

29 September 2017

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Trans-Tasman IP Attorneys Board  
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Dear Ms Brown

Xenith IP Group Limited (“XIP” or “Xenith”) responds to the Draft Code of Conduct for Patent & Trade Marks Attorneys 2018 (the “draft Code”) and accompanying draft Guidelines issued by the Trans-Tasman IP Attorneys Board (“the Board” or “TTIPAB”) on 1 September 2017, by making the submissions set out in this letter.

### **Background to this Response**

1. As noted in our submission dated 6 June 2017 on the earlier Consultation Paper, XIP is the holding company for several IP services practices – Shelston IP, Watermark and Griffith Hack – and is also the owner of a related advisory services practice - Glasshouse Advisory.

### **Principal Submissions on the draft Code and Guidelines**

2. XIP notes that the Consultation Paper proposed that the Code would be amended to provide that incorporated attorney practices that are commonly owned practices are not to be treated (a) as other than separate practices, and (b) as business associates of each other for the purposes of the conflict of interest provisions - in other words, there would be the presumption that no conflict would arise solely on the basis of the ownership or capital structure in which incorporated attorneys operated - provided the relevant incorporated attorney practices are *operated independently*.
3. Unfortunately, there is no such presumption in the draft Code. Section 21 of the draft tells the reader what “independent” means “for the purposes of sections 19 and 20”. Yet neither s. 19 nor s. 20 contains the word “independent”; nor does either section touch upon the concept of independence of operation. One finds in para. 21.1 of the Guidelines the statement that “where a registered attorney is a member of an ownership group, for the purposes of the duty of loyalty and the obligation to avoid a conflict it will be assumed that the registered attorney is not operating independently of other members of the group unless it is operating independently in the provision of attorney professional services”. But first, the Code itself contains no reference to such an assumption or presumption; and in any event, XIP submits that the presumption should be positive - that if members of the ownership group do operate independently in the provision of attorney professional services, ss. 19 and 20 are satisfied.
4. For this reason, we have suggested, in the attached draft, amendments to section 21 of the draft Code, so that “a client of a registered attorney that is a member of an ownership group will not, by reason solely of that fact, be regarded as a client of any other member of the group, unless the registered attorney does not operate independently of the other members in the provision to that client of attorney professional services”.

5. Further, XIP supports the proposition that for the purposes of the duty of loyalty to a client and the avoidance of conflicts of interest it is critical to determine whether different members A and B of an ownership group operate independently of each other in the provision of attorney professional services. However, XIP submits that the statement in para. 21.2 of the Guidelines that independence in providing “client-facing’ services... includ[ing] the provision of advice, the preparation of documents, and the prosecution of applications...typically requires that [A] not have any executive, management or professional staff... in common with [B]” is too wide.
6. As XIP noted in its submission dated 6 June on the Consultation Paper, “it is only in the areas of the professional duties which an attorney owes to a client to act in its best interests, and the possible transmission of the confidential information of clients between commonly-owned firms in a group, where there is a risk that a real or perceived conflict of interest [or, we would now say, that there might be a breach of the duty of loyalty to a client] might arise. To the extent that the governance and management structures of a holding company (publicly listed or otherwise) of separate attorney firms, and of the firms themselves, do not impinge on those areas, neither the Code nor any such Guidelines should restrict or purport to restrict the commercial freedom of the holding company, through its shareholdings in the operating subsidiaries, to direct, co-ordinate or manage the activities of its subsidiaries as it sees fit”.
7. We stated then (and we still consider) that such things as the provision of common “payroll [services], HR support, IT system hosting, maintenance or support,... accounts payable and credit control [and] procurement of goods and services” across an ownership group, should not be regarded as compromising the independent provision of such client-facing services.
8. Para. 21.3 of the Guidelines goes some way to acknowledge this point.
9. Yet – although we concede that it is unclear what the qualifier “typically” in para. 21.2 means – it is clear that the provision of common facilities in these areas will indeed require the employment or involvement of common “executive [and] management staff” across the group. For example, the group may employ an IT or HR “manager” in the provision of back-office services shared across the group. In the same way, these services might otherwise be outsourced to specialist firms providing the same support services to multiple IP practices, and those specialist firms will typically employ executive and management staff. For this reason XIP submits that the words “executive, management or” in para. 21.2 should be deleted. The only exception we can envisage is in circumstances where management staff might *also* provide professional attorney services to clients (in which case, we would accept the premise that overlap between entities should be avoided - see comments below).
10. XIP does support the independence of professional staff in the provision of attorney professional services, so that any individual attorney could not be employed by or render attorney professional services for clients of both A and B.
11. However, XIP considers it is unclear how far “attorney professional services” extends, particularly in relation to the preparation of “documents”. Clearly, the preparation of patent specifications or substantive documents such as agreements which involve at least some level of professional attorney input are properly the subject of a strict requirement for independence of operation in the relevant sense. But in practice many minor documents (perhaps better described as forms) are prepared relating to various administrative process steps, such as a patent request or request for examination form. These forms are typically prepared by administrative staff (non-attorneys) and typically require little more than the population of data fields. For this reason XIP submits that para. 21.2 of the Guidelines should be amended to recite that “...[a]ttorney professional services ... include the provision of advice, the preparation of specifications, the preparation of other documents involving

