



Consultative Paper on
The Liberalization of the Promotion Rules for Advocates

1 October 2019

Introduction and Process

This is a consultative paper prepared by the Chamber of Advocates making proposals for a reform in the publicity rules and guidelines for the profession. This paper sets out the rationale underpinning the consultation by the Chamber for a review of the general prohibition against promotion and publicity by advocates of their practices and how it is proposed that new rules be put in place to regulate this activity.

The Chamber has established the following time-lines for the completion of this consultation period :

Date of Commencement of Consultation period:	1 October 2019
Closing of Consultation Period:	30 October 2019
Feedback Statement by the Chamber:	30 November 2019

The Chamber shall be calling a meeting for members of the profession midway through the consultative process during which members of the profession shall have the opportunity of articulating their positions on this consultative paper. Following the consultation period, the Chamber shall then issue a feedback statement with a final draft of the rules and guidance notes. It shall then seek to have the proposed changes to the code of conduct approved by the Commission for the Administration of Justice.

Feedback on this consultative paper is to be addressed to the Secretary General, Chamber of Advocates, and sent:

By email on : info@avukati.org; or

by mail to the Chamber of Advocates, The Lawyers Chambers, Courts of Justice, Republic Street, Valletta.

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LIBERALISATION OF THE PROMOTION RULES FOR ADVOCATES

The guidelines with respect to the promotion and publicity of an advocate's practice have been a matter of debate for some time.

The guiding rule today remains Rule 2 in Chapter One of Part II of the Code of Ethics:

Rule 2

Advocates shall not in any manner publicise their practices or permit other persons to do so on their behalf or in their interest. The Chamber of Advocates shall from time to time, either on its own motion, or at the request of any member, issue guidelines and interpretations as to what does not constitute publicity for the purposes of this Rule.

Whilst the first part of the rule seems to impose a general prohibition of publicity of an advocate's practice, the second part of the rule allows sufficient flexibility for the Chamber to issue guidelines with respect to the proper application of what would otherwise be a total prohibition.

The Chamber has prepared this consultative paper to share its thoughts and considerations on how the rules and guidelines for professional promotion may be updated to cater for the needs of the profession today. The Chamber believes that this reform is long overdue in the profession. Indeed there are significant signs in the market that a number of members of the profession consider the current outright prohibition as outdated and in a radically changed environment of practising the profession, no longer serves its original purpose. We have experienced and indeed still are experiencing in the market certain conduct which is a flagrant abuse of the current rule. The Chamber is of the view that a more liberalised environment for promotion by advocates should provide a regulatory framework which allows advocates to properly promote their services to meet the demands

of the general public and the consumer of legal services, whilst still respecting the core values of the profession, and do so with dignity, integrity and decorum.

Is the rule, as a general prohibition, still the way forward?

The first point of debate is whether the profession ought to retain the general prohibition against publicity of a legal practice in its current form. Indeed, the question is whether there remains validity in the rule, or whether this is today a legacy of the past that needs to be completely re-thought.

The Chamber's answer to that question is that the rule is outdated, it needs to be changed and that a new framework needs to be put in place that reflects the demands of the profession today. However, there is also merit in understanding the legacy and retain from it that which still has a significant value to the profession. The general prohibition against publicity and promotion is underpinned by an important principle intended to highlight the particular dignity attributed to the profession which is not, and therefore should not, be made equivalent to the provision of other services. The prohibition in its various forms has sustained significant dilution over time – not so the principle underlying it. There has been a general liberalisation of the rule in various jurisdictions in the EU; the UK and the US. This liberalisation in Europe is a matter of the past – France introduced the first legislation in 1991, followed by Germany in 1997 and, possibly one of the most conservative professions, Italy in 2006. Both in the US and the UK the developments happened earlier. In the UK, publicity was first allowed by the Law Society in 1986 whilst in the US, the first development can probably be attributed to *Bates v. Arizona State Bar* 433 U.S. 350 (1977), in which the United States Supreme Court decided that lawyer publicity is partially protected by the First Amendment. The Supreme Court rejected the argument by the Arizona Bar that attorney publicity was "inherently misleading" and "tarnish the dignified public image of the profession." The Court found "the

postulated connection between advertising and the erosion of true professionalism to be severely strained," and noted that "lack of legal advertising could be viewed as the profession's failure to reach out and serve the community." This was 1977.

