

ASSOCIATION OF SINGAPORE PATENT AGENTS (“ASPA”)

CODE OF CONDUCT

I. PRELIMINARY

Application

1.1 This Code of Conduct shall apply to every member of ASPA (“Member”).

Objectives

1.2 The objectives of this Code are:

- (1) to provide a framework for fair and equitable dealing between Members 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 Members to their clients and to provide information on the grounds for complaints and the method for filing a complaint.

Interpretation

1.3 In the interpretation of this Code, regard shall be had to the principle that a Member 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 concentrating 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 Member 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 Member shall practise competently, conscientiously and objectively, putting clients' interests foremost and respecting clients' confidence while observing the law and the Member's duty to the Intellectual Property Office of Singapore, or any Court or Tribunal.

Dignity of profession

2.1.3 A Member 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.

Safeguard client's interests

2.1.4 A Member shall take measures to safeguard his client's interests in the event he would be prevented from exercising his profession.

Confidence in profession

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

Promote public confidence

2.1.6 A Member's conduct shall be such as to promote well-founded public confidence in the intellectual property system, in ASPA and its Members.

Other businesses

2.1.7 A Member 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 Member 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 Members are expected to keep their relevant knowledge and expertise up to date to the best of their ability.

Undertaking work

2.1.10 Members must not undertake work for which he/she is not qualified.

Handling unreasonable conduct

2.1.11 Faced with unreasonable conduct, Members 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, Members should be frank with their clients and, whenever it seems in the client's best interest, recommend taking advice from or transferring the whole matter to, someone better qualified to deal with the particular 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 Member by a third party, the Member shall:

- (i) maintain the independence and integrity of the profession and not permit the third party to undermine the professional independence of the Member;
- (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 such 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 such 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 Member; 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.

2.2 Liability

Compensation fund

2.2.1 A Member in Singapore offering intellectual property services as a Principal in private practice shall be responsible for ensuring that funds would be available to a reasonably practicable extent to provide compensation if a client were to suffer loss as a result of the Member's professional negligence.

Definition of "Principal"

2.2.2 "Principal in private practice" means any partner, director of a company or sole practitioner offering direct intellectual property services to the public, including those in employment if they have a private clientele.

Insurance cover

2.2.3 Members must determine the actual level of cover which is appropriate to their own practice. Failure to maintain a reasonable level of cover could be a breach of this Code.

Foreign clients

2.2.4 Members 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 Member who offers intellectual property services solely to overseas clients may still require insurance cover.

Overflow work/consultancy

2.2.5 Members 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 Member shall at all times give adequate care and attention and apply the necessary expertise to work entrusted to him by clients. A Member shall keep clients informed of the status of their cases.

Advance client's interests

2.3.2 A Member shall use all reasonable legal means consistent with his agreement with a client pursuant to which he is retained to advance the client's interests.

Supervising staff

2.3.3 A Member supervising unqualified staff is responsible for the work of the unqualified staff. If a client is dealing with a staff member who is not a patent agent, the

client must be advised that the staff member is not registered. The staff member must work under the supervision of a Member.

Qualifications of Member

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

Competence of referred practitioner

2.3.5 Where a Member engages another practitioner, either in Singapore in another country to act on behalf of a client, the Member 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 A Member must at all times maintain standards of professional practice which are at once courteous, ethical and well-informed, as the success of the profession relies heavily on trust, honesty, and a high standard of behaviour as described herein.

Act in best interests of client

2.3.7 A Member must at all times act within the law and subject to that obligation in the best interests of the client:

- (i) A Member must act promptly on a client's instructions or promptly advise a client of his or her inability to do so.
- (ii) A Member must not use his/her position to take advantage of information given to the Member by a client, or circumstances resulting from the professional relationship with a client, either on his/her own account or on behalf of another person.
- (iii) A client should be given an opportunity to view drafts of specifications where time allows.

- (iv) A Member must make suitable arrangements for a client to have access to a qualified practitioner at any office at which the Member carries on business.
- (v) Subject to the client satisfying any lien imposed in accordance with any relevant legislation, all documents, samples and other material that is the property of the client must be made available for forwarded to the client on request.

Non-entrusted work

2.3.8 In principle, a Member 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 Members have a duty not to charge unjustifiable fees.

