

Draft Code of Conduct for Every Registered Patent Agent in Singapore who
has in force a practising certificate
30th August 2006

I PRELIMINARY

Application

1.1 This Code of Conduct shall apply to every registered patent agent in Singapore who has in force a practising certificate.

Objectives

1.2 The objectives of this Code are:

- (1) to provide a framework for fair and equitable dealing between registered patent agents and their clients;
- (2) to provide a standard of acceptable conduct that can be used in the settling of disputes; and
- (3) to assist complainants to understand the obligations of registered patent agents to their clients.

Interpretation

1.3 In the interpretation of this Code, regard shall be had to the principle that a registered patent agent shall not in the conduct of his practice do any act which would compromise or hinder the following obligations:

- (1) to maintain the Rule of Law concerning intellectual property and assist in the administration of the intellectual property system in Singapore;
- (2) to uphold the independence and integrity of the intellectual property profession;
- (3) to act in the best interests of his client and to charge fairly for work done; and
- (4) to facilitate access to intellectual property laws by members of the public.

II. PRACTICE

2.1 General

Reliable Adviser

2.1.1. The basic task of a registered patent agent is to serve as a reliable adviser to persons interested in patent matters. He should act as an independent counselor by serving the interests of his clients in an unbiased manner without regard to his personal feelings or interests.

Competence

2.1.2 A registered patent agent shall practise competently, conscientiously and objectively, putting clients' interests foremost and respecting clients' confidence while observing the law and the registered patent agent's duty to the Registrar.

Dignity of profession

2.1.3 A registered patent agent shall exercise his profession conscientiously and in a manner appropriate to its dignity. In particular, he shall not knowingly make any false or misleading statement.

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Safeguard client's interests

2.1.4 A registered patent agent shall take measures to safeguard his client's interests in the event he is prevented from practising his profession.

Confidence in profession

2.1.5 A registered patent agent shall conduct himself in such a manner as not to prejudice the confidence of the public in the profession of patent agents.

Promote public confidence

2.1.6 A registered patent agent's conduct shall be such as to promote public confidence in the intellectual property system in Singapore and the Registrar.

Other businesses

2.1.7 A registered patent agent shall not engage in any business, trade or calling which:

- (i) derogates from the dignity of the profession of patent agents;
- (ii) is likely to lead to the attraction of professional business unfairly; and
- (iii) is in any way prohibited by law.

No touting

2.1.8 A registered patent agent shall not tout for business or do anything which is likely to lead to the reasonable inference that it is done for the purpose of touting.

Maintain expertise

2.1.9 Registered patent agents are expected to keep their relevant knowledge and expertise up to date to the best of their ability.

Undertaking work

2.1.10 Registered patent agents must not undertake work for which they are not qualified.

Handling unreasonable conduct

2.1.11 Faced with unreasonable conduct, registered patent agents should nevertheless be reasonable in handling the situation (though without prejudice to the pursuit of any appropriate legal remedy).

Referral where appropriate

2.1.12 When asked to advise or act in a matter outside their expertise, registered patent agents should be frank with their clients and, whenever it seems in the client's best interest, recommend the client to take advice from or transfer the whole matter to someone better qualified to deal with the matter.

Third-party referrals

2.1.13 Without prejudice to the generality of the foregoing, where there is reason to believe that a client is referred to a registered patent agent by a third party, the registered patent agent shall:

- (i) maintain the independence and integrity of the profession and not permit the third party to undermine the professional independence of the registered patent agent;

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- (ii) not reward the third party by the payment of commission or any other form of consideration;
- (iii) not allow the referral in any way to affect the advice given to the client;
- (iv) advise the client impartially and independently and ensure that the wish to avoid offending the third party does not in any way affect the advice given to the client;
- (v) ensure that the third party does not in any way influence any decision taken in relation to the nature, style or extent of the practice of the registered patent agent; and
- (vi) communicate directly with the client to obtain or confirm instructions in the process of providing advice and at all appropriate stages of the transaction.

Liability

Insurance Cover

2.2.1 Registered patent agents must have professional indemnity insurance such as that referred to in rule 9(1) of Patents (Patent Agents) Rules 2001 or any amendment thereof and determine the actual level of cover which is appropriate to their own practice. Failure to maintain an appropriate level of cover may constitute a serious breach of this Code.

Foreign clients

2.2.2 Registered patent agents should bear in mind that advice given to a foreign client could result in losses to a Singapore subsidiary which might bring an action in the Singapore Courts. Consequently, any registered patent agent who offers intellectual property services solely to overseas clients may still require insurance cover.