What seems to have happened following the Bates decision is that the emphasis shifted to the regulation of publicity and ensuring that it is not misleading, rather than completely prohibiting it. This is also the thrust of the developments in the main European jurisdictions including the UK, where publicity was initially introduced as a means of providing information to the public.

Over time, even in the legal field the important distinction between information and publicity or promotion that characterised the first liberalisation of the prohibition is no longer the main issue. The principal issue today is that between proper and correct publicity on the one hand (which involves information which is true and correct that respects the dignity and decorum of the profession) and misleading publicity on the other hand. This has been spurred by EU directives, and court judgements considering the restriction as anti-competitive and above all a perception that lawyers tend to use this restriction for their own protection, rather than in the public interest and for the benefit of consumers.

The socio-economic environment in which advocates practice today, the evolution of the profession that provides legal services which go far beyond those that were contemplated when the prohibition was the order of the day, the competition being faced in these areas from other quarters not bound by the same rules and restrictions, but above all the shift in looking at the market for legal services from a consumer perspective rather than simply the profession's own perspective all create a case, indeed a compelling case for a liberalisation of the rule.

The Council of Bars and Law Societies of Europe (CCBE) in its latest Model Code of Conduct has also liberalised the model rule by shifting the position from publicity being prohibited, to a

position where it is a permissible practice. The rule as enshrined in the CCBE model code is the following:

2.6. Personal Publicity

2.6.1. A lawyer is entitled to inform the public about his or her services provided that the information is accurate and not misleading, and respectful of the obligation of confidentiality and other core values of the profession.

2.6.2. Personal publicity by a lawyer in any form of media such as by press, radio, television, by electronic commercial communications or otherwise is permitted to the extent it complies with the requirements of 2.6.1.

Proposal for Change

There are two levels which, in the Chamber's view, require a change if we are to re-visit the policy basis for publicity of a practice:

Amendment to the Code of Ethics – where the current rule is a complete prohibition and needs to be changed to reflect the new thinking. This will also require further consequential changes in the Code.

The problem as regards the publicity and marketing of legal services is really to balance competing goals. On the one side is the need to promote access to legal services and to ensure the benefits of competition within the market for legal services. On the other side is the need to maintain the standing and decorum of the profession, to prevent unfair tactics which may harm other members of the profession, and to prevent the public from being misled or exploited.

The proposal below adopts a more liberal approach. So long as the information is not false or misleading, a breach of confidentiality and is not such as to bring the profession into disrepute, it generally ought to be allowed.

The proposal is to adopt a rule in the Code on the following lines (taken from the CCBE model):

Rule 2 – Publicity

- 1. An Advocate is entitled to inform the public about the services he or she provides as long as the information is accurate and not misleading, and respectful of the obligation of confidentiality and of the Advocate's other obligations in this code, including but not limited to the obligations to act with honesty and integrity; and in a way which is not likely to diminish the trust and confidence which the public places in the Advocate or in the profession.*
- 2. An Advocate may use any form of medium for the purpose of providing information about his or her practice as long as it complies with the provisions of paragraph (1).*
- 3. The Chamber shall issue binding rules and guidance notes on the proper application of these rules and may issue different guidance notes with respect to the application of these rules to publicity on different forms of media.*

That should set the scene on three basic principles:

- It establishes the shift from a complete prohibition to a permitted activity;
- Establishes a balance between the need of the consumer public to be informed against the standards required within the profession; and
- The ability of the Chamber to issue detailed rules and guidance notes on the proper application of the rule.

Consequential Amendments to the Code

Given the application of the new rules and guidelines to law firms and the evolution of law-firms, or advocates practising under a common name giving the impression of a law firm over the last few years, the Chamber believes that it is important to ensure full transparency to consumers of legal services of the proper nature and set up of the firm or association or advocates and the manner in which such firms or associations project themselves publicly.

In this context, it is therefore important for the Code to provide clarity on this issue and to have rules that ensure an appropriate manner in which advocates project themselves to the general public.

There are fundamentally three types of structures in which the profession is organised:

1. **Civil Partnerships** or **other associations** between lawyers where the partners or principals are jointly liable and where they share in the costs and profits of the partnership or association, and that normally practice under a partnership or firm name;
2. **Loose associations of advocates** – where there are certain loose arrangements of office sharing and the sharing of certain common costs, between advocates who however retain their individual independence in servicing their clients and managing their practice where each advocate in effect has his/her own clients and has full management and control over his/her revenues and where there is no joint liability between the principals forming part of that association;
3. **Sole practitioners**, who in some cases may well engage under contracts of employment a number of lawyers, and who practice law and provide legal services under one brand or firm name, but where the liability towards clients is only of the principal and where the employed

lawyers do not have any liability towards clients, and do not contribute to the costs incurred in the practice nor share in the profits of the practice.

