

## REGISTERED IMAGE RIGHTS AGENTS CODE OF PRACTICE

### PART 1 - PRELIMINARY

Made: 20<sup>th</sup> March 2017.

Coming into operation: 1<sup>st</sup> April 2017.

This Code of Practice is published by the Registrar of Intellectual Property under the following legislation:

- Section 1 of The Image Rights (Bailiwick of Guernsey) Ordinance, 2012; and
- Section 3 of the Intellectual Property (Office of Registrar) (Bailiwick of Guernsey) Ordinance, 2005.

### PART 2 – OVERVIEW

#### 2.1. Definitions

2.1.1 In this Code of Practice, the following words have the following meanings -

“**Agent**” means a registered image rights agent;

“**Bailiwick**” means the Bailiwick of Guernsey;

“**Client**” means the person who has engaged the Agent to provide them with services for any acts required or authorised by the Ordinance or the Regulations;

“**Code**” means this Code of Practice;

“**Ordinance**” means the Image Rights (Bailiwick of Guernsey) Ordinance, 2012, as amended;

“**Register**” means the register of image rights agents;

“**Register of Image Rights Agents**” means the register defined under section 97 of the Ordinance and kept pursuant to regulation 5 of the Regulations;

“**Registered Image Rights Agent**” means a person whose name is entered in the Register;

“**Registrar**” means the Registrar of Intellectual Property;

“**Regulations**” means the Image Rights (Bailiwick of Guernsey) Regulations, 2012; and

“**Rules**” means the Image Rights: Registrar Rules for Agents, published by the Registrar on 30<sup>th</sup> November 2012 as amended from time to time.

This mandatory Code of Practice applies to each registered image rights Agent whose name is entered in the Register of Image Rights Agents.

## 2.2 The Objective of this Code

- 2.2.1 This Code seeks to take a positive approach, to encourage and build the foundation for sound principles that will ensure high professional standards within the intellectual property industry in the Bailiwick.
- 2.2.2. The objectives of this Code are to:-
- (a) set out the standards of professional conduct and practice expected of Agents undertaking professional work;
  - (b) ensure maintenance of the highest professional standards for Agents;
  - (c) enhance the reputation and standing of:-
    - the Bailiwick's image rights and intellectual property environment;
    - the Bailiwick and its international standing as a jurisdiction that upholds the highest standards, principles, practices, conduct and ethics in all their activities;
    - Agents; and
    - the businesses that Agents represent.
- 2.2.3 This Code sets out sound principles of practice for Agents. It is not a statement of the law. A failure to comply with this Code does not automatically make an Agent liable to any sanction or proceedings, but the Court may, and the Registrar will, take into account any breach of this Code, which is relevant to any decision which either the Court or the Registrar has to make.
- 2.2.4 This Code does not affect or reduce the rights of a Client in relation to the conduct of the Agent.
- 2.2.5 This Code is intended to be helpful to Agents and will also provide a useful guide to others as to the standards expected of Agents.
- 2.2.6 Each principle is followed by a guidance note in *italics* which is not mandatory and does not form part of the Code, but gives an additional explanation behind the relevant principle or the Registrar's interpretation of it. Nevertheless, any alleged breach of this Code will be considered with reference to the relevant guidance note.
- 2.2.7 The Registrar may amend this Code from time to time after consultation with Agents and their representative bodies.

### Guidance Note

*This Code is intended to set standards that need to be achieved and to provide guidance to Agents, Clients and the Registrar to ensure clarity and high standards of competence.*

## **PART 3 – PROFESSIONAL CONDUCT**

### **3.1 Core Obligations and Integrity**

- 3.1.1 An Agent must act as an Image Rights Agent;
- (a) in the best interests of the Client;
  - (b) in the public interest; and
  - (c) in the interests of the registered image rights profession as a whole.
- 3.1.2 Agents must:
- a) not act in a way that is fraudulent or deceitful; and
  - b) maintain standards of professional practice that are courteous, ethical and well-informed.
- 3.1.3 Agents should conduct their business with integrity and should not attempt to avoid or contract out of their responsibilities under this Code.
- 3.1.4 Agents shall at all times put their Client's interest foremost, subject to the law and overriding duty to any Court or Tribunal.

