IPReg

RULES OF CONDUCT FOR PATENT ATTORNEYS, TRADE MARK ATTORNEYS AND OTHER REGULATED PERSONS

The Patent Regulation Board of the Chartered Institute of Patent Attorneys and the Trade Mark Regulation Board of the Institute of Trade Mark Attorneys working jointly together as the Intellectual Property Regulation Board (IPReg) now make the following provisions under Section 275A of the Copyright Designs and Patents Act 1988 and under Section 83A of the Trade Marks Act 1994, respectively (as amended by Sections 185 and 184 of the Legal Services Act 2007) and Part 5 and Schedule 11 of the Legal Services Act 2007).

Rule 1 – Interpretation

In these Rules, unless context otherwise requires:

"ABS" means a licensable body as defined in section 72 of the Legal Services Act 2007;

"client" means the principal on whose behalf a regulated person acts as agent and includes any person for whom the regulated person is address for service for any right regardless of the nature of any current relationship. In the case of foreign originating work, for the purposes of these Rules the "client" remains the principal for whom the work is ultimately being done, although the instructions may come from an intermediary foreign patent or trade mark attorney, to whom the regulated person will also owe a duty of professional care. Where a regulated person is instructed via such an intermediary any obligation to provide information to a client under these Rules may be discharged by providing such information to that intermediary.

"corporate work" means professional work undertaken by an employed regulated person acting solely as an agent on behalf of:

a) their employer;

b) a company or organisation controlled by their employer or in which their employer has a substantial measure of control;

c) a company in the same group as their employer;

d) a company which controls their employer;

e) an employee (including a director or a company secretary) of a company or organisation under (a) to (d) above, where the matter relates or arises out of the work of that company or organisation; or

f) another person with whom a person under (a) to (e) above has a common interest;

"manager", in relation to a body, has the same meaning as in section 207 of the Legal Services Act 2007;

"patent attorney register" means (together) in respect of registered persons other than ABS, the Register kept under section 275 of the Copyright Designs and Patents Act 1988 as amended, and in respect of ABS, is part of IPReg's register of licensed bodies for the purpose of section 87 of the 2007 Act;

"in private practice" means undertaking professional work which is not solely corporate work;

"professional work" means any services provided by a regulated person in the course of business providing legal services and/or ancillary services (whether or not legal services);

"registered person" means:

a) a registered patent attorney;

b) a registered trade mark attorney; or

c) a body (corporate or unincorporated) registered in the patent attorney register or the trade mark attorney register whether or not an ABS;

"regulated person" means a registered person, an employee of a registered person, or a manager of a body which is a registered person;

"trade mark attorney register" means (together) in respect of registered persons other than ABS, the Register kept under section 83 of the Trade Marks Act 1994 as amended, and in respect of ABS, is part of IPReg's register of licensed bodies for the purpose of section 87 of the 2007 Act;

Rule 2 – Scope

These Rules set out the standards of professional conduct and practice expected of regulated persons undertaking professional work. Registered persons are responsible under these Rules not only for their own acts and omissions, but also for those sanctioned, expressly or otherwise, by them.

Not every shortcoming on the part of a regulated person, nor failure to comply with these Rules, will necessarily give rise to disciplinary proceedings. The guidance shown in *italics* accompanying these Rules is not mandatory and does not form part of the Rules. Nevertheless, any alleged breach of the Rules will be considered with reference to the guidance.

General and (if any) Special Conditions attaching to the registration (or licensing) of firms, companies and other bodies are deemed to be incorporated into these Rules in relation to that body.

Rules 12 (Complaints handling) and 17 (Professional Indemnity Insurance) are only applicable to registered persons "in private practice" and attorneys employed within industrial departments are not required to comply with these Rules provided that such attorneys limit their professional activities to "corporate work". In general, this means only undertaking work on behalf of their employer and individuals or companies associated with their employer.

Attorneys undertaking "corporate work" may, however, but subject always to the overarching obligations of section 15 of the Legal Services Act 2007 act on behalf of third parties unrelated to their employer where their employer or an associated individual or company has a "common interest" in such work. Typical examples of permitted actions on behalf of third parties would include: maintaining or enforcing patents on behalf of third parties where the patents are licensed to an employer; prosecuting patent applications owned jointly by an employer and a third party; the appointment of an attorney as a joint representative on behalf of an employer and others in revocation or opposition proceedings; and time limited activities arising due to the transfer of assets to or from an employer such as the on-going maintenance of a portfolio of rights whilst a formal transfer was being finalised.