The Chamber is of the view that when advocates project themselves publicly, whether in brochures, websites or other media – there is a tendency to do so under a name, for the sake of convenience in this paper referred to as a **firm name or brand** – which in reality may not clearly and fully denote the nature of the set-up or structure of the particular practice and can indeed cause confusion in the minds of consumers of legal services as to whether he/she is dealing with a firm that has other interests in entities providing other services; or a firm with, for instance six partners who are jointly liable for anything done in the name of the firm, or whether it is a sole practitioner, who may or may not employ other lawyers, but who is simply practising under a brand and for which practice he/she is solely responsible.

There is a need to ensure greater transparency and the use of a brand or firm name should not be a means: (i) to promote the provision of services other than legal services and, if the brand or firm name is also used for the provision of such other services, then it needs to be made clear to avoid misleading the consumer of legal services; or (ii) of disguising the real nature of a practitioner's set-up and structure, and ultimately of who is properly responsible for advice given to the consumer of legal services.

It is in this context that we need to design new rules to ensure full transparency of the internal arrangements and legal set up of a practice to enable a consumer understand better who is really responsible towards the client and the real level of resources that an advocate can place at the disposal of clients. To leave this unaddressed could potentially be misleading.

Accordingly, the following definitions are being proposed to be adopted in the Code in substitution of what is currently Rule 1 of Part Five of the Code:

Rule 1

In this Code of Ethics and Conduct:

“advocate” means a duly qualified lawyer in terms of law in Malta, and includes chambers, law firms and sole practitioners and European lawyers capable of practising law in Malta under any applicable law;

“chambers” means a number of independent advocates who associate themselves for the sole purpose of practicing the profession of advocate under one name, but where each of them is personally and solely responsible for his/her own practice and clients, and where no joint liability between the lawyers subsists towards a client of one of them, whether registered with the Chamber of Advocates or not;

“firm” or “law firm” means a partnership or other association of advocates:

- (i) the sole object of which is the provision of legal services;*
- (ii) which is registered with the Chamber as such; and*
- (iii) in the case of an association of practising advocates, which is not a partnership, its members or principals are jointly liable for any legal services provided by or in the name of the association, and where members share the costs and profits of the practice;*
- (iv) a sole practitioner who employs the services of at least four (4) other advocates on a full-time basis and who together conduct their professional activities under one firm name.*

“partnership” means a civil partnership made up of advocates whether or not properly constituted.

The next step is to re-visit the detailed rules or guidance to the profession.

THE RULES

CHAMBER OF ADVOCATES

PROFESSIONAL RULES AND GUIDANCE ON PUBLICITY BY ADVOCATES

Amended and put in effect as of [-] 2019

The Chamber acknowledges the balance required in the area of the supply and demand of legal services; the evolution of the profession from the provision of what are best termed as traditional legal services to a wider and broader array of legal services provided by advocates and law-firms, the technologies available today in the provision of those services – in brief, a radically changed environment in the provision of legal services that requires, amongst others, a re-think of the manner in which advocates manage and promote the provision of their services.

The Chamber does not subscribe to the school of thought that the provision of legal services is merely a commodity in the market and that they accordingly need to be addressed exclusively in economic terms as any other commodity by applying the same rules of demand and supply applied to other services and commodities. The matter is somewhat more complex than that – and the ethical rules that regulate the profession, the trust placed by consumers of legal services in their legal counsel and which characterises the client-attorney relationship – places the relationship beyond the simple commodity or service that can be viewed in simplistic economic terms. This notwithstanding, the Chamber acknowledges that there is merit in the view that as advocates we also need to be sensitive to the manner in which clients perceive the market for legal services and we simply cannot just be guided by the manner in which we, as a profession, perceive ourselves and what we do.

This calls for a balanced approach to the regulation of the profession, including in areas such as promotion and publicity. As a profession, we need to take stock of all that is happening around us and to evaluate whether long-standing and time honoured rules are still as cogent or even relevant in today's environment as they were when originally contemplated.