#### Guidance note

*A breach of this principle will be regarded as being amongst the most serious of breaches of this Code. Without limiting its scope, Agents must deal with Clients fairly and communicate information to them in a way which is suitable and not misleading.*

*Agents should in all professional activities:*

- a) practice 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 Agent's duty to any Court or Tribunal, put the Client's interest foremost and keep the Client's affairs confidential in accordance with the terms of their client retainer.*

*Agents should not do anything that might compromise:*

- a) their independence;*
- b) the dignity and good standing of the Agent, or of the intellectual property profession; or*
- c) the freedom of Clients to instruct any person or firm to carry out their work or to change their representation.*

### **3.2 Acting in accordance with the law**

- 3.2.1 Agents should act in accordance with any legislation and rules relating to the business that they are undertaking.
- 3.2.2 Agents must have knowledge of, and act in accordance with, any legislation and rules relating to the business that they are undertaking, including, without limitation, the Ordinance, the Regulations, and the Rules.
- 3.2.3 Where an Agent has any doubt or uncertainty, that Agent has a duty to seek professional advice from one or more appropriate professionals with knowledge in the relevant legal or practice area (See additional comment in Section 3.6 – Competence and Effective Management).

### Guidance note

*Agents are expected to have and acquire appropriate knowledge, or to seek professional assistance where required, in order to act and conduct their business with integrity. Agents are expected to have sufficient knowledge to be able to judge the level of actions they can take and when legal advice should be sought.*

### **3.3 Cooperation with the Registrar**

3.3.1 Agents should deal openly and honestly and co-operatively with the Registrar and the Office of the Registrar of Intellectual Property.

3.3.2 The attention of Agents is drawn to regulation 8A of the Regulations. The Registrar must be notified if there is any matter existing, or arising, which could reasonably be considered material to the professional conduct of the Agent, including (but without limitation) any of the following events: -

- (a) Changes of a material nature to the Agents' information that was originally supplied to the Registrar.
- (b) The serious or prolonged breakdown of the Agent's administrative systems, if that could result in an inability to keep proper records, or to comply with any other principle contained in this Code.
- (c) If a significant complaint has been made about the Agent or any member of the Agent's staff.
- (d) Any payment by the Agent's insurers under their professional indemnity cover in relation to intellectual property matters.
- (e) The commencement of proceedings specific to intellectual property matters involving the Agent or any member of the Agent's staff in any country.
- (f) The making of, or any proposals for the making of, a composition or arrangement with creditors of the Agent and/or the Agent's business, holding company or subsidiary.
- (g) The presentation of any application to the Court for the commencement of any insolvency proceedings, including desastre, winding up or the appointment of a receiver, administrator or provisional liquidator, under the law of any country in relation to the Agent or a company which is a subsidiary or holding company of the Agent, or the summoning of any meeting to consider a resolution to wind up the Agent's business or a subsidiary or a holding company of it.

### Guidance note

*Agents are expected to behave and communicate with the Registrar in an open and operative manner.*

*The Registrar expects that matters of a vexatious nature will not be pursued by Agents, including, but not limited to:*

- (a) Using another Agent's client for their own publicity (which, for the avoidance of doubt, does not include simply referring to details contained in the Register); and*
- (b) Passing themselves off as the Agent of another Agent's Client.*

### **3.4 Know your client**

Where applicable, Agents must, as appropriate, comply with the Bailiwick's legislative and regulatory requirements relating to know your client and anti-money laundering and counter terrorist financing including the requirements under the Disclosure (Bailiwick of Guernsey) Law, 2007, the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 or The Criminal Justice (Proceeds of Crime)(Prescribed Businesses) (Bailiwick of Guernsey) Regulations, 2007, as relevant, and the Guernsey Financial Services Commission Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing or the Guernsey Financial

Services Commission Handbook for Legal Professionals, Accountants and Estate Agents on Countering Financing Crime and Terrorist Financing, as amended from time to time (“the **Handbook**”), as relevant.