Overflow work/consultancy

2.2.3 Registered patent agents who undertake overflow work or who act as a consultant to another firm of patent agents should check that this work will be covered by professional indemnity insurance.

2.3 Conduct of Matters

Adequate care and attention

2.3.1 A registered patent agent shall at all times give adequate care and attention and apply the necessary expertise to work entrusted to him by clients and shall keep clients informed of the status of their cases.

Advance client's interests

2.3.2 A registered patent agent shall use all reasonable legal means consistent with his retainer with a client to advance the client's interests.

Supervising staff

2.3.3 A registered patent agent supervising unqualified staff is responsible for and must supervise the work of the unqualified staff. If a client is dealing with a staff who is not a registered patent agent, the client must be advised that the staff is not registered. The staff must work under the supervision of a registered patent agent.

Qualifications of registered patent agent

2.3.4 In the interests of clients, the qualifications of a registered patent agent to practise is to be clearly indicated, and appropriate expertise, including technical expertise, will be brought to bear on work entrusted by clients.

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Competence of referred practitioner

2.3.5 Where a registered patent agent engages another practitioner, either in Singapore or another country to act on behalf of a client, the registered patent agent must make reasonable investigations and inquiries to satisfy himself or herself that the other practitioner is appropriately qualified to carry out the work required.

Standards of practice

2.3.6 Registered patent agents must at all times maintain standards of professional practice which are courteous, ethical and well-informed, as the success of the profession relies heavily on their trustworthiness, honesty, and high standard of behaviour.

Act in best interests of client

2.3.7 A registered patent agent must at all times act within the law and subject to that obligation in the best interests of his client by:

- (i) acting promptly on the client's instructions or promptly advise the client of his or her inability to do so;
- (ii) not using his/her position to take advantage of information given to the registered patent agent by the client, or circumstances resulting from the professional relationship with the client, either on his/her own account or on behalf of another person;
- (iii) giving the client a reasonable opportunity to view drafts of specifications. If it becomes apparent that time does not allow him to give the client a reasonable opportunity to view the drafts of specification, he should so inform the client;
- (iv) making suitable arrangements for the client to have access to a qualified practitioner at any office at which the registered patent agent carries on business; and
- (v) forwarding as soon as possible all documents, samples and other materials that are the property of the client to the client or any other registered patent agent or person appointed by the client, subject to the client settling any outstanding fee or the other registered patent agent or person protecting the registered patent agent's lien for costs.

Non-entrusted work

2.3.8 In principle, a registered patent agent does not need to serve the interests of a client in matters not connected with professional work entrusted to him by the client.

Fees

2.3.9 Registered patent agents have a duty not to charge unjustifiable fees.

Cost estimate

2.3.10 A registered patent agent must ensure that his client is made aware of the likely costs of the action that are necessary or recommended by him. At the request of the client, he must provide a detailed estimate of the costs of acting for the client in a particular matter.

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Control costs

2.3.11 A registered patent agent must not undertake work in such a manner as to unnecessarily or improperly escalate his costs.

Advance payments

2.3.12 A registered patent agent may demand advance payment from his client.

Client's funds

2.3.13 A registered patent agent must handle the funds of a client in accordance with proper accounting practices and the law and must not use monies paid by the client other than for the purposes for which the monies are paid.

Not to mislead/deceive

2.3.14 A registered patent agent must not engage in behaviour or practices which are misleading or deceptive or are likely to mislead or deceive. Such behaviour or practices include:

- (i) lying to the client;
- (ii) knowingly misleading the client to a wrong conclusion;
- (iii) knowingly creating a false impression;
- (iv) knowingly leaving out or hiding important and relevant information; and
- (v) knowingly making false or inaccurate claims.

2.4 Promotion

Fair and accurate

2.4.1 Promotional activity is permitted if it is fair, not undignified, wholly accurate and gives a true impression.

True and objective

2.4.2 Advertising is generally permitted provided that it is true and objective and conforms with basic principles such as integrity and compliance with professional secrecy.

Comparative advertising

2.4.3 If advertising is of a comparative nature, it must be factually supportable and must not be misleading.

Exceptions

2.4.4 The following are exceptions to permitted advertising:

- (i) identifying a client without the client's express authorization;
- (ii) mentioning the name of another professional entity unless there is a written co-operation agreement between the registered patent agent and that entity;
- (iii) advertising, announcing or publishing offer to buy, sell or negotiate industrial property rights, except upon the instructions of a client.