The Chamber trusts that in regulating the publicity and marketing of legal services, the aim is really to balance competing goals. On the one side is the need to promote access to legal services and to ensure the benefits of competition within the market for legal services. On the other side is the need to maintain the standing and decorum of the profession, to prevent unfair tactics which may harm other members of the profession, and to prevent the public from being misled or exploited.

In a competitive market for legal services, it is only right that advocates are permitted to market themselves, using such media as may be available to them, including through websites, social media or other digital platforms. In many cases, lay and professional clients are likely to be interested in researching advocates – by understanding who they are, or who they are considering, instructing – or advocates who are known to be on the other side of the case or transaction. This public interest however can only be truly and properly served if advocates are able to promote the services they provide in full respect of the dignity, decorum and professionalism that is expected of them, in full respect therefore of the core values that distinguish them as an important pillar within the society in which they operate and exercise their profession. To consider the provision of legal services as any other commodity would be to dismiss or discard the significance and importance that ethical rules and

rules of conduct still play and indeed should play in advocates and legal practitioners performing their duties to their clients.

It is in this context that the Chamber is revising its rules and guidelines for the profession to market and promote its services.

This rulebook is divided into the actual rules and the Guidance notes for each of the rules.

Article 1 - Definitions

Terms used in these rules shall, unless the context otherwise requires or are otherwise defined in these rules, have the meanings assigned to them in the Code of Ethics for advocates (the “Code”).

Article 2- Promotion

- (1) Advocates may only publicize or promote their practices, firms, chambers and/or their professional services to provide public awareness of the services they offer and to enable the general public and prospective clients to make an informed choice in engaging the services of an advocate.
- (2) Any promotional or publicity activity by advocates must be conducted in full respect and compliance of the core values of the profession and in strict compliance with the provisions of the Code and as hereinafter provided for, or with the approval of the Chamber.

Article 3 – General Principles on promotion and publicity

(1) Advocates may engage in any publicity or promotion of their practice, which conforms to the rules in the Code of Ethics and these rules and such publicity or promotion must at all times be:

- a. an accurate description of the service;
- b. lawful;
- c. decent;
- d. truthful;
- e. honest; and
- f. socially responsible (not encouraging illegal, unsafe or anti-social behaviour).

(2) Advocates may not use publicity or promotion which:

- a. is either misleading or inaccurate in any respect, or which is likely to be misleading;
- b. is likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;
- c. makes direct comparisons in terms of quality with or criticisms of other identifiable persons (whether they be advocates or members of any other profession);
- d. includes statements about the lawyer's success rate;
- e. indicate or imply any willingness to accept instructions or any intention to restrict the persons from whom instructions may be accepted otherwise than in accordance with the Code;

- f. indicate or imply a certain structure or set up that gives a misleading impression of its actual set up or structure;
- g. is so frequent or obtrusive as to cause annoyance to those to whom it is directed.

(3) Publicity and promotion of an advocate's practice may, subject to all the other rules of this Code, include:

- a. photographs or other illustrations of the advocate;
- b. statements of rates and methods of charging;
- c. statements about the nature and extent of the advocate's services;
- d. information about any case or transaction in which the lawyer has appeared (including the name of any client for whom the lawyer acted) only with the express prior written consent of the lay client.

(4) Practitioners must not publicize their practices by making unsolicited visits; telephone calls or electronic communication to a member of the public or a person who they know is the client of another advocate.

(5) "Member of the public" does not include:

- a. a current or former client;
- b. another lawyer;
- c. an existing or potential professional or business connection; or
- d. a commercial organisation or public body.

Article 4- Prohibited Publicity

- (1) No advocate, chambers or law firm shall, without the consent of the Chamber:
- (a) use or allow the use of its name to appear or to be used, on a permanent or continuous basis, on any brochure, website, letter headed paper or other medium intended to promote or publicise the provision of legal services in conjunction or in association with the names of other entities when those other entities are not themselves advocates, chambers or law-firms;
 - (b) use, on a permanent or continuous basis, the name of any other person or entity, not being an advocate, chambers or a law firm, in conjunction or in association with its own name on any brochure, website, letter headed paper or other medium intended to promote or publicise the provision of services other than legal services.
 - (c) use a logo or other distinctive brand or mark for the publicity or promotion of the provision of legal services that is also used for the provision of services other than legal services and which is likely to mislead a reader as to the nature of the services that are provided by the entity or other person using that logo, or other distinctive brand or mark.
- (2) The practices mentioned below do not respect the integrity and decorum of the profession and do not add any value to the information of the public on the provision of legal services by advocates, accordingly they shall constitute a breach of the rules:
- (a) any advertising on broadcast media, including television, radio and other forms of broadcast media (save for what is stated in Article 6); Billboards whether electronic or otherwise;
 - (b) any advertising campaigns promoting the marketing of a practitioner's services on any medium;
 - (c) the use of offensive, uncouth, or vulgar language;

