

Code of Good Conduct For Malaysian IP Agents

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Effective 01 January 2014, the Malaysian Intellectual Property Office ("MyIPO") has released a set of guidelines for the good conduct of IP Agents.

Its main purpose and objective is to introduce and put in place a set of rules to be adhered by all IP practitioners in Malaysia as to what constitutes good conduct and acceptable practices. Some of these guidelines include specific instances of what conduct is required and they are by no means exhaustive. MyIPO has further clarified that the Guidelines are subject to periodical review and may be amended from time to time.

IP Agents have been defined as follows:

- (a) Trademark Agents that have been registered in accordance with the Trade Marks Act 1976 and its Regulations;
- (b) Patent Agents that have been registered in accordance with the Patents Act 1983 and its Regulations;
- (c) Industrial Design Agents that have been registered in accordance with the Industrial Designs Act 1996 and its Regulations; and
- (d) Geographical Indications Agents registered in accordance with the Geographical Indications Act 2002 and its Regulations.

Based on the above, only IP Agents may perform the functions as prescribed in the respective legislations and may describe themselves as the relevant IP Agent. Some of the salient points in this Guideline include the following:

1. Carrying out instructions with due care, skill and diligence;
2. Only to undertake work on behalf of clients in accordance with one's area of expertise or competence;
3. Clients are to be made aware about the chargeable costs in exchange for the professional services rendered;
4. IP Agents must maintain clients' confidentiality at all times and as far as possible avoid situations of conflict arising;
5. Should any conflict of interest arise, steps must be taken to resolve the same whilst ensuring the preservation of rights of parties involved; and
6. Agents shall not engage in misleading and deceptive practices though advertising is allowed.

With regard to Item 6 above, MyIPO has made illustrations as to what they consider as misleading dealings, which include dealings with the respective Registrars of Patents, Trade Marks and Industrial Designs.

Misleading acts have been categorised as follows:

- (a) Lying to them;
- (b) Leading them to a wrong conclusion;
- (c) Creating a false impression;
- (d) Omission of important information; and
- (e) Making false and inaccurate claims.

Another guideline that is of interest would be the conditions under which communications with parties who already have engaged their own IP agent are acceptable and the circumstances where such communication may be made.

In summary, the Guidelines should be viewed as a positive step undertaken by MyIPO and may require changes over time to make it more comprehensive. It is a timely move by MyIPO to put forth a Guideline that will not only increase the level of professionalism of Malaysian IP agents but serves to protect the public and consumers who would be in need of these IP agents' services.