴² with the balance as recorded in the books of account, which amount, less the amount of R_____ paid over to the Society since period end, <is/ is not> held in the firm's trust account.

If not held in the trust account, a written explanation detailing how the trust interest has been dealt with is to be annexed to the report.

- (vii) The following information was extracted from our trust accounting records that were the subject of our auditor's assurance engagement in respect of trust creditors/liabilities and trust funds available at the <period / year end> <insert date> and on one other date, selected by our auditor <insert date>:

⁴² 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).

TOTAL TRUST CREDITORS / LIABILITIES	Local	Foreign ⁴³	At period / year end⁴⁴
Trust creditors/liabilities			
Trust creditors in terms of:			
- Section 78(1)			
- Section 78(2)(a)			
- Section 78(2A)			
- Interest			
Trust creditors in terms of estates ⁴⁵			
Trust creditors in terms of other entrusted assets ⁴⁶			
TOTAL TRUST CREDITORS / LIABILITIES			
Trust funds available in terms of trust banking accounts:			
- Section 78(1)			
- Section 78(2)(a)			
- Section 78(2A)			
- Trust cash on hand			
- Interest			
Trust funds and assets relating to estates			
Other entrusted assets ⁴⁷			
Debit balances in trust ledger ⁴⁸			
TOTAL FUNDS			
TRUST SURPLUS / (DEFICIT)⁴⁹			

⁴³ Attach a detailed schedule of liabilities per foreign currency per category, in the same format, and convert to Rand at the reporting date.

⁴⁴ 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.

⁴⁵ 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.

⁴⁶ 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.

⁴⁷ Assets entrusted to the practitioner other than the trust funds items listed.

⁴⁸ 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.

⁴⁹ 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.

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> complied⁵⁰ in all respects with the provisions of <insert relevant Law Society's Rule>⁵¹ of the Society's 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>⁵²

⁵⁰ 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).

⁵¹ Applicable Rules relating to Investment Practices:

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

⁵² 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
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
Total				

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 bank 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.*⁵³
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.*⁵⁴
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.*⁵⁵
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 auditor⁵⁶

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.⁵⁷

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.⁵⁸
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.

⁵³ Section 78(1) of the Act

⁵⁴ Section 78(2)(a) of the Act

⁵⁵ Section 78(4) of the Act

⁵⁶ The word "*accountant*" which is currently referred to in the Rules, is synonymous with a "*registered auditor*" in terms of the Auditing Profession Act and is referred to as an "*auditor*" in this Guide.

⁵⁷ Law Society of the Northern Provinces Rule 70.1; KwaZulu-Natal Law Society Rule 21A(1); Law Society of the Free State Rule 16B1; and Cape Law Society Rule 13.17.

⁵⁸ Law Society of the Northern Provinces Rule 70.2; KwaZulu-Natal Law Society Rule 21A(2); Law Society of the Free State Rule 16B2 and Cape Law Society Rule 13.18.

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

Duties of the auditor⁵⁹

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;⁶⁰
Without delay report in writing directly to the Council if, at any time during the discharge of his or her functions and duties –
 - It comes to his or her notice that at any date the total of the balances shown on trust accounts in the accounting records of the firm exceeded the total amount of the funds in its trust banking account, its trust investment account and its trust cash;
 - Any material queries regarding its accounting records which he or she has raised with the firm have not been dealt with to his satisfaction; 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.

⁵⁹ Law Society of the Northern Provinces Rule 70.4; KwaZulu-Natal Law Society Rule 21A(4); Law Society of the Free State Rule 16B(4) and Cape Law Society Rule 13.20.

⁶⁰ The Rules of all provinces are expected to be amended to include the "Attorney's Annual Statement on Trust Accounts" in Appendix 6, in the relevant Schedule to their Rules once the Guide is issued.