substantive attorney input, and the prosecution of applications”. For this reason also, XIP submits that para. 21.3 of the Guidelines should be amended to recite “...back-office activities...such as data entry, preparation of standard forms and documents requiring only administrative input, accounting, payroll, human resource management and like activities”.

12. Further, in the interests of efficient delivery of client services, it makes sense to allow the option for such administrative forms and documents to be either prepared or automatically generated centrally for all subsidiaries within the incorporation group. Pursuant to item 7 above, the provision of such centralised administrative services may also logically and legitimately involve the employment of common “executive [and] management staff”, for example an administrative operations manager, across the group.
13. Again, as XIP stated in its Submission on the Consultation Paper, the critical issue for the integrity of the profession is whether confidentiality of client information and communications is rigorously maintained, and whether the professional duties (both non-fiduciary and fiduciary) owed to the clients by their respective attorneys are not impinged, so that no client suffers any practical or theoretical detriment.

#### **Detailed comments on the draft Code**

14. Section 16 – Communication
  - a. Sec. 16(1)(b) – XIP sees no utility in amending sec. 13(1)(b) of the existing Code.. It is not clear what benefit or utility flows from requiring the registered attorney to disclose to the client those competencies the registered attorney has in other types of work which are not relevant to the client’s needs.
  - b. Sec. 16(1)(d) - First, under s. 198 of the Patents Act, the only persons who may be registered as patent attorneys are natural persons or companies. Cognate provisions appear in sec. 228A of the Trade Marks Act relating to the registration of trade marks attorneys. So the first requirement of paragraph (d) is otiose - the registered patent attorney must be either a natural person or a company, and whether a registered attorney is a company will be disclosed by whether it has the word “Limited” or “Ltd” at the end of its name. Secondly, what do the words “the legal structure under which the registered attorney practises” mean? If as the Guidelines note the intent is to require disclosure of the details of the attorney’s ownership group, that is achieved by paragraph (f).
  - c. Sec. 16(1)(f) (renumbered (d) in our attached amendments) – Where the work to be done by the registered attorney does not involve a contentious matter or dispute with another client, how does it assist the prospective client if the registered attorney is required to disclose to the prospective client the identity of the other members of the registered attorney’s ownership group? An analogy might be a patient who seeks treatment in a medical centre which is owned by a parent company which owns other medical centres. There would be no utility in burdening the patient with information as to the identity of all other medical centres owned by the parent. Of course, in the rare circumstances where that information may actually be of relevance or interest to the patient, it should be readily available. A further analogy can be drawn by reflecting on the past practice, where legal firms in Australia were previously required to identify all partners of the firm in correspondence to clients, predominantly on letterhead. As firms grew in scale, both the practicality and the utility diminished. Particularly as legal practice moved into the digital age, this requirement was replaced by the need for a simple statement directing the client to where this information could be readily found, typically via a website link, for the benefit of the