Cost estimate

2.3.10 At the request of a client, a Member should wherever possible provide a detailed estimate of the cost of acting for the client in a particular matter.

Control costs

2.3.11 A Member must not undertake work in such a manner as to unnecessarily or improperly escalate his costs. He must ensure that his client is made aware of the likely costs of the actions that are necessary or recommended by him. At the request of a client, a Member must provide a detailed estimate of the cost of acting for the client in a particular matter.

Advance payments

2.3.12 A Member may demand advance payments from a client.

Client's funds

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

Not to mislead/deceive

2.3.14 A Member must not engage in behaviours or practices which are misleading or deceptive, or that are likely to mislead or deceive. To mislead someone may include:

- (i) lying to them;
- (ii) leading them to a wrong conclusion;
- (iii) creating a false impression;
- (iv) leaving out (or hiding) important information; and
- (v) 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 any comparisons must not be misleading.

Exceptions

2.4.4 The following are exceptions to permitted advertising:

- a. the identification of a client without the express authorization of that client;
- b. the mention of the name of another professional entity unless there is a written cooperation agreement between the Member and that entity;
- c. the advertisement, announcement or publishing of offers to buy, sell or negotiate industrial property rights, except upon the instructions of a client.

III. RELATIONSHIP WITH CLIENTS

3.1 Availability

Unavailability

3.1.1 When unwilling to provide services, or withdrawing them, a Member shall make reasonable effort in the circumstances to enable the person wishing to use those services to make other arrangements and to avoid detriment.

Protect IP rights

3.1.2 Where a Member withdraws his or her services or ceases to act for a client, the Member must advise the client of any actions necessary to maintain the intellectual property rights of that client.

Other arrangements

3.1.3 A Member put in an unreasonable position, particularly if expected to continue services without payment, should nevertheless ensure that a client has the opportunity to make other arrangements, giving notice reasonable in all the circumstances. This may entail contact direct rather than through an associate, if due assurance cannot otherwise be obtained.

3.2 Professional secrecy

Obligation

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

Confidential information

3.2.2 A Member 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 Member may use the confidential information to reply or defend any charge or complaint as to his conduct or professional behaviour brought against him whether in Court or before a disciplinary tribunal

Release

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

3.3 Conflicts of Interest

Avoid conflict

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

Situations of conflict

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

Opposed interests

3.3.3 A Member 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.

Previous matter

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

Acquisition of interest

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

Personal interest

3.3.6 A Member 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 Member 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 Member or any member of his family or organization has an interest in any matter entrusted to him by a client, the Member 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 Member 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 Member or any member of his family or organization is adverse to the interest of the client, the Member 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 Member 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 Member obviously cannot act for that client.

Not to acquire conflicting interest

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

Taking advantage of confidential information

3.3.11 A Member must not use his or her position to take advantage of information given to the Member by a client or circumstances resulting from the professional relationship with a client, either on his or her own account or on behalf of another person.

Connected Members

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

Handling related matters

3.3.13 A Member shall not take any action against a particular matter which is being handled or has been handled by the Member or another person in his office, unless the client in the matter agrees to this action or unless the Member has no cognizance of the matter and is no longer in a position to take cognizance of it. The Member 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.

Immediate resolution

3.3.14 Where a conflict or a potential conflict arises, a Member 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 Member must take the necessary action to maintain the rights of a person and then immediately resolve the conflict.

3.4 Clients' obligations

Advising clients of obligations

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

Guidelines

3.4.2 Clients should be advised to:

- (i) assist the Member to provide appropriate advice or take appropriate action by disclosing all relevant information they hold in respect of the rights sought;
- (ii) provide Members with clear and timely instructions based on the advice given;
- (iii) provide timely response to requests from the patent agent;

- (iv) settle accounts provided by patent agents promptly, including charges for overseas actions commissioned by the patent agent in accordance with client 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 patent agents themselves.

IV. RELATIONSHIP WITH THE PUBLIC/IPOS

Uphold ASPA's reputation

4.1 A Member shall uphold the public reputation of ASPA, of its members and of the practice of representation before the Intellectual Property Office of Singapore.

Official indications

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

No commission

4.3 A Member 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 patent agency practice.

Representation at IPOS

4.4 A Member shall not permit without adequate supervision professional activities related to the Intellectual Property Office of Singapore under his name or the name of his association by a person who is not a Member.

