

23 March 2015

To: All Registered Business Valuers registered with
the Hong Kong Business Valuation Forum

Dear members,

Subject: Intellectual Property (IP) Valuation Reporting Standard

In 2013, the member institutes of the HKBVF (Hong Kong Business Valuation Forum) were invited by the Intellectual Property Department of the Government of the HKSAR to attend various round table meetings with various stakeholders on IP valuations. In the meetings, the stakeholders reached a consensus that there is a need to have a set of IP valuation reporting standard for the stakeholders to refer to, and the HKBVF took the lead in drafting a reporting standard.

In 2014, the working group of the HKBVF worked and circulated a draft reporting standard for the Council to discuss and endorse. The intention is to incorporate the IP valuation reporting standard into the existing HKBVF Business Valuation Standards (BVS)

The Council recently endorsed the IP valuation reporting standard and a copy is attached for your reference. Please be reminded that the attached IP valuation reporting standard forms part of the HKBVF BVS.

Yours faithfully



Sr Joseph Ho
Honorary Secretary, the Council
The Hong Kong Business Valuation Forum

Statement of Standard

5.14 Reporting of Intellectual Property Valuation

Background

1. This Statement of Standard is supplemental to and should be read in conjunction with, the following documents released by the International Valuation Standards Council:

- The International Valuation Standards incorporating the IVS Framework and General Standards, IVS 210 'Intangible Assets' ("IVS 210") and IVSC Technical Information Paper 3, 'The Valuation of Intangible Assets' ("TIP 3").

2. IVS 210 defines an intangible asset as *"a non-monetary asset that manifests itself by its economic properties. It does not have physical substance but grants rights and economic benefits to its owners"*.

A variety of intangible assets are identified in IVS 210 which are more clearly defined in Section B of this guidance.

3. Intellectual property rights ("IP") are a subset of intangible assets. Intellectual property is a legal concept that refers to creations that are derived from intellectual or creative effort for which exclusive rights are recognised. IP rights are negative rights in that they give the owner the right to prohibit others from using the property without permission.

4. TIP 3 refers to the need for a valuer to understand the *"nature and attributes of the subject intangible asset"*, reference is also made to *"characteristics"*, *"attributes"* and *"functionality"* of the subject asset.

This is important as the functional, market and economic attributes of IP influence its capability to generate earnings and risk profile and, therefore, its value.

5. This Statement of Standard is for the use of the Registered Business Valuers registered with the Hong Kong Business Valuation Forum (the "Valuer") undertaking valuations of IP.

A. Minimum Contents of a Valuation Report

1. Description of the Valuer
 - i. A statement of independency in relation to the engagement
 - ii. A statement of valuation skillset (such as academic or practical training)
 - iii. A statement of knowledge of the property (could be assisted by an industry consultant or by an additional Valuer in the case of the Valuer lacking particular knowledge of the property)
 - iv. A statement of experience in valuing similar property
2. Scope of work
 - i. Valuation date
 - ii. Purpose of valuation
 - iii. Nature and description of documents / information relied upon in performing the valuation
 - iv. Details of any investigations carried out by the Valuer in performing the valuation
 - v. The compliance of applicable valuation reporting standards (in this case, the IVS and the Business Valuation Standards published by the Hong Kong Business Valuation Forum from time to time)
3. Description of the intellectual property
 - i. Owner(s) description
 - ii. Usage description
 - iii. Background information and characteristics description
 - iv. Registration details of the subject intellectual property
4. Basis of value

One of the following bases

 - i. Market value basis

Market value is the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties have each acted knowledgeably, prudently and without compulsion.
 - ii. Non-market value basis
 - a) Fair value

Fair value is the estimated price for the transfer of an asset or liability between identified knowledgeable and willing parties that reflects the respective interests of those parties.
 - b) Investment value

Investment value is the value of an asset to the owner or a prospective owner for individual investment or operational objectives.
5. Basic description of the industry and the market to which the intellectual property is applicable

6. Verification of information
 - i. Source or availability of the information used by the Valuer in the course of valuation
 - ii. Description of research / verification work conducted
 - iii. Description of any discussion or meeting that has been conducted with the owner or other industry experts
7. Disclosure of assumptions (general or special)
8. Valuation approach and reasoning

The Valuer needs to state clearly which approach(s) has been adopted, the reasons for adopting the approach(s), and the details of use of the selected approach and its related methodology. Some of the methods that are commonly used and recognised for the valuation of intellectual property are discussed in IVS TIP3. IVS 210 indicates that because of the heterogeneous nature of many intangible assets there is often a greater need to consider the use of multiple methods and approaches than for other asset classes.