relatively few clients actually interested. Similarly, in our submission it ought to be sufficient in most circumstances to draw to the client's attention the fact that the registered attorney is part of an ownership group and to provide a clear and direct one-click link to the list of members. We have however accepted in our suggested amendments to the draft Code attached, a requirement to explicitly identify the other members of the group in the context of contentious or potentially contentious matters, where this level of disclosure could conceivably be relevant from the client's perspective. See our comments below on s. 23.

#### 15. Section 19 – Loyalty

Section 19(4)(a) - The expression “reasonably informed consent” is not defined in the Code. Para. 19.4 of the draft Guidelines says that “a client's consent will be reasonably informed when it is given with knowledge of all the information that is reasonably necessary and legally possible to be provided to the client so that the client can make an informed decision”. If that is meant to be the meaning of the phrase, why is that provision not included in the Code, rather than in the Guidelines which do not have the force of law? It will be noted that we have included that definition of that phrase in sec. 4.

#### 16. Section 23 – Ownership

- a. Sec. 23(2) – First, XIP notes that as the draft Code is drawn, the relevant disclosure must be on ALL “client and public communications”, in perpetuity, no matter how trivial. After the client has been informed once of the identity of the members of the ownership group, XIP sees no utility to the client in requiring that disclosure again and again, in every subsequent communication to that client.
- b. Secondly, we have proposed in the amendments set out in the draft Code attached that the requirement to disclose the identity of the members of the registered attorney's ownership group be limited to contentious or potentially contentious matters, because we do not consider that such information can assist the prospective client. In any event, in our submission it ought to be sufficient to draw to the client's attention the fact that the registered attorney is part of an ownership group and to provide a direct one-click link to the list of members.
- c. Thirdly, “communications” clearly extends to telephone calls, communications via Skype or other similar media, SMS messages and the like. It cannot be seriously suggested that each telephone call with a client (including all those made during the course of a matter) must include a recitation of the attorney's ownership structure and a listing of all the other members of the ownership group. XIP submits that any such disclosure should be required only before or at the time of the first formal written communications with the client in a matter, namely the engagement letter – but see below.
- d. Fourthly, an issue will clearly arise if the number of members of the ownership group becomes large, say over 20. (As previously mentioned, an analogous situation arose when law firms in Australia became larger in the 1990s, when in the biggest partnerships more than half the page was taken up with the names of the partners. The law was then amended to permit firms to state that a list of partners' names was available on request.) It is submitted that from a client's perspective, in the 21st century it will be sufficient if the client is told that the registered attorney is a member

of an ownership group, and is provided with a prominent one-click link to the list of the names of the members of the ownership group. This reflects the reality that for the vast majority of clients in the vast majority of circumstances, this information is of no relevance or interest, but nonetheless that the information should be readily accessible where required.

- e. Fifthly, disclosure “to the fullest extent reasonably feasible” as required by sec. 23(2) is surely too wide. “Feasible” means “capable of being done”. Of course, almost anything is “feasible”, even “reasonably feasible” – say, a click-through pagewall on the registered attorney’s website denying all visitors to access to the site unless they acknowledge that they have read and thoroughly understood both that the registered attorney is a member of an ownership group and the names of all the other members of the ownership group - but it is submitted that this is not what might be intended here.

Indeed, there is a significant variance between the draft Code and the draft Guidelines on this issue – the latter speaks of disclosure “as fully as reasonably practicable”, which is not by any means the same test.

XIP submits that the requirement ought to be to make the disclosure with "reasonable prominence".

We have provided suggested amendments in the attached draft of the Code to cater for these points.

