

Accounting Bulletin 6

Guidance on the Requirements of Section 436 of the Hong Kong Companies Ordinance Cap.622



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

ACCOUNTING BULLETIN 6
GUIDANCE ON THE REQUIREMENTS OF SECTION 436
OF THE HONG KONG COMPANIES ORDINANCE CAP. 622

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ACCOUNTING BULLETIN 6

**GUIDANCE ON THE REQUIREMENTS OF SECTION 436 OF THE HONG KONG
COMPANIES ORDINANCE CAP. 622**

**"REQUIREMENT IN CONNECTION WITH PUBLICATION OF 'SPECIFIED
FINANCIAL STATEMENTS' AND 'NON-STATUTORY ACCOUNTS'"**

(Issued June 2015)

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This Accounting Bulletin provides general guidance on the requirements of section 436 of the Hong Kong Companies Ordinance Cap. 622. It does not introduce additional accounting, disclosure or legal requirements. Users of this Accounting Bulletin should consider taking their own legal advice if in doubt as to their obligations under the Hong Kong Companies Ordinance as the HKICPA and the authors do not accept responsibility for loss caused to any person who acts or refrains from acting in reliance on the material in this Accounting Bulletin, whether such loss is caused by negligence or otherwise.

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INTRODUCTION

1. This Accounting Bulletin is prepared and issued by the Institute to provide guidance on the requirements concerning the publication of 'specified financial statements' or 'non-statutory accounts' by any Hong Kong incorporated company, as set out in section 436 of the new Hong Kong Companies Ordinance, Cap. 622 (CO). Hereafter, all references to sections or schedules are to those of the CO unless otherwise stated.
2. Section 436 replaces the requirements of section 129C(1) and (3) of the predecessor Hong Kong Companies Ordinance, Cap. 32 dealing with the publication of a company's balance sheet. It also introduces new requirements dealing with the publication of a company's 'non-statutory accounts'. Essentially, section 436 requires that:
 - (a) when Hong Kong incorporated companies make their 'specified financial statements' available to others, they must always ensure that they are accompanied by the auditor's report on those financial statements; and
 - (b) when Hong Kong incorporated companies make any 'non-statutory accounts' available to others they must be accompanied by a statement that includes the information required by section 436(3) and must not be accompanied by the auditor's report on its 'specified financial statements' for the same financial year.

Section 436 does not apply to companies incorporated outside Hong Kong directly nor is it indirectly applicable to foreign companies listed on the Main Board or GEM through any requirement of the SEHK's Listing Rules or GEM Rules as at the date of publication of this Accounting Bulletin.

3. In accordance with section 358(3), section 436 applies in relation to 'specified financial statements' and 'non-statutory accounts' for financial years beginning on or after the commencement date of that section i.e. it applies to 'specified financial statements' and 'non-statutory accounts' for financial years beginning on or after 3 March 2014.
4. Failure to observe the requirements in connection with the publication of 'specified financial statements' and 'non-statutory accounts' will mean that the company and every responsible person of the company, commits an offence and each is liable to a fine of \$150,000 (section 436(5)).
5. This Bulletin provides guidance for members by addressing the following questions:
 - (a) What does section 436 require companies to do?
 - (i) Requirements that apply when making 'specified financial statements' available to others
 - (ii) Requirements that apply when making 'non-statutory accounts' available to others
 - (b) When is section 436 applicable?
 - (i) What does the term 'specified financial statements' mean?
 - (ii) What does the term 'non-statutory accounts' mean?
 - (iii) What actions would or would not be considered making 'specified financial statements' or 'non-statutory accounts' available to others within the scope of section 436?
 - ~~(c) Does section 436 apply to Summary Financial Reports prepared under sections 437-446?~~

The appendices to this Bulletin contain a list of defined terms used in this Bulletin, Illustrative Examples of the section 436(3) statement to be attached to 'non-statutory accounts' and a guide to when section 436 first becomes applicable to interim financial reports of listed companies.

6. This Accounting Bulletin is for guidance only and does not introduce additional disclosure or legal requirements. It has been developed in consultation with the Companies Registry in so far as the provisions in the CO are concerned. However, users of this Accounting Bulletin should consider taking their own legal advice if in doubt as to whether a document constitutes 'non-statutory accounts' or what are their obligations in connection with making 'specified financial statements' or 'non-statutory accounts' available to others.