- (d) publicity on vehicles intended for public transport, including buses, coaches and taxis;

Article 5- Permitted Publicity

Practitioners may undertake any of the following activities in full respect of the provisions of the Code and these rules:

- (a) publicise vacancies in their firm or office,
- (b) publicise any changes in the organisational structure;
- (c) sponsor and promote events, such as conferences, seminars, workshops provided they concern matters of academic or professional interest, promote cultural or artistic activities or sporting events; sponsorship of charitable activities;
- (d) insert entries in legal directories or other publications whether such entries are paid for or not;
- (e) publish articles of a professional or academic interest, including write-ups about the advocate or law firm publishing the article;
- (f) publish interviews of an academic or professional content or about the services provided by the advocate or firm on any medium;
- (g) use social media to post matters of a professional or academic interest and to promote the legal services provided by such advocate or law firm.

Article 6 – Appearance on broadcast media

- (1) Any advocate who appears on any television, radio or other broadcast (including a broadcast over the internet) shall at all times conduct himself or herself with circumspection.

- (2) The obligations of integrity and honesty require that such advocate states clearly whether his or her appearance on TV, or participation in a radio or other form of broadcast is because he or she has been invited to appear on the programme or broadcast by the producers with a view to provide generic advice and information to the public as a public service or whether he or she is participating in the programme or broadcast as a means of publicity or promotion of the legal services he or she provides, including whether he/she has paid or will pay any compensation for such appearance.

Article 7 – Digital Platforms and Websites

Websites

- (1) Advocates may lawfully have and maintain their own websites as part of providing the public with information about who they are and the services they offer. Websites shall be subject to these rules and the guidance provided in these rules.
- (2) In addition, websites shall conform to the following requirements:
- (a) indicate the persons who are responsible for any data or information contained on the website;
 - (b) indicate at least one physical address from where the advocate practices his profession and provides his services;
 - (c) no indication is to be made to the provision of services which are or may be provided by the advocate (including through a different entity owned by the advocate or principals or partners in a law firm or member of chambers) but which are not legal services.

Other Digital Promotion

- (3) Advocates shall be generally allowed to promote or publicise their practice through digital and social media, provided that at all times the provisions of these rules are fully complied with.

Article 8 – Role of the Chamber

- (1) In all instances where an advocate, chambers or law firm is unsure on the manner in which it may proceed with respect to promotion, it is highly recommended that practitioners should seek the advice of the Chamber, failing which, the Chamber reserves the right to take any action it may deem fit.
- (2) The Chamber reserves the right to alter and modify these guidance notes as may be necessary from time to time, and to issue guidelines to supplement and clarify these rules.
- (3) The Guidance Notes appended to these rules shall be construed as one with these rules.

Appendix – Guidance Notes

The following are guidance notes issued by the Chamber to provide more clarity on each of the rules relating to promotion and publicity of a legal practice and the provision of legal services. These guidance notes are binding on practitioners.

Guidance Note 1 (Article 2)

You should note that promoting or publicising your practice is intended, principally, to serve the purpose of allowing prospective clients to make an informed decision before engaging an advocate or law-firm, whether with respect to dispute resolution services or advisory services.

The Chamber accepts however that in a competitive market for legal services, lay and professional clients are likely to be interested in researching advocates - who they are, or who they are considering, instructing – or advocates who are known to be on the other side of a case or transaction.