### **Concluding comments**

XIP reiterates the comment made in its Submission of 6 June on the Consultation Paper, that it is fully supportive of the maintenance of high professional standards for patent and trade marks attorneys. Moreover, XIP seeks clarity in the law relating to these important areas. However, XIP considers that there are several features of the draft Code and Guidelines which go further than is necessary to accommodate the technological and business restructuring changes which are emerging in the marketplace within the highest professional standards, and which are likely to have the consequences of limiting a client’s freedom to choose its attorney and unduly restricting the legitimate commercial activities of firms in a corporate group.

Yours sincerely,



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## **Code of Conduct for Trans-Tasman Patent and Trade Marks Attorneys 2018**

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The Trans-Tasman IP Attorneys Board makes the following Code of Conduct under the *Patents Act 1990* and the *Trade Marks Act 1995*.

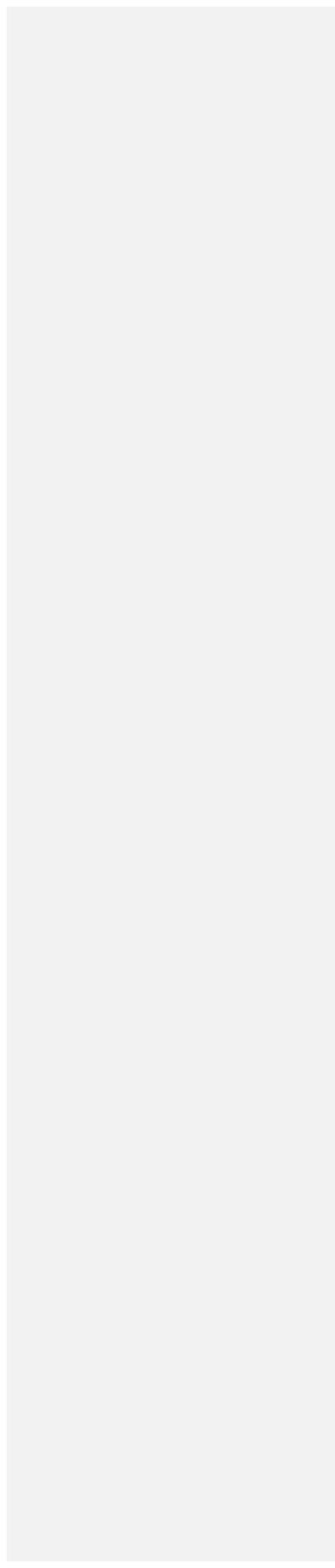
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The Trans-Tasman IP Attorneys Board

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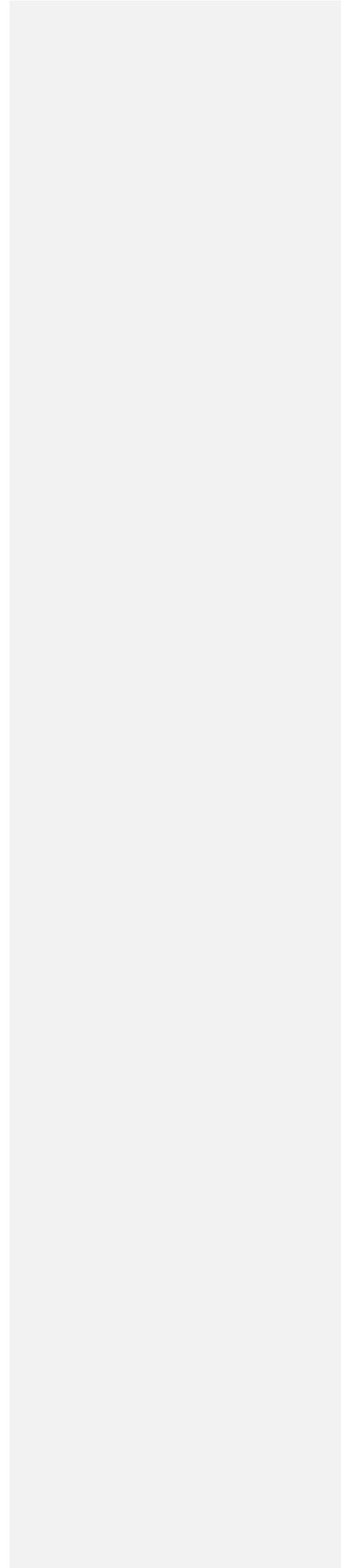


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## Part 1—Preliminary

### 1 Name of code

This code is the Code of Conduct for Trans-Tasman Patent and Trade Marks Attorneys 2018.

