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[online version](http://www.charltonslaw.com/hong-kong-stock-exchange-publishes-revised-guidance-on-prospectuses-issued-within-3-months-of-the-issuers-financial-year-end/)

# Hong Kong Stock Exchange Publishes Revised Guidance On Prospectuses Issued Within 3 Months Of The Issuer’s Financial Year End And The Financial Information Requirements For First Draft Listing Documents And Guidance On Disclosure Of Intellectual Property Rights In Listing Documents

The Stock Exchange of Hong Kong (the “Exchange”) has recently published the following:

* [Revised guidance letter HKEx-GL25-11 setting out revised conditions for waivers from strict compliance with the requirement to include three years’ financial results in prospectuses issued within three months of the financial year end](#section1);
* [Revised guidance letter HKEx-GL6-09 on the financial information required to be included in first draft listing documents in specific situations](#section2); and
* [Guidance letter HKEx-GL30-12 on the disclosure of intellectual property rights in listing documents](#section3).

The following provides a summary of the above guidance.

## Guidance Letter On The Revised Conditions For Rule 4.04(1) Waivers

The Exchange published an updated guidance letter (HKEx-GL25-11) on 10 November 2011 setting out revised conditions for waivers from strict compliance with the requirement to include three years’ financial statements in prospectuses under Rule 4.04(1) of the Listing Rules. The guidance letter is available [here](gl25-11.pdf).

### Rule 4.04(1) and Rule 4.04(1) Waivers

Rule 4.04(1) requires a listing applicant to include in the accountants’ report its consolidated results for each of the three financial years immediately preceding the issue of the prospectus. These rules mirror the requirements of the Companies Ordinance. In practice it is often difficult for listing applicants to include audited accounts for the latest financial year when they propose to issue a prospectus shortly after the financial year end. In recognition of this, the Exchange’s practice has been to grant waivers from strict compliance with Rule 4.04(1) (“Rule 4.04(1) Waivers”) subject to certain conditions. The rationale for the changes to the conditions for Rule 4.04(1) Waivers stems from amendments to Rule 13.49 which reduce the time limit for publishing preliminary results announcements from four to three months after the end of a financial year for accounting periods ended on or after 31 December 2010.

### Effective Date

The revised conditions apply to listing applicants with annual accounting periods ending on or after 31 December 2011.

### Revised Conditions for Rule 4.04(1) Waivers

The revised guidance letter sets out two sets of conditions for Rule 4.04(1) Waivers distinguishing an applicant which issues a prospectus within two months after the latest financial year end and an applicant which issues a prospectus in the third month after the latest financial year end. These are the conditions to which a Rule 4.04(1) Waiver will normally be subject, although the Exchange may modify or add to these conditions as it sees fit.

1. For an applicant that issues a prospectus within two months after the latest financial year end, a Rule 4.04(1) Waiver will be subject to the following conditions:
	1. the applicant must list on the Exchange within three months after the latest year end;
	2. the applicant must obtain a certificate of exemption from the Securities and Futures Commission (“SFC”) on compliance with the Companies Ordinance Requirements;
	3. a profit estimate for the latest financial year (which must comply with Main Board Rules 11.17 to 11.19) must be included in the prospectus or the applicant must provide justification why a profit statement cannot be included in the prospectus; and
	4. there must be a directors’ statement in the prospectus that there is no material adverse change to its financial and trading positions or prospect with specific reference to the trading results from the end of the stub period to the latest financial year end.
2. For an applicant that issues a prospectus in the third month after the latest year end, a Rule 4.04(1) Waiver will be subject to the following conditions:
	1. the applicant must list on the Exchange within three months after the latest year end;
	2. the applicant must obtain a certificate of exemption from the SFC on compliance with the Companies Ordinance Requirements; and
	3. the prospectus must include financial information for the latest financial year and a commentary on the results for the year. The financial information to be included in the prospectus must:
		1. follow the same content requirements as for preliminary results announcements under Rule 13.49; and
		2. be agreed with the reporting accountants following their review under Practice Note 730 “Guidance for Auditors Regarding Preliminary Announcements of Annual Results” issued by the Hong Kong Institute of Certified Public Accountants

### Publication of Preliminary Results Announcement and Annual Report

An applicant which has obtained a Rule 4.04(1) waiver under paragraph 2 above is still required to publish a preliminary results announcement and an annual report for the latest financial year according to Rules 13.49 and 13.46. However, if the applicant has already included the preliminary results information under paragraph 2(iii) above, the Exchange may grant a waiver of the preliminary results announcement requirement under Rule 13.49 on a case-by-case basis.

## Revised Guidance Letter On The Financial Information Required To Be Included In First Draft Listing Documents

The Exchange published a revised version of its guidance letter HKEx-GL6-09 on 2 December 2011 in relation to its administrative practices on accepting early filings of listing applications and the information it requires to be included in the first draft listing document submitted for vetting. The revised guidance is available [here](gl6-09.pdf). The revised administrative practices are summarised below.

### 1. Applications made within 45 days after the end of the trading record period that do not include financial figures for the third financial year

In general, the Exchange will only accept an application for vetting from an applicant whose trading record is three years or more if the first draft listing document includes, at a minimum, figures for three financial years in audited or advanced draft form.