Guidance

Rules 1 and 2 define the scope of the Code of Conduct. Individuals, firms and companies (whether or not ABS) registered in the patent attorney register or trade mark attorney register, their managers and employees are subject to the code if they act in the course of a business which undertakes relevant professional work.

Rule 3 – Service of Documents

Any notice or other document required by or for the purposes of these Rules or any other regulatory arrangements made by IPReg must be notified to the regulated person in writing. IPReg's notification in writing may be:

- by any form of electronic communication normally used for business purposes such as email;
- given to them personally; or
- sent by mail to their last known address by Royal Mail "Signed for 1st Class" (or equivalent product), in which case the document is treated as received on the second calendar day (not including bank holidays) after posting.

Rule 4 – Competence

Regulated persons shall carry out their professional work with due skill, care and diligence and with proper regard for the technical standards expected of them.

A regulated person should only undertake work within his expertise or competence.

Guidance

4.1 A regulated person should always consider whether, having regard to:

a) the circumstances (including in particular the gravity, complexity and likely cost) of the work;

b) the nature of the regulated person's practice;

c) the regulated person's ability, experience and seniority; and

d) the regulated person's relationship with the client,

the interests of the client would be served by the regulated person or some other person providing professional services in fulfilment of the client's instructions.

4.2 This should be considered as soon as practicable after receiving instructions and from time-to-time thereafter, particularly when circumstances change. If the regulated person considers that the interests of the client would be served by some other person acting, he must advise his client accordingly.

4.3 Particular care should be taken when undertaking advocacy and litigation work before the Courts. A regulated person must only undertake advocacy and litigation work which is within their expertise and competence. Normally, this will mean that registered persons only undertake litigation and advocacy in matters where the primary issues at stake relate to intellectual property rights. It will be appreciated that some cases raise a mix of issues. Where a case raises issues which are not within a registered person's competence (e.g. complex issues of employment law in an IP entitlement case), if a registered person is to continue to act they must supplement their team with other legal advisers who have relevant specialist knowledge of such matters. Undertaking advocacy or litigation in cases unrelated to intellectual property rights will be considered prima facie a breach of Rule 4.

4.4 The conduct of litigation may only be undertaken either by a person authorised to undertake it or under their supervision. If a firm is acting in respect of a matter and the only person entitled to act in respect of that matter provides notice of their intention to leave the firm or leaves the firm unexpectedly, the firm must immediately take steps to appoint another authorised person to act. The firm must transfer the matter and cease to act if no suitable person can be appointed within a month of the authorised person's departure. Continuing to act after that date would place the firm in breach of the criminal provisions of the Legal Services Act 2007.

4.5 Inappropriate exercise of litigation and/or advocacy rights is a matter which is taken very seriously by IPReg. If a registered person is found to have used rights inappropriately this can result in severe disciplinary sanctions including removal of rights to conduct litigation and/or advocacy and removal of a registered person's name from the register of patent attorneys and/or trade mark attorneys.

4.6 Patent and trade mark attorneys do not have rights of audience in respect of criminal litigation. In addition, legal professionals (including patent and trade mark attorneys and solicitors) practising in an IPReg-regulated firm may not practise criminal work (see Regulation 3.1 of the Registered Bodies Regulations). This does not prevent you from offering advice on sanctions in the Copyright, Designs and Patents Act 1988 and the Trade Marks Act 1994 and other legislation relevant to copyright, designs, patents and trade marks but if asked for such advice you must consider carefully on what it is within your competence to advise and the point at which it would be advisable to refer the client to another lawyer, such as a solicitor.

Rule 5 – Integrity

Regulated persons shall at all times act with integrity putting their clients' interests foremost subject to the law and any overriding duty to any Court or Tribunal.

Guidance

5.1 A regulated person should in all professional activities:

a) practise competently, promptly, conscientiously, courteously, honestly and objectively, avoiding unnecessary expense to the client;

b) act so as to promote confidence in the intellectual property system; and

c) subject to the law and the regulated person's duty to any Court or Tribunal, put clients' interests foremost and keep clients' affairs confidential.

5.2 A regulated person should not do anything that might compromise:

a) his independence;

b) the dignity and good standing of the regulated person, or of the patent or trade mark professions; or

c) the freedom of clients to instruct any person or firm to carry out their work or to change their representation.