Guidance note

*The requirement to disclose knowledge or suspicion of money laundering or terrorist financing to the Financial Intelligence Service, as set out in the Disclosure (Bailiwick of Guernsey) Law, 2007 and the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, applies to all businesses, and therefore applies to Agents. The Handbook may not apply to all Agents.*

*The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 or The Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 as amended and the respective Handbook will apply to Agents, to the extent that they are a financial services business or a prescribed business as defined by that legislation (such as a lawyer or other independent legal professional). In such cases, Agents need to be fully familiar with the Handbook, The Criminal Justice (Proceeds of Crime)(Bailiwick of Guernsey) Law, 1999, the Regulations referred to above, and any other legislation which makes up Guernsey’s anti-money laundering and counter-terrorist financing framework.*

*For the avoidance of doubt, no additional regulatory requirements in relation to know your client or anti-money laundering and counter terrorist financing are intended to be placed on Agents by this Code.*

### **3.5 Relationship with Clients**

- 3.5.1 Agents are under a duty to carry out the terms of retainers with care and skill, proper diligence and promptness, and to keep clients properly informed.
- 3.5.2 Agents have a duty to provide a clear and appropriate level of advice to their Clients.
- 3.5.3 Agents must not act or continue to act in circumstances where Clients cannot be represented with competence or diligence, and must carry out instructions exercising reasonable care and skill.
- 3.5.4 Agents shall not use any confidential information obtained in the performance of their duties for their personal gain unless written consent of such is obtained by the Client, or disclosure is required and permitted by law or by a Court.
- 3.5.5 Where instructions are received not from a client but from a third party purporting to represent that client, the Agent should take appropriate steps to confirm the validity of the instructions.
- 3.5.6 Agents are under a duty to keep Clients properly informed and to comply with reasonable requests from Clients for information concerning their affairs.
- 3.5.7 Agents should ensure that a copy of this Code is made available to every Client, or a reference provided as to where it can be found.
- 3.5.8 Agents should provide details of their terms of business to each Client or their representative, and keep a record of the terms of the agreement with each Client, including evidence of their agreement to those terms. There should be a record of the date that information was provided with a clear statement of the:
  - services to be provided;
  - fees, or the basis of the fees, to be charged;
  - responsibility for and the manner in which the renewals of registration of the personality and the image(s) will be undertaken between the Agent and client;

- a description of the Agents procedure for dealing with complaints;
- a statement that the Agent is a registered image rights agent whose name is entered on the Register kept by the Registrar.

3.5.9 Agents should render bills to Clients within a reasonable time of concluding matters to which bills relate.

Guidance note

*The above is considered as central (not exhaustive) in any agreement for the provision of an Agent's service to a Client. Electronic form records and electronic communications service including automated systems are acceptable forms of communication and record.*

*Comprehensive and unambiguous written terms of business (including details of all applicable fees and costs and the basis on which the work is to be charged) should be given to Clients at the outset of a relationship and as often as necessary thereafter. Any variations should be comprehensively and unambiguously communicated to Clients as soon as they apply to the Client.*

*Agents should ensure that Clients receive as often as necessary a comprehensive and unambiguous explanation, appropriate to the Client's reasonably apparent or expected level of understanding, as to the issues in a matter, the progress of the Client matter and the likely timescale. The level of reporting will depend 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 experienced professionals. Agents are encouraged to use plain English to the extent it is practicable to do so. Agents must have regard both to the level of understanding that can reasonably be expected of the particular client type and to the actual level of understanding of the Client as is manifested through the professional relationship.*

*Clients should be given the name of the person or persons who are dealing with their matters and, if different, the supervising principal.*

*When unwilling to provide services to an existing Client, or withdrawing from giving services, an Agent should make reasonable efforts to enable the Client to make other arrangements and bear in mind their obligations to put Clients' best interests foremost.*

*Even where there is no ongoing Client relationship, where there has been no formal termination, including clear and reasonable notice to the former Client that communication will not be forwarded, Agents should take timely steps to draw a former Client's attention to correspondence or communications received relating to the former Client and their rights. An Agent may seek a fees undertaking when the Client relationship has been terminated for the costs involved in forwarding correspondence.*

*Every Agent should have a written file retention/ destruction policy which should be given to the Client, or a reference provided as to where it can be found. Any fees should be included in the costs information given to Clients.*

### **3.6 Competence and Effective Management**

3.6.1 Agents are responsible under this Code, not only for their own acts and omissions, but also for those sanctioned, expressly or otherwise, by them.

3.6.2 Agents shall carry out image rights agency work with due skill, care and diligence and with proper regard for the technical standards expected of them in their profession, and only undertake actions within their experience or competence.

3.6.3 Agents and their staff shall be suitably qualified or experienced to conduct the required work.

3.6.4 Agents should:

- understand and comply with their statutory, contractual and other legal obligations;
- identify and avoid or deal properly with any conflict of interest;
- keep and preserve appropriate records including, accounting records, registers, records of material communications with Clients and others, and make appropriate disaster recovery provision;
- prepare and file returns/validations and forms as required by the Ordinance, Regulations and Rules;
- record, investigate and, as appropriate, act on complaints;
- advise their Client if a ground for the refusal of registration under section 6 of the Ordinance exists prior to the submission of an application, and the consequences of the submission of such an application.