In all instances, any promotional or publicity activity is to be conducted in line with the requirements of the rest of the Code. Nothing in these rules allowing you to publicise your practices exempt you from compliance with all the other core values and all other principles in the Code. These include, in particular, but without limitation:

- Rule 4 of Part One - Chapter I of the Code;
- Rule 1 of Part Three – Chapter I of the Code;
- Rule 1 of Part Three – Chapter II of the Code

Guidance Note 2 (Article 3)

- (1) You ought to exercise great care in the application of this rule. If you knowingly or recklessly publish publicity or promotional material which is inaccurate or likely to mislead, this could also result in a breach of the Rule. Accordingly, you should be particularly careful about making comparisons with other persons as these may often be regarded as misleading.
- (2) It would be misleading for a name or description of a practice to include the word “advocates” or “lawyers”, or terms that would imply a duly qualified legal practitioner if such person is not admitted to practice law in accordance with applicable law in Malta.
- (3) Likewise, it would be misleading for any advocate employed by a non-advocate or law-firm to allow his/her employer to promote or publicise the provision of legal services, including those set out in the Code, simply by virtue of the employment of the advocate or lawyer.
- (4) It would also be misleading for you, if you are a sole practitioner, to use a firm name or terms such as "and partners" or "and associates" in a firm name unless the firm did formerly have more than one partner or practitioner.
- (5) It would likewise be misleading for any lawyer, advocate or law firm to publicise or promote the provision of legal services through the use of a limited liability company or commercial partnership. It is indeed unlawful for any company to provide legal services or for any law firm to take the form of a limited liability company or other commercial partnership and provide legal services through such an entity.

Names of practices

- (6) The name of any chambers, law firm or sole practice shall not be misleading in terms of projecting an impression or view of the real structure or set up of the practice.
- (7) Names to designate practices which are not misleading and in compliance with this rule may either include:
- a.* the name or names of one or more practicing advocates who, in the case of a sole practitioner is the principal of the practice; in the case of a partnership is or who are partners in the firm (or any abbreviations thereof), in the case of chambers is or who are members of the group of independent lawyers practising under one name; or
 - b.* the name of a person who, having been a practising Advocate and:
 - i. in the case of a partnership, a partner in the firm,
 - ii. in the case of chambers, a member of the grouping of independent lawyers,who may have since ceased to be a practising Advocate or a partner in the firm or member in the chambers, and the existing partners or members of chambers, as the case may be, have retained the same name of the partnership or the name of the ex-partner as part of the name of the law firm, or in the case of chambers have retained the same name of the chambers.
- (8) To ensure that they do not breach the rule, sole practitioners are encouraged to practice the profession under their own personal names or any derivative thereof that clearly identifies the sole practitioner concerned and the fact that he/she is a sole practitioner.

(9) Sole practitioners who engage other advocates in their employ may together with their own names use terms such as “and associates” or “ and Co” or words of similar import.

(10) A sole practitioner who practises the profession under a particular name that is likely to give an impression to the public that the practice is a law firm or chambers is however considered as misleading. Where sole practitioners engage at least four (4) other advocates in their employ and wish to practice the profession under a firm name, the Chamber believes that, provided that the name is qualified by appropriate explanatory wording on letter-headed notepaper, emails, websites, bills or other media where the name under which the advocates practice their profession appears, it would be sufficient to provide consumers with adequate disclosure of the structure or set-up.

(11) The Chamber considers the following be to appropriate explanatory wording:

[Name used] is the name under which [name of principal] and other lawyers engaged by him/her practices the profession of advocate.

Use of the word “Partner”

(12) In the context of a civil partnership, it is permitted, and desired, to refer to members of the partnership as "partners", provided the firm complies with the provisions of the Civil Code (Cap.16 of the Laws of Malta) with respect to civil partnerships.

(13) The names of partners must appear on the firm's notepaper or in a statement that a list of partners is available from the address shown on the notepaper or from the firm’s website (a link to the firm’s website ought to be included).

- (14) Some firms are not organised as a civil partnership, accordingly calling its principals or members “partners” may well be misleading as it gives the impression that the firm is organised as a partnership when in actual fact it is not. Others that are organised as partnerships may wish to designate some non-members of the firm as "partners". This is also potentially misleading.
- (15) Where law firms are not organised as civil partnerships other terms may be used, such terms may include the word "members", “principals” or words having a similar meaning, otherwise the use of the term “partner” is considered as potentially misleading.

Designation of chambers

- (16) Where an association of advocates is organised or structured as a form of chambers, appropriate explanatory wording ought to appear on any letter headed paper, notepaper, brochure, publicity or promotional material, including any website or digital platform, that notwithstanding that a number of advocates practice under one name, there is no joint liability towards a client between each of the advocates practising under that name, and that each advocate is independent and has his own personal clients and is solely responsible for servicing those clients. Any material that projects chambers as a firm is considered to be misleading and in breach of this rule.
- (17) The Chamber considers the following to constitute appropriate wording that may be properly utilised on letter-headed notepaper, emails, websites, bills or other media where the name under which the advocates practice their profession:

[Name], is a grouping of independent lawyers. Whilst each lawyer practises law under the name of the group and from one office, each lawyer is responsible towards his/her own clients.