Rule 6 – Client Care and Service

Regulated persons shall carry out their professional work in a timely manner and with proper regard for standards of professional service and client care.

Guidance

6.1 Written terms of business should be given to clients at the outset of a relationship and as often as necessary thereafter. Any variations should be communicated to clients as soon as they apply to the client. Regulated persons should ensure that clients receive as often as necessary an explanation, appropriate to the client's reasonably apparent or expected level of understanding, as to the issues in a matter, the progress of the matter and the likely timescale and an update periodically on expenditure incurred or to be incurred. The level of reporting depends on the client relationship and the experience of the client or the person responsible within the client's organisation. For example, lay clients may require more care than in-house counsel. Extra care should be taken when dealing with potentially vulnerable clients such as private individuals and in particular where there may be risk factors related to a person's circumstances (e.g. bereavement, illness or disability, etc.) which increase the likelihood of the client being at a disadvantage or suffering detriment.

6.2 When instructions are received orally, it is sensible practice, for the avoidance of future disputes as to the precise instructions given, for a regulated person to provide to the client a written note confirming the instructions received.

6.3 When unwilling or unable to provide services to an existing client, or withdrawing from giving services, a regulated person should make reasonable efforts to enable the client to make other arrangements and bear in mind their obligations to put clients' interests foremost. A regulated person should co-operate with a client and any new representative of the client to ensure the client's interests are protected on any change of responsibility.

6.4 Even where there is no on-going client relationship, absent a formal termination including clear and reasonable notice to the former client that communications will not be forwarded, regulated persons should take timely steps to draw a former client's attention to correspondence or communications received relating to the former client and their rights. A regulated person may seek a fees undertaking where the client relationship has been terminated for the costs involved in forwarding correspondence.

6.5 Every regulated person should have a written file retention/destruction policy which should be made available to the client on request.

6.6 If a regulated person gives an indication (such as an estimate) of the likely cost of work and that indication is not intended to be fixed, the regulated person is responsible for making it clear that the indication is not fixed, and for ensuring that the client is informed in advance whenever reasonably possible if it appears the indication will be materially exceeded.

6.7 Unless otherwise agreed with the client a regulated person should not require as a condition precedent from a sender of correspondence or a communication intended for or relevant to the client, an undertaking to meet the regulated person's fees for forwarding the sender's correspondence or communication to the client or for giving the client advice on the matter.

6.8 This applies typically to requests for consent, licence and so on. There have been instances where regulated persons have refused even to pass on correspondence without comment until their fees are met. Absent the client's agreement, this is a breach of Rules 5, 6 & 7 since the regulated person is putting his own interest in fees before the interest of the client which is in being informed promptly. This does not prevent the regulated person asking the sender for an agreement to meet reasonable costs, but the forwarding of the communication must not be dependent on it. It is up to the regulated person, having regard to his relationship with the client, to determine how matters of this kind should be drawn to the attention of the client and in the absence of any other arrangement, if the regulated person is unwilling to forward the communication "on risk as to costs" the communication should either be returned to the sender (provided that the client is not prejudiced by the resulting delay) or be forwarded without comment or offering assistance on appropriate terms.

6.9 Note that the sender is not liable for any costs until agreement is reached but that any agreement will impose liability regardless of whether the sender receives the benefit or co-operation sought.

Rule 7 – Conflicts

A regulated person must not act where his interests conflict with those of a client or of a former client, or where he knows or has reasonable grounds for suspecting that the interests

of any partner or regulated person or staff of his firm, conflict with those of a client or of a former client.

Provided in all the circumstances it is reasonable to do so, a regulated person may act for two or more clients, or for a client as against a former client, in relation to the same or a related matter in a situation of conflict, or possible conflict but only if all of the parties have given their informed consent in writing. Regardless of consent a regulated person must, however, refuse to act on behalf of conflicting or potentially conflicting parties in contentious matters, in circumstances where the regulated person's actions would not be seen to be neutral or where accepting instructions from both parties would risk a breach of Rule 5 or if Rule 8 cannot be observed.

Guidance

7.1 If a regulated person acquires or has acquired relevant knowledge concerning a current or a former client in the course of acting for that client in any capacity, the regulated person should not accept instructions to act against that client or should henceforth cease to act against that client. The term "relevant knowledge" should mean knowledge of the client or the client's affairs that is not widely disseminated to the public and that is, or is likely to become, relevant to the action concerned against the client.