III. RELATIONSHIP WITH CLIENT

3.1 Availability

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Unavailability

3.1.1 If a registered patent agent is unwilling or unable to provide services, or wishes to withdraw the services, to a client, he/she must make reasonable efforts in the circumstances to enable the client to make other arrangements and to avoid detriment to the client.

Protect IP rights

3.1.2 Where a registered patent agent withdraws or wishes to withdraw his or her services to a client or ceases to act for a client, he/she must advise the client of any action necessary to maintain the intellectual property rights of the client.

Other arrangements

3.1.3 If a registered patent agent is put in an unreasonable position (such as he is expected to continue services without payment), he/she should nevertheless ensure that the client has the opportunity to make other arrangements by giving notice reasonable to the client. This may entail contacting the client directly rather than through an associate.

3.2 Professional secrecy

Obligation

3.2.1 A registered patent agent shall be bound not to disclose information received by him in confidence in the exercise of his duties, unless he is released from this obligation.

Confidential information

3.2.2 A registered patent agent shall not in any way, directly or indirectly, disclose any confidential information which he receives as a result of the retainer or disclose the contents of the papers containing such instructions, unless with the consent of the client or is required by law or order of court. Notwithstanding this, a registered patent agent may use the confidential information to reply or defend any charge or complaint as to his conduct or professional behaviour brought against him before a disciplinary committee.

Release

3.2.3 A registered patent agent is automatically released from his secrecy obligation if the secret information becomes published.

3.3 Conflict of Interest

Avoid conflict

3.3.1 When receiving an enquiry or instructions from a new client, registered patent agents should consider the possibility of conflict.

Situations of conflict

3.3.2 A registered patent agent must take all reasonable steps to avoid situations in which a conflict between the interests of a client and the interests of the registered patent agent or those of another client may occur.

Opposed interests

3.3.3 A registered patent agent shall refuse or withdraw his services if acceptance or continuation would necessitate his dealing with a particular matter on which he has represented or advised another client with opposing interests and the conflict has not been resolved.

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Previous matter

3.3.4 Except with the approval of the client concerned, a registered patent agent shall not act for a client on any particular matter if, having acted for another client on a conflicting matter, the registered patent agent's professional duty to either client may be compromised.

Acquisition of interest

3.3.5 A registered patent agent shall not act for a client if, without the knowledge and approval of that client, the registered patent agent has, or acquires, any significant interest that the registered patent agent knows, or could reasonably be expected to know, may conflict with the registered patent agent's professional duty to that client.

Personal interest

3.3.6 A registered patent agent shall decline an instruction which is in conflict with his own interests. In all such cases, if the instruction cannot be postponed without possible damage to the client, a registered patent agent shall accept and perform the instruction so far as immediately necessary to avoid such possible damage. Thereafter, he shall resign from the case.

Interests of associated parties

3.3.7 Where any registered patent agent or any registered patent agent of his family or organization has an interest in any matter entrusted to him by a client, the registered patent agent must make a full and frank disclosure of such interest to the client or if, on the ground of confidentiality or for any other reason, the registered patent agent is unable to make such disclosure, decline to represent or withdraw from representing the client.

Informed consent

3.3.8 Where the interest of the registered patent agent or any registered patent agent of his family or organization is adverse to the interest of the client, the registered patent agent shall decline to represent or withdraw from representing the client, unless the client having been fully informed, and advised that he should seek independent advice consents to the registered patent agent acting or continuing to act on his behalf.

“Conflicting matter”

3.3.9 A “conflicting matter” is not necessarily the same matter as the one in which the second client is interested. Whether a conflict of interest exists – or whether a personal interest is “significant” – must remain questions for judgment having regard to the facts of the particular case. If a client cannot be told of a possible conflict of interest beyond the bare indication that it exists, or if the client's approval cannot be sought without some breach of confidence, then the registered patent agent obviously cannot act for that client.

Not to acquire conflicting interest

3.3.10 A registered patent agent must not acquire a financial interest in any industrial or intellectual property right in such circumstances as to give rise to a conflict between professional duty and interest. He must also not charge a fee directly related to the outcome of the service he provides.

Taking advantage of confidential information

3.3.11 A registered patent agent must not use his or her position to take advantage of information given to the registered patent agent by a client or circumstances resulting from

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the professional relationship with a client, either on his or her own account or on behalf of another person.

Connected registered patent agents

3.3.12 Where a conflict of interest might arise if two clients were both represented by the same registered patent agent, then if they are in fact represented by two different registered patent agents (or if there is a proposal to this effect), but a connection exists between those registered patent agents, if it is possible without breach of confidence, the first registered patent agent to find out must tell the other, and both clients must be told.