Naming non-partners

- (18) It is unusual for non-partners or non-members of a firm, or for advocates who are consultants or employees to be named on a partnership's or firm's letterhead or included in a list of partners or members. Likewise in the case of chambers, employees of any independent member should not be included in letterheads of the chambers concerned. Any advocate, chambers or law firm wishing to do so ought to qualify their status in clear and unambiguous terms.

Cold Calling

- (19) This Rule also prohibits advocates from making unsolicited approaches, either in person or by telephone, to a "member of the public". This is intended to protect the public from the intrusiveness and pressure of unsolicited telephone calls and approaches in person. This rule, therefore, bans what is often termed "cold calling" and prohibits, for example, knocking on doors, approaching people newly arrived at ports of entry, approaching someone in the street, in a hospital or at the scene of an accident, or handing out leaflets in the street. The rule also prohibits approaching a member of the public (either in person, e.g. in the street or by telephone) to conduct a survey which involves the collection of contact details of potential clients, or otherwise promotes your firm's practice. This rule also prohibits you from

undertaking any unsolicited communications with a person, a prospective client, who you know is already the client of another member of the profession, with a view to soliciting that prospective client to engage you to provide legal services which are already being provided by another member of the profession.

- (20) Attention is drawn to the section on touting on the code of Police laws which prohibits, amongst others, having any financial arrangements with an introducer in respect of business which has been obtained (either by that introducer or through an intermediary) by way of unsolicited face-to-face or telephone "cold calling".

Guidance Note 3 (Article 4)

- (1) This rule is intended to ensure that advocates, Chambers and law firms do not use means of promotion which may appear to be legitimate in order to avoid the application of these rules. For instance, advocates who may have an ownership interest in a corporate services provider may advertise the CSP and its services, but cannot then make reference to the provision of legal services in the same advert or promotional material. Nothing in this rule however ought to be construed as prohibiting or otherwise limiting any law firm to place or allow its name to be used on publicity and promotional material together with a firm or other entity or person providing services other than legal services, if the promotional or publicity material is intended to promote or publicise a particular joint event or initiative, provided that such initiative does not fall foul of any other rule.

(2) The Chamber has come across situations where a law firm forms part of a group of entities, owned and managed substantially by the same advocates and which provide services other than legal services through such entities. It is a common occurrence in such instances that the law firm uses a common logo or brand that is used for the promotion by that group or other entities within that group of services which are not legal services. At times, that common logo or brand may or may not be qualified by different nomenclatures of the different entities within the group, to the extent that it is not immediately clear which of the entities within the group is acting, or which services are being provided. This practice is considered to be a breach of the rule as generally, it has the ability to create confusion and can be misleading to the public in determining when that brand or logo is used for the provision of legal services and when it is used for the provision of other services. You are to exercise extreme care in the use of such brands or logos to ensure at all times that (i) the use of such logos or brands is not used or construed to be used as a means of evading these rules and guidelines; and (ii) consumers of legal services can easily identify the entity that is providing legal services without any reasonable doubt.

(3) Promotion of law firms and services by advocates should therefore clearly indicate themselves as such and should not confuse the market as to the services really being offered. Promotion of bundled services, where services that are not legal services are bundled with legal services are not only discouraged, but will be considered a breach of these rules.

(4) There are instances which are more evident than others that can fall foul of this rule. A website of an advocate promoting the provision of real estate management can hardly be considered as the provision of legal services; a website promoting the provision of legal and accounting and auditing services would also clearly fall foul of this rule¹.

(5) In other instances, advocates may provide services which are objectively complementary to legal services, such as the provision of corporate support services. In these instances advocates should be cautious as to the manner in which the provision of such services are promoted and ought to be clear and transparent.

(6) For instance, if those services are provided by the advocate directly, then it is legitimate to promote them as part of the same publicity material, but if those services are provided by a separate company in which the advocate has an interest, then it should be made just as clear that the services are so provided.