### 2 Commencement

This code commences on the day that is 1 month after the day this code is registered.

### 3 Authority

This code is made under the *Patents Act 1990* (Cth) and the *Trade Marks Act 1995* (Cth), and in accordance with the *Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys* signed in March 2013.

### 4 Definitions

In this code:

**ancillary ancillary business** means a business providing services in relation to intellectual property that are ancillary ancillary to the attorney professional services provided by a registered patent attorney or a registered trade marks attorney and that are directed to, or likely to be utilised by, a client or a prospective client of a registered attorney.

**associated person** means a person (including another registered attorney), other than a staff attorney or a foreign-registered attorney, who does work for a registered attorney under a contract or other arrangement, including a person who acts as the agent or representative of the registered attorney for the purposes of the Patents Act or the Trade Marks Act.

**Board** means the Trans-Tasman IP Attorneys Board.

**director** means a patent attorney director or trade marks attorney director.

**foreign-registered attorney** means an individual or a body corporate (however described) that is authorised, under a law of a country or region other than Australia or New Zealand, to do some or all of the following work:

- (a) applying for patents, trade marks, designs or protection for plant varieties;
- (b) obtaining patents, trade marks, designs or protection for plant varieties;
- (c) preparing applications or other documents for the purposes of the laws of that country or region relating to patents, trade marks, designs or protection for plant varieties;

**Comment [CRD1]:** Spelling error. Cf the definition of “ancillary offence” in s. 9 of the Corporations Act, or s. 295J of the Telecommunications Act dealing with “ancillary or incidental provisions”.

Section 4

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- (d) giving advice about the validity of patents, trade marks, designs or protection for plant varieties;
- (e) giving advice about the possible infringement of patents, trade marks, designs or protection for plant varieties.

**guidelines** means the guidelines for understanding and interpretation of this code as published by the Board from time to time.

**incorporated attorney** means an incorporated patent attorney or an incorporated trade marks attorney.

**incorporated patent attorney** has the same meaning as in the Patents Act.

**incorporated trade marks attorney** has the same meaning as in the Trade Marks Act.

**incorporation group** means two or more incorporated attorneys, and any incorporated [ancillary business](#), that constitute “associated entities” as that term is defined in the *Corporations Act 2001*.

**ownership group** means an incorporation group or a partnership group.

**partnership group** means two or more partnerships of registered attorneys in respect of which there is at least one registered attorney that is a partner in all partnerships, together with any [ancillary business](#) in which a material investment, and over which significant influence, is held by at least one partner in any of the partnerships.

**patent attorney director** has the same meaning as in the Patents Act.

**Patents Act** means the *Patents Act 1990* (Cth).

**professions** means:

- (a) the patent attorney profession; and
- (b) the trade marks attorney profession.

[reasonably informed consent in relation to a client means the client’s consent given with knowledge of all the information that is reasonably necessary and legally possible to be provided to the client so that the client can make an informed decision.](#)

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**registered attorney** means a person to whom this code applies.

**registered patent attorney** has the same meaning as in the Patents Act.

**registered trade marks attorney** has the same meaning as in the Trade Marks Act.

**regulatory authority** means a body:

- (a) established by or under a law; or
  - (b) otherwise established by a government;
- with which a registered attorney may deal with while doing work as a registered attorney.

*staff attorney* means:

- (a) an individual who is a registered patent attorney and employed by an incorporated patent attorney; or

Section 1

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Preliminary **Part 1**

<sup>(a)</sup> ~~(b)~~(a) an individual who is a registered trade marks attorney and employed by an incorporated trade marks attorney.

*Trade Marks Act* means the *Trade Marks Act 1995* (Cth).

