

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

### Circumstances

- Any non-compliance identified of attorneys' trust accounts with the Act and the Rules.
- Qualified auditor's opinion
- The information in the attorney's annual statement on trust accounts agrees with the underlying records that were the subject of the engagement on the attorney's trust accounts.

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

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

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

We have undertaken a reasonable assurance engagement on the compliance of attorneys' trust accounts of <insert the name of the attorney's firm> with Section 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Attorneys Act, No. 53 of 1979 (the Act), and the Rules<sup>39</sup> of the Attorneys' Profession (the Rules) for the <period from <insert date> to <insert date>> <year ended <insert date>>.

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

As part of our engagement, we are required to agree the information extracted from the accounting records and included in the accompanying Attorney's Annual Statement on Trust Accounts for the <period from <insert date> to <insert date>>/ <year ended <insert date>> to the underlying records that were the subject of our engagement on the compliance of the attorneys' trust accounts with the Act and the Rules. We are also required to read the attorney's representations and the other disclosures in the Attorney's Annual Statement on Trust Accounts for the purpose of identifying material inconsistencies based on our knowledge obtained in our engagement on the compliance of attorneys' trust accounts with the Act and the Rules.

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

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

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

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

### *Our Independence and Quality Control*

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

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

### *Auditor's Responsibility*

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

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

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

- Considering, and applying when considered applicable in the engagement circumstances, the guidance in the *Revised Guide for Registered Auditors: Engagements on Attorneys' Trust Accounts* issued by the Independent Regulatory Board for Auditors.
- Making inquiries of the attorney and the attorney's staff.
- Testing transactions for all significant activities with the objective of evaluating whether:
  - Transactions were appropriately identified as trust transactions;
  - Trust transactions were in accordance with mandates and supported by adequate documentation and narrative to identify from whom funds were received, and for whose credit;

- Deposits and withdrawals from the trust bank account were to, or for, a trust creditor; and
- Transfers to the attorney's business account were only in respect of moneys claimed to be due to the attorney; and
- Testing and/or scrutinising bank reconciliations, as considered appropriate in the engagement circumstances, and evaluating whether confirmations from financial institutions were in support of the records made available to us.

We believe that the evidence we have obtained is sufficient and appropriate to provide a basis for our qualified opinion.

*Basis for qualified opinion*

The attorneys trust accounts were not maintained in compliance with the Act and the Rules, as follows<sup>40</sup>;

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

*Qualified opinion*

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

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

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

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

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<sup>40</sup> Any contravention of Sections 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Act, and any instance of contravention of Uniform Rules 35 and 36 identified in the course of the engagement relating to trust accounts in terms of the Rules is regarded as material and should be reported.

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

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

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

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

***Restriction on distribution and use***

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

*Auditor's Signature*

Name of individual registered auditor

IRBA registration number of the firm and/or auditor

Registered audit firm

Date of auditor's report

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

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

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

(On an attorney's letterhead)

The Secretary

*Insert the name of the relevant Law Society*

Address

Date

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

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

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

- 1.
- 2.

#### 2. Attorney's compliance representations

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

- a) The firm's trust accounts have been updated monthly and balanced at least quarterly.
- b) The firm has complied/not complied with the service fee structure (including the cash deposit fee structure, where applicable) and the credit interest rates, as amended from time to time, as nationally/provincially agreed upon between the Attorneys Fidelity Fund and the firm's bank(s).
- c) The ratio as a percentage of total bank charges (excluding VAT) incurred during the year/period to the total of interest earned during the year was <insert percentage>.
- d) The firm's trust accounts for the period subsequent to <insert year/period end date> have been written up to <insert date> and the trial balance was last balanced at <insert date> and in compliance with the provisions of <insert Rule X> read with <insert Rule X>.
- e) The following changes in the composition of the firm occurred during the year or period from <insert date> to <insert date>:

<Insert changes>:

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

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

<sup>46</sup> Accounting records include those for trust liabilities in respect of which the practitioner is the executor, trustee or curator or which he administers on behalf of the executor, trustee or curator.