(7) A website or other digital platform, promoting the advocate's legal services should not itself promote the provision of such other services directly, unless those services are in actual fact provided by the advocate directly. In the event that those services are provided through a company or other entity, then the advocate's website or other publicity material may have a link directing the reader to the other website; or in the case of other publicity material may

¹ This is also likely to fall foul of other provisions of the Code itself and article 42 of the code of police laws.

mention the link to the other entity and refer readers to where they can find materials explaining the services provided by such other entity.

Guidance Note 4 – (Article 5)

- (1) This rule is intended to provide a non-exhaustive list of promotional activities that are strictly prohibited, since they are considered by their very nature to place the integrity and decorum of the profession at a disproportionately high risk, when compared to the real value that may be added to the provision of factual information to the public.
- (2) Running an advertising campaign for an advocate's practice using for instance buses, taxis or other forms of public transport or billboards, is considered as breaching the rules and is not to be conducted.
- (3) Publicity on certain websites which are typically known for highly questionable material or activity that may place the dignity and decorum of the profession in bad light is likewise susceptible to being considered in breach of the rules.

Guidance Note 5 – (Article 6)

Practitioners should feel free to use any medium that modern technology places at their disposal to be able to promote their practices provided that the provisions of the Code of Ethics and these rules are properly observed. The activities mentioned in Article 6 are not intended to be exhaustive but rather, to be used as a list of activities that shall not require any prior

approval by the Chamber and where advocates may therefore feel at liberty to undertake any of the activities mentioned in the list. Practitioners are also to note the provisions of Article 8 in connection with the use of websites and digital media for promotion of publicity activities.

Guidance Note 6 – (Article 7)

- (1) The appearance of members of the profession on TV and radio programmes has been a practice which has, over time, caused significant issues within the profession. In the light of the liberalisation of the principles on the promotion by advocates of their services, the general prohibition of participating on TV/radio programmes is being removed and substituted by a requirement based on full disclosure.
- (2) This, however, requires better and more stringent regulation of the practice in a manner that can be effectively monitored and enforced.
- (3) The Chamber notes the significant impact that a medium such TV or radio, as well as other media, may have on the general public – indeed it is designed to have such an impact. In this context, it finds that in the interest of honesty and integrity as underlying the core values of the profession – an advocate appearing on such programmes should not appear or be perceived as providing a public service when, in actual fact, the ultimate intention is to promote himself as an advocate, or to promote the legal services provided by such advocate. That would constitute deceitful conduct which is itself a breach of the Code of Ethics.

- (4) It is important that this rule is not to be confused with the prohibition in Article 5 – which deals with publicity on a broadcast medium. This rule simply regulates the appearance by an advocate on broadcast media for the purpose of the rule and therefore only regulates such conduct without prejudice to the prohibition set out in Article 5. Practitioners ought to exercise great care and circumspection in relying on the provisions of Article 7 to create a “safe harbour” from the application of the provisions of Article 5. There can be a very fine line that divides the two and this will normally depend on the overall impact and impression that an advocate’s appearance may have.
- (5) In this context, any advocate appearing on programmes on the media ought to state clearly whether he/she has been invited to provide generic advice or information as part of a public service, or whether he/she is promoting himself/herself and/or his/her services through that medium.
- (6) In the latter case, any additional visual or audio promotion or adverts complimenting or supporting what an advocate may say during a broadcast, will be considered as a prohibited activity under Article 5.
- (7) The Chamber recommends that the following statement, or a statement similar in effect, is made, whether verbally, or in the case of visual communication made to appear on screen:

Dr [-] is participating in this programme/broadcast on an invitation by the producers and his/her appearance is not an advert or promotion of his/her services;

or

Dr [-] is participating in this programme/broadcast of his/her own initiative and constitutes an advert or promotion of his/her professional services. Dr [-] has paid for this appearance.

Guidance Note 7 – (Article 8)

- (1) The Chamber is fully aware of the importance and significance of digital media as a form of providing information and for advocates to promote and publicise the provision of their services.
- (2) You should be cautious in the use of such digital media, given the international exposure that such media may have. The rules applicable to general publicity and promotion activities shall likewise apply to digital media. In addition, certain specific rules shall apply to digital media.
- (3) You are to be very cautious in the nature of the digital platforms that are used in order to publicise and promote your practice – sometimes the very platform used may well be considered to be likely to diminish public confidence in the legal profession or the administration of justice or otherwise, bring the legal profession into disrepute.