*trade marks attorney director* has the same meaning as in the Trade Marks Act.

**5 Former Code of Conduct**

This code replaces the Code of Conduct that was published by Professional Standards Board for Patent and Trade Marks Attorneys dated 18 September 2013.

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## **Part 2—Overview**

### **6 Application of code**

This code applies to:

- (a) a registered patent attorney; and
- (b) a registered trade marks attorney.

### **7 Objective of code**

The objective of this code is to set out the standards of practice to which a registered attorney is required to adhere.

### **8 Guidelines to code**

From time to time the Board may publish guidelines to assist registered attorneys and their clients to understand this code and the conduct it covers. Any such guidelines are informative, illustrative, are not exhaustive and do not form part of this code.

### **9 Rights of clients not affected**

This code does not affect or reduce the rights of a client of a registered attorney in relation to the registered attorney's conduct.

### **10 Administration**

- (1) The Board is responsible for:
  - (a) publicising this code to ensure widespread awareness of its purpose and provisions; and
  - (b) implementing measures to ensure that registered attorneys are aware of this code's purpose and provisions; and
  - (c) conducting periodic reviews of this code's effectiveness, and of the procedures in this code, with a view to possible changes; and
  - (d) preparing annual and other reports relating to this code.
- (2) This code is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and is available on the Federal Register of Legislation website (<https://www.legislation.gov.au/>).
- (3) The Board's contact details are available on the Board's website (<https://www.ttipattorney.gov.au/>).

## **Part 3—Professional conduct**

### **11 Core obligations**

- (1) A registered attorney must act as a patent attorney or a trade marks attorney:
  - (a) in accordance with the law; and
  - (b) in the best interests of the registered attorney's clients; and
  - (c) in the public interest; and
  - (d) in the interests of the registered attorney's profession as a whole.
- (2) If a registered attorney is unable to comply equally with all of the obligations mentioned in subsection (1), the registered attorney must treat the obligations as an order of priority in which paragraph (1)(a) is the highest priority.

### **12 Responsibility**

- (1) A registered attorney, whether an individual, a director or an incorporated attorney, is responsible for:
  - (a) the registered attorney's own work, acts and defaults as a patent attorney or a trade marks attorney; and
  - (b) the work, acts and defaults of each associated person.
- (2) A registered attorney who is a director is responsible for:
  - (a) the director's own work, acts and defaults as a director; and
  - (b) each staff attorney's work, acts and defaults as a patent attorney or a trade marks attorney.
- (3) A registered attorney that is an incorporated attorney is responsible for:
  - (a) the incorporated attorney's own work, acts and defaults as an incorporated attorney; and
  - (b) each director's work, acts and defaults as a director; and
  - (c) each staff attorney's work, acts and defaults as a patent attorney or a trade marks attorney.

### **13 Integrity**

- (1) A registered attorney must not act as a patent attorney or a trade marks attorney in a way that is fraudulent, deceitful or knowingly misleading.
- (2) A registered attorney must maintain standards of professional practice as a patent attorney or a trade marks attorney that are courteous, ethical and well-informed.

Section

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### 14 Competency

- (1) A registered attorney must have appropriate competency for the work that the registered attorney undertakes.
- (2) A registered attorney must carry out the work that the registered attorney undertakes with due skill and care.

### 15 Diligence

- (1) A registered attorney must carry out the work that the registered attorney undertakes in a timely manner.
- (2) A registered attorney must:
  - (a) act promptly on the instructions of a client or a prospective client; or
  - (b) inform the client or prospective client promptly of the registered attorney's inability to do so.