Dealings with IPOS

4.5 In all dealings with the Intellectual Property Office of Singapore and its employees, a Member shall act courteously, and shall do everything possible to uphold the good reputation of ASPA and its members.

V. RELATIONSHIP WITH ASPA

5.1 Relations with Other Members

Fellowship

5.1.1 Good fellowship among Members 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 Member may not speak of another Member in discourteous or offensive terms. Grievances in respect of another Member should first be discussed in private with the other Member, either directly or through a third Member, and then if necessary through the official channels prescribed by ASPA.

Impugning other Members

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

Exchange of views

5.1.4 A Member shall avoid any exchange of views about a specific case, which he knows or suspects is or was being handled by another Member, with the client of the case, unless the client declares his wish to have an independent view or to change his representative. The Member may inform the other Member only if the client agrees.

Transfer of case to another Member

5.1.5 Where a Member is instructed by a client to take over the handling of a case from another Member, the Member so instructed is free to accept such instruction but then shall ensure that the other Member is informed. Such other Member shall without delay,

loan or transfer all documents necessary for the handling of the case or provide copies at reasonable expense to the new representative.

Knowledge of Code

5.1.6 Each Member 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 Member is responsible under this Code not only for that Member's own acts and omissions, but also for those sanctioned, expressly or otherwise, by that Member.

5.2 Use of ASPA's Name etc.

Public communications

5.2.1 The President, Vice-President or Secretary may make public communication in the name of ASPA and may in doing so use any emblem of ASPA. Any other Member may do these things only on the authority of the President, of the Vice-President, or of the Committee.

Fact of memberships

5.2.2 For avoidance of doubt, there is no restriction on use of ASPA's name to indicate the fact of a person's membership.

5.3 Professional Guidance

Individual guidance

5.3.1 A Member has the right to seek individual guidance from the Committee of ASPA, on the propriety under the Rules of any act or course of conduct he intends to undertake or sanction.

Permissibility of act

5.3.2 A Member has the right to seek through the Secretary of ASPA an opinion on the permissibility, under this Code, of any act the Member proposes to do or sanction. Such opinion shall not be binding on ASPA.

Acts of Member

5.3.3 However, this right only applies when the Member himself actually intends (subject to being satisfied that it is proper) to do or sanction the course of action concerned.

Non-binding

5.3.4 Neither individual nor general guidance given will be binding on the Committee in any formal professional conduct proceedings, but full account will be taken of the fact that such guidance was sought and given as well as of the content of that guidance.

5.4 Obligations to ASPA

Address

5.4.1 Members must keep ASPA informed of their address to which correspondence and other information from ASPA are to be sent. Changes of address must be notified to the Secretary of ASPA without delay.

Subscription

5.4.2 Members must pay, in accordance with arrangements laid down and notified by the Committee, the annual subscription required by ASPA. If a Member fails to pay the subscription as required, the matter may be disciplinarily dealt with.

Unauthorized communication

5.4.3 No Member may, unless authorized by the President of ASPA, make any written or oral communication on behalf of ASPA.

5.5 Complaints against a Member

Grounds for complaint

5.5.1 A complaint may be made on the grounds that a Member:

- (i) has breached this Code;
- (ii) has engaged in unprofessional or unsatisfactory conduct;
- (iii) was unqualified at the time of registration as a patent agent; or
- (iv) has obtained registration by fraud.

Avoidance of complaints

5.5.2 Clients are encouraged to discuss a grievance with Members to attempt settlement before a complaint is made.

Disciplinary Committee

5.5.3 Complaints about the conduct of any Member can be made to ASPA's Committee which shall convene a disciplinary committee to consider the complaints

Complaints to other bodies

5.5.4 A person who makes a complaint to ASPA is not precluded from making a complaint under any other disciplinary regime or pursuing his or her rights under the law.

Contents

5.5.5 The complaint must:

- (a) state the name and address of the Member complained about;
- (b) state the nature of the complaint;
- (c) state the name and address of the complainant;
- (d) be signed by the complainant; and
- (e) be accompanied by a statutory declaration stating the facts on which the complainant relies to support the complaint.

Addressee for complaints

5.5.6 The complaint must be addressed to The Secretary of ASPA, at ASPA's registered address.