Relevant factors that affect IP valuations include but not limited to :

 - i. The relevant legal rights, protections and limitations pertaining to the intellectual property to be valued.
 - ii. The history and the nature of the intellectual property.
 - iii. The expected remaining economic (useful) and legal life of the intellectual property.
 - iv. The direct or indirect economic benefits that the intellectual property is expected to provide to its owner during its life.
 - v. Previous or existing litigation involving the intellectual property.
 - vi. The distinction between an undivided interest and a fractional interest in the intellectual property resulting from, e.g., shared ownership or a licensing agreement.
 - vii. The feasibility and character of potential commercial exploitation of the intellectual property.
 - viii. Additional factors relating to the specific type of intellectual property to be valued, as appropriate.
9. Disclosure of parameters adopted and their sources
10. Valuation uncertainty - discussion of factors or news that might affect the valuation
11. Valuation result – an absolute figure and words in an agreed currency and prevailing exchange rate at the valuation date, if appropriate. A range of values is not encouraged from a professional perspective
12. Limiting conditions and restrictions
13. Signature of the Valuer
14. Literature references

B. DEFINING THE SUBJECT IP AND ASSESSING LEGAL CHARACTERISTICS IN THE VALUATION REPORT

1. Brand-IP, tech-IP and artistic-IP are the three main categories of IP and can be comprised of a number of distinct legal rights the ownership of which can vary between jurisdictions and classes of products and services. It is important that the Valuer identifies, defines and describes the specific rights that are the subject of the valuation report.
2. Unless a valuation clearly identifies the legal rights that underpin the subject asset, and indicates whether ownership of the rights has been established, the subsequent steps in the valuation can be compromised.

Brand-IP

3. There is not a generally accepted legal or financial definition of the term 'brand' It is therefore essential for a Valuer to first define the pool of rights that are the subject of a brand valuation. The following should always be considered:
 - Registered trademarks;
 - Common law rights in trademarks (for jurisdictions where common law applies);
 - Copyright in artistic works within the brand design/ logo;
 - Design rights.
4. Additional rights might be included in the definition of 'brand' such as:
 - Copyright in brand guidelines and marketing collateral;
 - Recipes, formulations and other product related confidential information;
 - URLs and social media websites.
5. The form of legal protection can vary by jurisdiction, so a brand can consist of multiple rights of different types in different jurisdictions and also by class of product or service.
6. Some ownership rights are automatic while others require examination and registration by the appropriate body.
7. Each right can be owned by different parties. For example, the creator of an artistic work is the initial owner of the copyright rather than the party that paid for the work who may own the trademark.
8. Trade mark registrations in each jurisdiction are by class and in respect of specific goods and services. Registration in one class does not provide the right to use the mark in another class.

Tech-IP

9. Technology related IP includes patents, design rights, plant breeders' rights, circuit layout rights, copyright associated with technical know-how, and trade secrets pertaining to formulations and other technical know-how.
10. In some instances it is appropriate to value specific rights on a standalone basis, whilst in

others it is more appropriate to value as a pool of complimentary assets. Where the term 'technology' is used to describe an asset, the valuation should clearly identify the specific rights included in the definition.

Patents

11. Patents provide inventors with the exclusive right to prohibit others from using an invention without permission for a set period. Patents are governed by both specific country legislation and by international treaties. Consequently, the extent to which a technology benefits from patent protection can vary by jurisdiction.
12. Patent protection is for a fixed term. The term may be extended under certain circumstances.

Other Types of Tech-IP

13. The term '**trade secrets**' generally refers to know-how that confers an economic benefit, is not in the public domain and is subject to reasonable efforts to maintain its confidentiality.
14. Confidentiality can be protected through physical and electronic security measures, limiting access to the information within the company, contractual obligations, and enforcement of non-disclosure and non-compete agreements.
15. The period of legal protection is not limited unless protection is reliant on contractual terms.
16. **Copyright** can protect certain documented know-how, designs, and computer software (Patents and copyright can be used at the same time).
17. Copyright protects the expression of the work, and not the idea or process underlying the work. In the case of software, the source code represents the expression of the work. Other legal characteristics of copyright are identified under the heading 'Artistic-IP'.

Artistic-IP

18. TIP 3 states that artistic-related intangible assets "arise from the right to benefits such as royalties from artistic works such as plays and other performed works; books, newspapers and other literary works; films, television and other visual media; music, including lyrics (either published or performed), or photographs, illustrations, drawings and paintings."
19. Copyright is the most common form of IP protecting this category of intangible asset. Copyright vests in the original creator of the work, so it is necessary to establish the author of the work and the current holder of the copyright if there has been an assignment of ownership.

20. In some jurisdictions copyright can be registered and this can support copyright litigation, but registration is not necessary in all jurisdictions. In some circumstances a copyright owner's protection can be enhanced through notification that the subject item is subject to copyright.
21. In describing the subject asset, it is necessary to identify the type of work and potential sources of earnings.
22. Copyright can represent a range of rights and it is important for the valuer to identify the rights that are the subject of a particular valuation. In addition to the original author's right there might be separate rights to sell, copy, distribute or to create derivatives of the original work.
23. The total potential earnings from the copyright works might therefore be distributed amongst different owners of different rights to the copyright.
24. The period of protection is normally the lifetime of the creator plus a number of years depending upon the relevant jurisdiction.

This Standard became effective 1 April 2015