7.2 A regulated person must not allow any person to perform work under his supervision when the regulated person knows or has reasonable grounds for suspecting that such a person has a conflict of interest in respect of the work.

7.3 A conflict may not arise simply because the regulated person acts for two or more parties in the same general field of business or technology although on the facts it may do so. More typically a conflict arises by reference to the specific subject matter of a case. However, acting for two or more parties in the same general field of business or technology may give rise to issues of confidentiality under Rule 8.

7.4 Confidentiality safeguards within firms or between branches may be sufficient to "cure" conflict, provided informed written consent is obtained from all parties and suitable arrangements to ensure the confidentiality of information applying to each client are in place. Safeguards – within firms or between branches – cannot, however, "cure" conflicts to enable the same regulated person to act on behalf of opposing parties in a contentious matter.

7.5 All regulated persons should undertake a "conflict check" before taking on a new client. This may take whatever form is considered appropriate in all of the circumstances. The minimum expected is a check with all other relevant persons that acceptance of a named client is not likely to compromise the interests of a client already on the books.

7.6 Unless otherwise agreed, informed consent requires that the parties whose interests do or may conflict are notified in writing of the name(s) of the other party(ies).

7.7 Where there is conflict between the interests of a regulated person, and those of a client, neither informed consent, nor any other arrangement, will enable him to act for that client.

7.8 Nothing in these Rules prevents a regulated person from acting as a mediator between parties to a dispute provided the appropriate codes of practice which deal with conflict when acting as a mediator are observed.

Rule 8 – Confidentiality and Disclosure

Regulated persons must keep the affairs of clients and former clients confidential except where disclosure is required and permitted by law or by the client or former client.

Subject to this duty of client confidentiality and any circumstance where disclosure of information is prohibited by law, unless a client expressly agrees that no duty to disclose arises or a different standard of disclosure applies, a regulated person should disclose all relevant information of which he is aware to a client.

Regulated persons must not put any client's confidential information at risk by acting, or continuing to act for another client where that information may be material, unless both clients provide informed consent and in all of the circumstances it is reasonable to do so.

Guidance

8.1 Confidentiality of clients' information is paramount and central to, though distinct from, the issue of conflict of interests.

8.2 A regulated person's duty of confidentiality arises irrespective of the source of information and continues until the client permits disclosure, waives the confidentiality or the information in question is made public and ceases to be confidential.

8.3 Where a regulated person takes on a client where there is already a client on the books in the same area of business or technology, but where the matters for which they have been engaged are not related, they should still ensure that the confidential information associated with one is not allowed to be made available to the other or to any regulated person acting for the other client.

8.4 Regulated persons have a duty to disclose all relevant information, of which they are aware, to their client in respect of the matter in hand. Information of which they are not aware, but is known to others in the same firm, for example, would be exempted, as would information disclosure of which would breach the duty of confidentiality to another client.

8.5 If information is obtained in relation to a prospective client, a regulated person may still be bound by a duty of confidentiality, even if that prospective client does not subsequently instruct that person or their firm. There may be circumstances, however, where a regulated person receives information where there is no real or genuine interest in instructing that person or their firm and that information is unlikely to be confidential.

Rule 9 – Relationships with Other Professionals

Regulated persons should not communicate directly with any other party who to his knowledge has retained a registered person or other legally qualified person as a professional advisor to act in a matter except:

a) to request the name and address of the other party's professional advisor;

b) where it would be reasonable to conclude that the other party's professional advisor has refused or failed for no adequate reason either to pass on messages to their client or to reply to correspondence, and has been warned of your intention to contact their client direct;

c) with that professional advisor's consent; or

d) in exceptional circumstances.

A regulated person should co-operate with a client and any new representative of the client to ensure the client's interests are protected on any change of responsibility.

Guidance

9.1 When a regulated person has been given explicit notice that another party has engaged a patent attorney, trade mark attorney or other legally qualified person in relation to a specific matter, the regulated person should normally direct all communications about that matter to the appointed advisor rather than directly to the party. The mere recordal of an address for service in relation to a relevant or potentially relevant right does not necessarily on its own constitute explicit notice that an advisor has been appointed in relation to a matter. Rather, it is only where a regulated person has been informed that a party has appointed a professional advisor, or the registered person receives a response from such an advisor, or it is otherwise objectively clear from the facts or circumstances that the recorded address for service is the appointed advisor in the specific matter in question, that the regulated person should avoid direct, or further direct, communication under this Rule.