If an application is filed within 45 days after the end of the trading record period but does not include the third financial year figures in audited or advanced draft form in the first draft listing document, the following conditions must be satisfied in order for the Exchange to accept the application for vetting:

1. the submission of a sponsor’s confirmation (the “Sponsor’s Confirmation”) to the effect that the sponsor is satisfied that:
	1. the applicant and sponsor have made a demonstrable effort in good faith to produce an advanced draft listing document;
	2. the Exchange will have enough information to begin substantive review of the listing application; and
	3. the sponsor considers, beyond reasonable doubt, that the applicant will satisfy Rule 8.05 or other financial standards requirement following its due diligence review under Chapter 3A and Practice Note 21 of the Listing Rules;
2. the inclusion in the first draft listing document of:
	1. audited figures for the two financial years before the most recent audited balance sheet date (e.g. if the applicant’s trading record period is from 1 January 2007 to 31 December 2009, audited figures for 2007 and 2008 must be included) and related management discussions; and
	2. the stub period figures as of a date within 230 days of the filing of the Form A1 in audited or advanced draft form and the prior year stub period comparative figures (e.g. six months’ accounts for 2009 and accounts for the comparable period in 2008) and related management discussions. However under the revised guidance, the applicant is not required to provide at the time of filing any prior year stub period comparatives and related management discussions if the final listing document will not include any stub period figures

### 2. Latest audited financial statements are more than six months old

In general, the Exchange will not accept a listing application for vetting if the latest financial period reported on in the first draft listing document is more than six months old at the date of filing of Form A1 (Rule 8.06).

The Exchange may however accept a listing application in these circumstances if the following conditions are met:

1. a Sponsor’s Confirmation is submitted which meets the requirements set out in paragraph 1.1 above;
2. if the latest audited financial statements are of a date within 230 days of the filing of Form A1, the first draft listing document must include audited figures for the three financial years preceding the most recent audited balance sheet date and related management discussions;
3. if the latest audited financial statements are of a date more than 230 days before the filing of Form A1, the first draft listing document filed with Form A1 must include:
	1. audited figures for the three financial years preceding the most recent audited balance sheet date and related management discussions; and
	2. stub period figures in audited or advanced draft form that are not more than six months old at the time of filing of Form A1 and the prior year stub period comparative figures and related management discussions. The applicant is not required to provide at the time of filing any prior year stub period comparatives and related management discussions if the final listing document will not include any stub period figures.

### 3. Acquisitions under Rule 4.28 and Rule 4.29

If an applicant has acquired or intends to acquire a company or business after the date to which the latest audited (or advanced draft) accounts have been made up and the acquisition falls within Rule 4.28, the first draft listing document must include pro forma information of the enlarged group under Rule 4.29. However, under the revised guidance letter, such pro forma information will not be required if the financial information in the final listing document will be updated to include pre-acquisition financial information relating to the acquired company or business as required under Rule 4.05A.

### Application of the Revised Administrative Practices

1. The revised administrative practices set out above apply only to the filing of listing applications after the end of the trading record period.
2. If the guidance set out above is followed, there is no need for the sponsor to apply to the Exchange for acceptance of an early filing.
3. The revised administrative practices also apply to an applicant whose trading record is less than three years and who intends to apply for listing under Rules 8.05(3) and 8.05A on the basis of a shorter trading record period. In this case, the applicant’s first draft listing document must include audited financial information for the period since the beginning of the shorter trading record period.
4. Applicants should allow the Exchange sufficient time to review the final year financials or latest stub period financials to avoid any delay in the listing hearing timetable.
5. The revised administrative practices do not affect:
	1. the Exchange’s commenting process for assessing an applicant’s listing eligibility regarding its final year or latest stub period financials; and
	2. an applicant’s obligations under Rule 8.06 and the requirements for submission of accountants’ reports and statement of adjustments (if any) for vetting under Chapter 9 of the Listing Rules.

## Guidance Letter On The Disclosure Of Intellectual Property Rights In Listing Documents

The Exchange published guidance letter HKEx-GL30-12 in February 2012 on the disclosure of intellectual property rights (“IP Rights”) in listing documents. A copy of the guidance letter is available [here](gl30-12.pdf).

### Purpose of the Guidance

The purpose of the guidance is to encourage issuers to discuss material IP Rights and focus on making more meaningful disclosure of IP Rights to investors in listing documents. In particular the guidance discourages the disclosure of IP Rights in long tables which is common in Hong Kong.

### Rule 28(4) of part A of Appendix 1 of the Main Board Listing Rules

Paragraph 28(4) of part A of Appendix 1 to the Main Board Listing Rules requires listing documents to disclose particulars of any trademarks, patents or other intellectual or industrial property rights which are material to the group’s business and, where such factors are of fundamental importance to the group’s business or profitability, a statement regarding the extent to which the group is dependent on such factors.

### Material IP Rights

The guidance letter recommends that instead of using long tables, material IP Rights should be discussed as part of the description of the issuer’s business. Materiality should be judged: (i) from the perspective of investors – whether the information would be relevant to their decision to invest; (ii) in the context of the issuer’s business, profitability and prospects as a whole; and (iii) by the extent to which the issuer’s business activities and operations, financial position and prospects are dependent on the IP Rights. In essence, a material IP Right is one the absence or defect of which, from a reasonable investor’s perspective, would materially impact the business, profitability or prospects of the issuer and its subsidiaries, taken as a whole.

The Exchange acknowledges that there may be circumstances in which issuers consider it justifiable to include IP Rights in listing documents even though they do not appear to be material to the business as a whole. In this case, issuers should make such disclosure as they consider appropriate.

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