Handling related matters

3.3.13 A registered patent agent shall not take any action against a particular matter which is being handled or has been handled by the registered patent agent or another person in his office, unless the client in the matter agrees to this action or unless the registered patent agent has no cognizance of the matter and is no longer in a position to take cognizance of it. The registered patent agent is not permitted in the action to make use of information obtained during the time the matter was previously handled, unless the information is public.

Resolution of conflict

3.3.14 Where a conflict or a potential conflict arises, a registered patent agent must take immediate steps to resolve the conflict. Where the rights of a person might be put at risk by failing to act urgently in a conflict or potential conflict, the registered patent agent must take the necessary action to maintain the rights of a person and then immediately resolve the conflict.

3.4 Client's obligations

Advising client of obligations

3.4.1 A registered patent agent should endeavour to assist a client in understanding what makes for a successful relationship with the registered patent agent by informing him or her of the following guidelines.

Guidelines

3.4.2 Clients should be advised to:

- (i) assist the registered patent agent to provide appropriate advice or take appropriate action by disclosing all relevant information they hold in respect of the rights sought;
- (ii) provide the registered patent agent with clear and timely instructions based on the advice given;
- (iii) provide timely response to requests from the registered patent agent;
- (iv) settle accounts provided by the registered patent agent promptly, including charges for overseas actions commissioned by the registered patent agent in accordance with the client's instructions;
- (v) provide advance payments when requested; and
- (vi) observe the same standards of honesty and courtesy in the relationship as are required of the registered patent agents themselves.

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IV. RELATIONSHIP WITH THE PUBLIC/REGISTRAR

Uphold reputation of the profession of registered patent agents

4.1 A registered patent agent shall uphold the public reputation of the profession of patent agents, and the practice of representation before the Registrar.

Official indications

4.2 A registered patent agent shall not give any indication on office premises, stationery or otherwise which is misleading to the public.

No commission

4.3 A registered patent agent shall not give any commission to others for the introduction of business, but this does not extend to the acquisition in part or in whole of another law or patent agency practice.

Representation before the Registrar

4.4 A registered patent agent shall not permit, without adequate supervision, professional activities related to the Registrar under his name or the name of his association by a person who is not a registered patent agent.

Dealings with the Registrar

4.5 In all dealings with the Registrar and its employees, a registered patent agent shall act courteously and shall do everything possible to uphold the good reputation of the profession of registered patent agents.

V. RELATIONSHIP WITH FELLOW REGISTERED PATENT AGENTS

5.1 Relations with Other Registered patent agents

Fellowship

5.1.1 Good fellowship among registered patent agents is a necessity for preserving the reputation of the profession and should be exercised irrespective of personal feelings.

Courtesy, etc.

5.1.2 Good fellowship includes courtesy and the fact that a registered patent agent may not speak of another registered patent agent in discourteous or offensive terms. Grievances in respect of another registered patent agent should first be discussed in private with the other registered patent agent, either directly or through a third registered patent agent.

Impugning other registered patent agents

5.1.3 A registered patent agent shall not impugn, explicitly or otherwise, the competence, integrity or professional reputation of another registered patent agent without clear justification. This implies a general duty not to make unfair comparisons with other registered patent agents.

Exchange of views

5.1.4 A registered patent agent shall avoid any exchange of views about a specific case which he knows or suspects is or was being handled by another registered patent agent, with the client of the case, unless the client declares his wish to have an independent view

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or to change his representative. The registered patent agent may inform the other registered patent agent only if the client agrees.

Transfer of case to another registered patent agent

5.1.5 Where a registered patent agent is instructed by a client or prospective client to take over the handling of a case from another registered patent agent, he can accept the instruction only if he has

- (i) ensured that the other registered patent agent is informed of the client's instruction; and
- (ii) given a written undertaking to protect the other registered patent agent's lien concerning documents and other materials in respect of his unpaid fees and/or disbursements.

Upon the provision of the undertaking, the other registered patent agent shall without delay release the documents and other materials necessary for the case or provide copies at reasonable cost.

Knowledge of Code

5.1.6 Each registered patent agent should know of the Code of Conduct and cannot plead ignorance of it.

Client's instructions

5.1.7 A breach of this Code cannot be justified by referring to instructions from a client.

Responsibility for acts

5.1.8 A registered patent agent is responsible under this Code not only for his/her own acts and omissions, but also for those sanctioned, expressly or otherwise, by him/her.

5.2 Complaints against a registered patent agent

Avoidance of complaints

5.2.1 Clients are encouraged to discuss a grievance with registered patent agents to attempt settlement before a complaint is made.