9.2 General communications and publicity undertaken by regulated persons (i.e. communications not in relation to a specific matter where another party has retained a professional advisor in relation to that matter) are governed by Rule 18.

9.3 Nothing in this Rule shall be taken to prevent a regulated person from exercising a lien over client papers or other materials to the extent permitted by Rule 13.

Rule 10 – Fees

Regulated persons' fees must be justifiable.

Guidance

Fees charged should be based upon the information provided in any letter of engagement or on the basis of any amendment thereto.

Rule 11 – Financial Matters

Regulated persons shall ensure that their professional finances are managed appropriately.

Every regulated person must ensure that they have in place appropriate controls, procedure and records and also sufficient and appropriately qualified staff and/or other resources to ensure that clients always receive a high standard of service in relation to the management of client money.

In the event that a regulated person receives money from a client, other than by way of payment of fees or disbursements incurred but including money on account for fees or disbursements paid up front, they should ensure that such money is held on trust for the client in an account which is entirely separate from the regulated person's or the firm's professional business accounts.

In the event that money is held on trust for a client the registered person's terms of business should deal with the issue of the ownership of the interest earned on the money held on behalf of a client.

Every regulated person must ensure they comply with all legislation pertaining to "money laundering" and "proceeds of crime".

Guidance

11.1 It is expected that client money held at any time would not exceed £250,000 in aggregate.

11.2 If client monies in excess of £250,000 in aggregate are intended to be held then additional compensation arrangements that have been previously approved by IPReg will be required or other arrangements would need to be put in place for client monies to be held by a body regulated by the Solicitors Regulation Authority or the Council of Licensed Conveyancers.

11.3 Use of "pro forma" invoices will not satisfy Rule 11.

Rule 12 – Complaints Handling

Regulated persons in private practice must have an established procedure for dealing with complaints. Written details of the procedure must be available whenever a client requests them and a client should be informed in writing, when first engaging the registered person, that such a procedure for the resolution of a complaint exists.

Regulated persons in private practice must notify all clients of the right to complain to the Legal Ombudsman at the conclusion of the complaint process, the timeframe for doing so and full details of how to contact the Legal Ombudsman. Such notification must be in writing and be provided at the time of engagement or in the case of existing clients at the next appropriate opportunity. A similar notification must be provided to all such clients at the conclusion of any complaint process. Should a complaint be made to the Legal Ombudsman or any other relevant ombudsman, regulated persons must give such ombudsmen all such assistance requested by them in connection with the investigation, consideration or determination of complaints under the relevant ombudsmen scheme, as they are reasonably able to give, and must comply with any order made by such ombudsmen.

Regulated persons in private practice must keep records of all complaints received and the outcomes of their complaints procedures in respect of such complaints. In this context a complaint means an oral or written expression of dissatisfaction which alleges that the complainant has suffered (or may suffer) financial loss, distress, inconvenience or other detriment.

Guidance

12.1 The Rules of the Legal Ombudsman provide a right of complaint to all individuals who engage the services of authorised persons such as Patent Attorneys and Trade Mark Attorneys. The Legal Ombudsman has also applied to have the jurisdiction to review complaints made by micro enterprises as defined in European Recommendation 2003/361/EC (broadly enterprises with fewer than 10 staff and a turnover or balance sheet value not exceeding €2 million); charities, clubs, associations and societies with annual incomes of less than £1 million, trusts with net asset value less than £1 million and personal representatives or residual beneficiaries of an estate where a person with a complaint died before referring it to the ombudsman scheme.

12.2 Sufficient information must be given to all clients to enable them to identify whether they do have a right to take their complaint to the Legal Ombudsman and to contact the Legal Ombudsman to clarify whether they can.

Rule 13 – Liens

Regulated persons may exercise a lien over client papers and other materials belonging to a client only when and to the extent that the lien is available in law or the lien is an express term of business to which the client has agreed.

Guidance

13.1 The issue of lien comes up reasonably frequently in complaints. Regulated persons do not benefit from the statutory lien of solicitors and the extent of any lien – if any – at common law has never been clarified. It is best to ensure this is dealt with in written terms.