### 16 Communication

- (1) Prior to undertaking work for a new or prospective client, a registered attorney must ensure that the client is clearly informed in writing of the following matters:
    - (a) that the registered attorney is registered as a patent attorney, a trade marks attorney or both, and is bound by this code; and
    - (b) that the type of work for which the registered attorney has appropriate competency to perform the work, including by drawing on technical expertise; and
    - (c) the procedures, timing and estimated cost of doing particular work; and
    - ~~(d) the legal personality of the registered attorney and the legal structure under which the registered attorney practices; and~~
    - ~~(e) where the registered attorney is an incorporated company whether the company is public or private; and~~
    - (d) where the registered attorney is the member of an ownership group:
      - i) that fact; and
      - ii) where the work or matter relates to proceedings or likely proceedings before a court, a tribunal or a like adjudicative body – the identity of the other members of that group.
  - (2) A registered attorney is not required to comply with any of paragraphs (1)(a), (1)(b) and (1)(c) if:
    - (a) the client is also represented by a foreign-registered attorney and the registered attorney is dealing with the client by dealing with the foreign-registered attorney; or
    - (b) the registered attorney has been requested to do work for the client by another registered attorney and the other registered attorney continues to act for the client in the work.
  - (3) Where any of the matters specified in subsection (1) become materially different from those previously notified to the client, the registered attorney must clearly
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inform the client in writing of the changes.

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## 17 Disclosure

Unless prohibited by section 18 or otherwise by law, a registered attorney that is an individual must disclose to a client all information of which the registered attorney is aware that is relevant to work being undertaken for the client.

## 18 Confidentiality

Unless permitted or required by law, a registered attorney must not use or disclose confidential information obtained from or on behalf of a former, current or prospective client without the consent of the client.

## 19 Loyalty

### *Current client*

- (1) A registered attorney is a fiduciary in respect of the registered attorney's dealings with a current client, and owes a duty of loyalty to a current client.
- (2) A registered attorney must not prefer the registered attorney's own interests over the interests of a current client.
- (3) A registered attorney must not prefer the interests of one current client over the interests of another current client.
- (4) Subject to subsection (5), a registered attorney must not act for a client in a matter knowing that the client's interests are adverse to the interests of another current client of the registered attorney unless:
  - (a) both clients in writing have given reasonably informed consent to the registered attorney acting in the matter; and
  - (b) where the registered attorney holds confidential information relevant to the matter obtained from or on behalf of either client – the registered attorney has established an effective information barrier in relation to the relevant confidential information.
- (5) A registered attorney must not act for two or more clients in the same matter relating to proceedings before a court, a tribunal or a like adjudicative body where the registered attorney knows the clients' interests are or are likely to be adverse.

### *Former client*

- (6) A registered attorney must not act for a client in a matter knowing that the client's interests are adverse to the interests of a former client unless:
  - (a) the registered attorney does not hold confidential information relevant to the matter obtained from or on behalf of the former client; or
  - (b) where the registered attorney does hold confidential information relevant to the matter obtained from or on behalf of the former client – the registered attorney has established an effective information barrier in relation to the

relevant confidential information.

## 20 Conflicts

- (1) A registered attorney must avoid creation of a situation giving rise to an actual conflict or the reasonable possibility of a conflict:
  - (a) between the registered attorney's interests and the interests of a current client; and
  - (b) between the interests of one current client over the interests of another current client.
- (2) Upon becoming aware of a situation giving rise to an actual conflict or the reasonable possibility of a conflict of the types described in subsection (1), a registered attorney must take steps, as soon as practicable, to resolve the actual conflict or the reasonable possibility of a conflict.

## 21 Independence

- (1) For the purposes of sections 19 and 20, a client of a registered attorney that is a member of an ownership group will not, by reason solely of that fact, not be regarded as a client of any independent of the other members of the group, unless the registered attorney does not operates independently of the other members in the provision to that clients of attorney professional services.
- (2) Notwithstanding subsection (1), a registered attorney that is a member of an ownership group must not act for a client in a matter relating to proceedings before a court, a tribunal or a like adjudicative body where the registered attorney knows that a client of another member of the group is involved in the matter and that the clients' interests are adverse unless the registered attorney has advised the registered attorney's client in writing that a client of another member of the group is involved in the matter and the registered attorney's client has then given reasonably informed consent to the registered attorney acting in the matter.

