

HKE_x GUIDANCE LETTER
HKE_x-GL30-12 (February 2012)

Subject	Disclosure of Intellectual Property Rights in Listing Documents
Listing Rules and Regulations	Main Board Rule Appendix 1 GEM Rule Appendix 1
Related Publications	N/A
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Important note: *This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Listing Rules, or this letter.*

1. Purpose

- 1.1 The Exchange wishes to encourage issuers and their advisors to reduce the practice of disclosing intellectual property rights in tabular form in listing documents, and to encourage issuers to discuss material intellectual property rights and focus on making more meaningful disclosure on such rights to the investors.

2. Relevant Requirements

Main Board Listing Rule Paragraph 28(4) of Part A of Appendix 1 (GEM Listing Rule Paragraph 28(4) of Part A of Appendix 1) requires issuers to include in their listing documents particulars of any trade marks, patents or other intellectual or industrial property rights (together referred here as “IP Rights”) which are material in relation 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.

3. Guidance

- 3.1 Issuers should discuss those IP Rights that are material to their businesses as part of the description of their businesses, rather than as a separate list. This is consistent with the wording of Paragraph 28(4), and issuers should focus on what IP Rights would be meaningful to disclose to investors and result in more relevant prospectus disclosure.
- 3.2 This would involve more consideration and judgment as to what IP Rights are considered material by the issuers especially when there are numerous IP Rights involved. In deciding what IP Rights are material in the context of disclosure in listing documents, issuers should consider the following :

- (i) Materiality should be analyzed from the perspective of investors—what would be relevant to their decision on whether to invest.
- (ii) Materiality should be judged in the context of the issuer’s business, profitability and prospects as a whole.
- (iii) Materiality should also be judged in the context of the extent to which the issuer’s business activities and operations, financial position and prospects are dependent on the IP Rights.

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.

3.3 Disclosure of IP Rights by issuers in other jurisdictions is far less extensive than in Hong Kong listing documents :

- (i) In the US, issuers are required to take into account both quantitative and qualitative factors such as the significance of the matter to the issuers, the pervasiveness of the matter and the impact of the matter in determining what information is material and should be disclosed. As a result, disclosure of IP Rights are far less extensive than in HK prospectuses (if any), and, if they appear, would form part of the narrative disclosure of all material information relating to the issuer’s business.
- (ii) In the UK, issuers do not generally engage in extensive disclosure of IP Rights. To the extent the issuer considers any IP Rights material to its business or profitability, it typically will describe such rights in narrative form as part of the business section.
- (iii) In Singapore, issuers follow the general principle in the Singapore Securities and Futures Act, and Singapore prospectuses do not generally contain disclosure of IP Rights unless a particular IP Right is materially important to the business, financial position, performance or prospects of the issuer, in which case it would be discussed as part of the business description of the issuer.
- (iv) In Australia, prospectuses do not generally contain disclosure of IP Rights unless they are important. If certain IP Rights are considered important, an IP report will be prepared and form part of the prospectus.

In these jurisdictions, very rarely are IP Rights disclosed in long tables, as they commonly are in Hong Kong. Issuers can review relevant IP Rights disclosures in prospectuses on other major stock exchanges, examples of which can be found at their respective websites.

3.4 We recognize that there may be circumstances where the issuer considers it justifiable to include certain IP Rights in the listing documents, although they may not appear significant to the issuer’s business as a whole, in which case the issuer should make such disclosure as they think appropriate in the listing document.