13.2 Any charges or contractual liens applicable to a transfer of files should be set out in the regulated person's terms of business or should be otherwise agreed, but the absence of agreement should not unreasonably delay effecting the transfer. Regulated persons should note that if they have not dealt with this issue adequately in their terms of business, they may be in no position contractually to recover costs associated with the transfer if no other agreement can be reached.

13.3 Save in exercise of any lien, it is not acceptable to obstruct or unreasonably delay a transfer of responsibility to a new representative when asked to do so by a client.

Rule 14 – Duty to Act in the Interests of Justice

Regulated persons exercising any right to appear before a Court or Tribunal or to conduct litigation must comply with their duties to the Court or Tribunal and act with independence in the interests of justice. Regulated persons exercising any right to appear before a court or

to conduct litigation shall observe the Special Rules of Professional Conduct applicable to Litigation Practitioners.

Guidance

14.1 A regulated person must not submit orally or in any documents or pleading:

a) statements of fact or contentions that are not supported by the evidence or instruction of the client;

b) contentions that he cannot justify as prima facie arguable; or

c) allegations of fraud unless clearly instructed to make such an allegation and it is prima facie supported by credible material(note, however, that this does not preclude the making of claims of "bad faith" per se (for example, a lack of intention to use a trade mark), unless that claim is specifically directed to substantive fraud).

14.2 A regulated person must not:

a) rehearse practice or coach a witness in relation to his evidence;

b) encourage a witness to give evidence which is untruthful or which is not the whole truth; or

c) except with the consent of the representative for the opposing side or of the Court, communicate directly or indirectly about a case with any witness, whether or not the witness is his lay client, once that witness has begun to give evidence until the evidence of that witness has been concluded.

14.3 A regulated person when conducting proceedings in Court:

a) is personally responsible for the conduct and presentation of his case and must exercise personal judgement upon the substance and purpose of statements made and questions asked;

b) must not unless invited to do so by the Court or when appearing before a Tribunal where it is his duty to do so assert a personal opinion of the facts or the law;

c) must ensure that the Court is informed of all relevant decisions and legislative provisions of which he is aware whether the effect is favourable or unfavourable towards the contention for which he argues;

d) must bring any procedural irregularity to the attention of the Court during the hearing and not reserve such matter to be raised on appeal;

e) must not adduce evidence obtained otherwise than from or through the client or devise facts which will assist in advancing the lay client's case;

f) must not make a submission which he does not consider to be properly arguable;

g) must not make statements or ask questions which are merely scandalous or intended or calculated only to vilify, insult or annoy either a witness or some other person;

h) must if possible avoid the naming in open Court of third parties whose character would thereby by impugned;

i) must not by assertion in a speech impugn a witness whom he has had an opportunity to cross-examine unless in cross-examination he has given the witness an opportunity to answer the allegation; and

j) must not suggest that a witness or other person is guilty of crime, fraud or misconduct or make any defamatory aspersion on the conduct of any other person or attribute to another person the conduct of which his lay client is accused unless such allegations go to a matter in issue (including the credibility of the witness) which is material to the lay client's case and appear to him to be supported by reasonable grounds.

14.4 In addition to observing the Special Rules of Professional Conduct applicable to Litigation Practitioners, advocates should also be aware of and give consideration to the professional rules of the Solicitors Regulation Authority and the Bar Standards Board as they impact on the conduct of the advocate.

Rule 15 – Anti-Discrimination

Regulated persons must not, in the conduct of their practice, unfairly or unlawfully discriminate against any person on grounds of race, religious belief, gender, sexual orientation, age or disability.

Rule 16 – Continuing Professional Development

Registered patent attorneys and registered trade mark attorneys shall undertake appropriate continuing professional development and, on request, provide details thereof to the appropriate Regulation Board.

Rule 17 – Professional Indemnity

Without prejudice to any obligation contained in the Special Rules of Professional Conduct applicable to Litigation Practitioners, each registered person must ensure that its Professional Indemnity Insurance is commensurate with the risks at large arising from the extent and size of their practice, with due regard to Rule 4 (Competence).

In relation to that professional indemnity insurance, each registered person or his firm in private practice must take out and maintain a policy with a participating insurer.

Any limitation of liability for negligence must be clearly drawn to the attention of a client and be understood and accepted by him.

Every registered person in private practice must ensure that all monies held by them for or on behalf of their clients and other persons are at all times protected by compensation arrangements to compensate for losses or hardship suffered by such persons in consequence of fraud or dishonesty or fraudulent or dishonest failure to account.