## 22 Termination of services

If a registered attorney withdraws the registered attorney's services, or ceases to act for a client, the registered attorney must take reasonable steps:

- (a) to inform the client of any actions necessary to maintain the client's intellectual property rights; and
- (b) to cooperate with the client and any new representative of the client to ensure the client's intellectual property rights are maintained during transfer of responsibility.

## Part 4—Practice management

### 23 Ownership

- (1) A registered attorney may be a member of an ownership group.
- ~~(2) Where a registered attorney is a member of an ownership group; that fact and the identity of all other members of the ownership group must be clearly disclosed on all client and public communications to the fullest extent reasonably feasible.~~
- ~~(3)(2)~~
  - (a) that fact must be -
    - (i) clearly disclosed with reasonable prominence on the registered attorney's website or other similar public media; and
    - (ii) separately disclosed in writing to a client, no later than the acceptance by the registered attorney of the client's instructions; and
  - (b) the identity of all other members of the ownership group must be -
    - (i) clearly available via a one-click link from the registered attorney's website or other similar public media; and
    - (ii) separately disclosed in writing to a client, no later than the acceptance by the registered attorney of the client's instructions in a matter where the matter relates to proceedings or likely proceedings before a court, a tribunal or a like adjudicative body.

### 24 Funds

- (1) A registered attorney must ensure that a cost, official fee or debt is paid in a timely manner after the registered attorney's client has given the relevant amount to the registered attorney.
- (2) A registered attorney must ensure that the funds of a client are kept and accounted for using an accounting standard that is appropriate to the circumstances of the registered attorney's practice.
- (3) A registered attorney must use money paid by a client only:
  - (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.
- (4) A registered attorney must, as soon as practicable, give a client any refund due to the client.

### 25 Client property

- (1) If a client asks a registered attorney to return or make available to the client a document, sample or other material:
  - (a) that is the client's property; or
  - (b) to which the client may have access under an agreement between the

- registered attorney and the client; or
- (c) in which the client has a legal or other interest that entitles the client to have access to the document, sample or material;
- the registered attorney must ensure that the document, sample or other material is returned or made available to the client.
- (2) However, a registered attorney is not required to comply with subsection (1) if the client has not satisfied a lien imposed in accordance with the *Patents Regulations 1991* (Cth) or the *Trade Marks Regulations 1995* (Cth) or otherwise by law.

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**26 Address**

- (1) A registered attorney must:
  - (a) have a current address at which notices can be served for the purposes of this code; and
  - (b) ensure that the Board is notified of the current address; and
  - (c) notify the Board of a change of address within 14 days.
- (2) The Board will act on the assumption that a notice served on a registered attorney at an address notified to the Board under paragraph (1)(b) has been received by the registered attorney.

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## **Part 5—Complaints and disciplinary proceedings**

### **27 Complaints**

- (1) A person or body may make a complaint to the Board, or provide information to the Board, about the conduct of a registered attorney.
- (2) A registered attorney must not:
  - (a) make a complaint to the Board, or provide information to the Board, under subsection (1) for an improper purpose; or
  - (b) threaten to make a complaint to the Board, or provide information to the Board, for an improper purpose.

### **28 Disciplinary proceedings**

- (1) The Board has the sole responsibility for commencing and conducting disciplinary proceedings against a registered attorney.
- (2) The Board can take on this role as a result of information it receives or on its own initiative.
- (3) The Board may commence proceedings before the Trans-Tasman IP Attorneys Disciplinary Tribunal against a registered attorney who is an individual if the Board is satisfied that there is a reasonable likelihood of that registered attorney being found guilty of unsatisfactory professional conduct. The Board is required to commence proceedings if the Board is satisfied that there is a reasonable likelihood of that registered attorney being found guilty of professional misconduct.
- (4) The Board may apply to the Trans-Tasman IP Attorneys Attorneys Disciplinary Tribunal to cancel or suspend the registration of an incorporated patent attorney or an incorporated trade marks attorney.
- (5) The Board may issue disciplinary guidelines relating to registered patent attorneys and registered trade marks attorneys.