3.6.5 Agents must maintain and be able to demonstrate adequate financial resources for the nature and scope of their business, including, without limitation, the payment of Registrar's fees and professional indemnity cover.

3.6.6 All declarations by Agents to the Registrar in respect of the personality or the image for registration must not, to the best of the Agent's knowledge, be prohibited by section 8 of the Ordinance. Research in this regard must be undertaken by Agents, or their members of staff, with due diligence and care.

#### Guidance note

*Agents do not need personally to undertake all administration work in relation to their Client. Sufficient internal controls need to be in place and adhered to in order to ensure that all work undertaken by Agents and their organisation is accurate, correct and in accordance with the Ordinance, Regulations, Rules and this Code. Agents are responsible for their actions and those undertaken by others that are and should be under the Agents' authority. Appropriate levels of training and competence are essential.*

*Agents must not act where their interests conflict with those of their Clients or former Clients, or where they know or have reasonable grounds for suspecting that the interests of members of staff conflict with those of Clients or former Clients.*

*It is essential that Agents are solvent and able to meet their liabilities.*

*The duty of the Registrar is limited to ensuring compliance by Agents with the Ordinance, Regulations, Rules, and this Code. It will not be a duty of the Registrar to investigate and prove failings below accepted professional standards, or to undertake audits of Agents practices. This does not however prevent the Registrar from taking action against Agents as deemed appropriate. In circumstances where Agents fail to act in accordance with the Ordinance, Regulations, and this Code, the powers of the Registrar are limited primarily to removal from the register, as detailed at 3.9 of this Code.*

### **3.7 Financial matters**

3.7.1 Agents must ensure that their professional finances are managed properly.

3.7.2 In the event that an Agent 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 Agent's professional business accounts.

- 3.7.3 In the event that money is held on trust for a Client the Agent'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.
- 3.7.4 Agents must ensure that Client funds are kept and accounted for using an accounting standard that is appropriate to the circumstances of their practice.
- 3.7.5 Agents must only use Client money:
- (a) for the purposes for which the Client paid the money; or
  - (b) in accordance with any instructions given by the Client before, during or after the payment of the money.
- 3.7.6 Agents must, as soon as practicable, give a Client any refund due to them.

### **3.8 Training and Ongoing Development**

- 3.8.1 Agents are required to undertake appropriate continuing professional development, attend training and seminars at the request of the Registrar, and on request, provide details of this to the Registrar.
- 3.8.2 Agents should ensure that the responsibilities and authority of each member of staff is clear and is appropriate to their qualifications and experience, and that staff receive any training which is necessary for their roles. Agents should formulate and keep up to date plans for staff training and development, including training in relation to anti-money laundering and countering the financing of terrorism.

#### Guidance note

*The Registrar may send communication, or invite some or all Agents to attend training or other meetings as deemed appropriate.*

*This Code does not impose an annual requirement for a fixed number of hours to be completed in order to demonstrate continuing professional development.*

*Where an Agent is subject to another code of professional conduct any conflict between the two will be given due regard when considering any potential breach of this Code.*

### **3.9 Complaints against Agents and legal proceedings**

- 3.9.1 The Registrar can take action detailed in 3.9.3 below as a result of information they receive or on their own initiative, where they consider that such action is justified.
- 3.9.2 A person or body may make a complaint to the Registrar, or provide information to the Registrar, about the conduct of an Agent. It will be a matter for the Registrar to determine whether they are the correct authority to deal with the complaint.
- 3.9.3 The powers of the Registrar to deal with misconduct of Agents include the power to erase from the Register the name of any person registered in it, or suspend a person's registration, pursuant to the powers set out under section 91 of the Ordinance and as set out in regulation 8 of the Regulations.

#### Guidance note

*Where an Agent's conduct has fallen below accepted standards of this Code, a complaint can be submitted to the Registrar, or a Client may wish to make a civil claim against the Agent through the Royal Court. Where the matter is the subject of a court action, the Registrar may choose, depending on the severity of the case, to*



*undertake action of an interim nature and suspend a person's registration, prior to and pending the outcome of that action.*