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

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

**3. Places of practice**

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

<insert office addresses>

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

Reconciliation of interest earned on the firm's Section 78(1) and Section 78(2)(a) trust accounts from <insert commencement date> to <insert year/period end date>:

(i)	Amount brought forward from the previous financial year in respect of interest earned on monies deposited in terms of Section 78(1) and monies invested in terms of Section 78(2)(a) of the Attorneys Act, No. 53 of 1979.	
(ii)	Amount earned during the current year/period on monies deposited in trust banking accounts in terms of Section 78(1) and monies invested in trust investment accounts in terms of Section 78(2)(a) of the Attorneys Act, No 53 of 1979.	
(iii)	Amount incurred during the current year/period in respect of refundable bank charges (excluding VAT – firms not liable for VAT as vendors may include VAT)	
(iv)	Amount already paid over to the Law Society as nominee of the Attorneys Fidelity Fund during the period under review in terms of Section 78(3) of the Attorneys Act, No. 53 of 1979 is (a schedule of the payments made is to be attached).	
(v)	Amount carried over to the next financial period in respect of interest earned on monies deposited in terms of Section 78(1) and monies invested in terms of Section 78(2)(a) of the Attorneys Act, No. 53 of 1979.	

- (vi) The amount referred to in paragraph 4(v) agrees/does not agree<sup>48</sup> with the balance as recorded in the books of account, which amount, less the amount of R \_\_\_\_\_ paid over to the Society since period end, <is/ is not> held in the firm's trust account.

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

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

<sup>48</sup> If the answer to paragraph 4(vi) is "does not agree", list all instances in which the Rules may not have been complied with. (If space is insufficient, this may be continued on a separate sheet and attached to this annual statement).

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

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

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

<sup>50</sup> The date selected by the auditor must be a date, other than the financial year-end, which occurs during the financial year/period to which this assurance engagement relates.

<sup>51</sup> This is trust liabilities in respect of which the practitioner is the executor, trustee or curator or which he administers on behalf of the executor, trustee or curator for which consent has been obtained from the Master of the High Court to deal with through the attorney's trust account.

<sup>52</sup> This relates to the liability originating from any asset entrusted to the practitioner other than the items listed, supported by a detailed schedule of the nature of such liability.



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

**5. Investment practice**

The firm:

- (i) <Has/has not> carried on the business of an investment practice during the year under review;
- (ii) <Has/has not> complied<sup>56</sup> in all respects with the provisions of <insert Rule><sup>57</sup> of the Rules; and
- (iii) <Is/is not> registered as a Financial Services Provider (FSP) with the FAIS Department of the Financial Services Board.

.....

**<Name of Attorney/s>**

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

<sup>53</sup> Assets entrusted to the practitioner other than the trust fund items listed.  
<sup>54</sup> Details of debit balances in the trust ledger must be provided as an attachment to the report, providing reasons for the occurrence and how it was resolved.  
<sup>55</sup> Detailed explanation required on how the surplus/deficit originated and how it was subsequently cleared and resolved. Indicate when the deficit was reported to the Law Society.  
<sup>56</sup> If the answer to paragraph 5(ii) is "*has not complied*", list all instances in which the Rules may not have been complied with. (If space is insufficient, this may be continued on a separate sheet and attached to this annual statement).  
<sup>57</sup> Applicable Rules relating to Investment Practices: Rule 36.1 - 36.11.2.  
<sup>58</sup> Delete whichever is not applicable. For practices with a large number of partners/directors, this "*Attorney's Annual Statement on Trust Accounts*" should be signed by the partner/director authorised by the Partnership/Board of the Inc.

**SUPPLEMENTARY INFORMATION REQUESTED BY THE <INSERT PROVINCE> LAW SOCIETY**

**FIRM <INSERT FIRM NAME >**

**Schedule of interest payments**

**For the financial period from \_\_\_\_\_ to \_\_\_\_\_**

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

**Notes:**

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

**FIRM <INSERT FIRM NAME >**

**Schedule of Section 78(1) Trust Banking Account/s**

For the financial period from \_\_\_\_\_ to \_\_\_\_\_

Schedule of Section 78(1) Trust Banking Account/s					
Account No	Financial Institution	New/existing account/closed	Date Account opened/closed	Balance at period end R	Balance at year end R
<b>Total</b>					

**Note:**

1. The total indicated above should agree with Paragraph 4(vii) of the Attorney's Annual Statement on Trust Accounts.

FIRM <INSERT FIRM NAME >

**Schedule of Section 78(2)(a) Trust Banking Account/s**

For the financial period from \_\_\_\_\_ to \_\_\_\_\_

<b>Schedule of Section 78(2)(a) Trust Banking Account/s</b>					
<b>Account No</b>	<b>Financial Institution</b>	<b>New/existing account/closed</b>	<b>Date Account opened/closed</b>	<b>Balance at period end</b>	<b>Balance at year end</b>
<b>Total</b>					

**Note:**

1. The total indicated above should agree with Paragraph 4(vii) of the Attorney's Annual Statement on Trust Accounts.