Guidance

17.1 It would be expected that Professional Indemnity Insurance of at least £1 million would be required for all registered persons and their firms, unless demonstrably, their practice does not warrant a sum that high.

17.2 The following insurers are participating insurers:

PAMIA Limited

Allianz Global Corporate & Specialty SE

China Re Syndicate 2088 acting through Chaucer Syndicates Limited

Royal & Sun Alliance Insurance plc

These insurers have entered into a commitment with IPReg to insure on, at least, minimum terms, which is a critical element of IPReg's compensation arrangements. Participating insurers will confirm this on request.

Rule 18 – Publicity

Publicity and promotional activity of any kind by regulated persons is permitted if it is fair, honest, accurate and is not misleading and is not otherwise in breach of these Rules.

The letterhead, website and e-mails of firms and sole practitioner registered persons in private practice must show the words "regulated by the Intellectual Property Regulation Board" or "regulated by IPReg".

Guidance

18.1 What is acceptable promotional activity will inevitably change over time and will be a matter of subjective assessment in each case. For example, whilst creativity is an essential part of promotion, good taste in content and execution is important.

18.2 Cold calling (by any means) of private individuals or to domestic premises unless a business is being conducted from there would generally be unacceptable, and would certainly be so if directed repeatedly to specific individuals or groups.

18.3 Letterheads must comply with the Business Names Act 1985 concerning lists of partners and an address for service on stationery etc. and the Companies (Trading Disclosures) Regulations: 2008 (SI 2008/495) regarding the appearance of the company name and other particulars on stationery, etc. If non-partners are named on a partnership's letterhead, their status should be made clear. A printed line is not sufficient in itself to distinguish partners from non-partners in a list. A similar standard applies to a company or an LLP's letterhead.

18.4 The website and e-mails of any individual or firm providing services to the public in the EU must comply with the provisions of the E-Commerce Directive 2000/31/EC. This requires that the following information is included in electronic communications including e-mails and websites involved in cross-border e-commerce within the EU:

a) details of the professional body with which a firm is registered, which in the case of patent attorneys and trade mark attorneys would be IPReg;

b) the professional title and the member state where it was granted – it is recommended to state that the partners/members/directors of the firm are UK registered patent and/or trade mark attorneys; and

c) a reference to the professional rules applicable to the firm in the member state where the firm is established and the means to access them. This could be achieved by providing a link to the Code of Conduct on the IPReg website.

18.5 Registered persons should only describe themselves or permit themselves to be described as "patent attorney litigators" or "trade mark attorney litigators" or the like if they hold a Higher Courts Litigation Certificate. Similarly, only registered persons who hold a Higher Courts Advocacy Certificate should describe themselves or permit themselves to be described as "patent attorney advocates" or "trade mark attorney advocates" or the like.

Rule 19 – Information to Regulation Boards

Regulated persons shall submit in a timely manner such information as the Regulation Boards may reasonably require.

Rule 20 – Co-operation

Regulated persons shall co-operate fully with the appropriate Regulation Boards, and with any persons designated by them in connection with their regulatory responsibilities.

Guidance

For the avoidance of doubt, the Patent Regulation Board and the Trade Mark Regulation Board designate the Legal Ombudsman, and any other relevant ombudsmen, as persons with whom regulated persons must co-operate.

Rule 21 – Avoidance of Regulatory Conflict

To avoid regulatory conflict as defined in Sections 52 – 54 of the Legal Services Act 2007, the appropriate Regulation Boards may waive in writing the provisions of these Rules in any particular case or cases where the professional activities of a regulated person are fully regulated by another professional regulator.

Rule 22 – Commencement Date

These Rules shall apply from 1 January 2015.

First issued September 2009

Rule 12 amended October 2010

Guidance to Rule 6 (additional text to 6.1) amended September 2011

Guidance to Rule 8 (new 8.2) amended September 2011

Guidance to Rules 4, 14 and 18 amended December 2012

Rules 2, 11, 12 and 17 amended January 2015

Guidance to Rules 4 and 17 amended January 2015

Guidance to Rule 17 (17.2) amended March 2016

Guidance to Rule 17 (17.2) amended April 2016

Guidance to Rule 17 (17.2) amended August 2017

Guidance to Rule 17 (17.2) amended March 2018

Guidance to Rule 17 (17.2) amended December 2018

Rule 3 amended December 2018

Guidance to Rule 17 (17.2) amended July 2019