WHAT DOES SECTION 436 REQUIRE COMPANIES TO DO?

7. Section 436 sets out separate requirements that apply depending on whether a Hong Kong incorporated company is intending to make its 'specified financial statements' or its 'non-statutory accounts' available to others. As explained in more detail in paragraphs 15 to 25 of this Bulletin, 'specified financial statements' are the company's statutory financial statements (see paragraph 19), whereas 'non-statutory accounts' has a broad meaning and refers to any statement of financial position or statement of comprehensive income, relating to, or purporting to deal with, a financial year of the company (otherwise than in the statutory financial statements).
8. The requirements in section 436 specify the information that should accompany those documents or publications if they are made available to others (the concept of availability is discussed in more detail in paragraphs 26 to 33). These requirements are set out in paragraphs 9 to 11.

Requirements that apply when making 'specified financial statements' available to others

9. Section 436(2) requires that any 'specified financial statements' that are circulated, published, issued or otherwise made publicly available must be accompanied by the auditor's report on those financial statements. In other words, if a company makes its statutory financial statements available to others in a way discussed in paragraphs 26 to 29 and 31 to 33, then those financial statements must have the auditor's report attached to them.
10. Failure to attach the auditor's report will mean that the company and every responsible person of the company, commits an offence and each is liable to a fine of \$150,000 (section 436(5)).

Requirements that apply when making 'non-statutory accounts' available to others

11. The requirements relating to 'non-statutory accounts' are intended to ensure that 'non-statutory accounts' are clearly distinguished from the company's statutory financial statements and to also ensure that the reader is informed of certain important matters relating to the company's statutory financial statements. In this regard, section 436 contains two key requirements:
- (a) Section 436(4) states that the 'non-statutory accounts' must not be accompanied by any auditor's report on the 'specified financial statements' (i.e. the opposite of the requirement applicable to 'specified financial statements' set out above in paragraph 9); and
 - (b) Instead, Section 436(3) states that the 'non-statutory accounts' must be accompanied by a statement indicating:
 - (i) that those accounts are not 'specified financial statements' in relation to the company;
 - (ii) whether the 'specified financial statements' for the financial year with which those accounts purport to deal have been delivered to the Registrar;
 - (iii) whether an auditor's report has been prepared on the 'specified financial statements' for the financial year; and
 - (iv) whether the auditor's report:

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- (i) was qualified¹ or otherwise modified;
- (ii) referred to any matter to which the auditor drew attention by way of emphasis without qualifying the report; or
- (iii) contained a statement under section 406(2) or 407(2) or (3)².

Illustrative examples of such statements are provided in Appendix 2 to this Bulletin.

12. Section 436(4) does not define what is meant by 'accompanied by' when referring to any auditor's report on the 'specified financial statements'. In this regard, the Companies Registry has published the following Frequently Asked Question to clarify the requirements:

"Section 436(4) provides that the non-statutory accounts must not be accompanied by any auditor's report on the specified financial statements. What is the meaning of 'accompanied by' in this section?"

"If a company circulates, publishes or issues any non-statutory accounts, such accounts must not be accompanied by the auditor's report on the specified financial statements. If the 'non-statutory accounts' are included in the same document containing the specified financial statements but it is clear that the auditor's report on those financial statements only relates to the specified financial statements and not to the 'non-statutory accounts' included in the same document, the prohibition on auditor's report accompanying non-statutory accounts as mentioned above is not contravened. Notwithstanding this, the 'non-statutory accounts' may be accompanied by a separate report from the auditor on the non-statutory accounts if it is clear that the report is not the auditor's report that was issued on the company's 'specified financial statements'."

Therefore, it follows that a single document could contain the company's 'specified financial statements', their related auditor's report, the 'non-statutory accounts' and a non-statutory assurance report on such accounts without contravening section 436(4).

13. Where an auditor's report on the relevant 'specified financial statements' had been qualified, modified, or contained a matter of emphasis or a statement under any of sections 406(2) or 407(2) or 407(3), section 436(3) does not ask for any detail to be provided about the nature of those matters in the required statement. As such, it would be sufficient just to state the fact that the auditor's report on the relevant 'specified financial statements' had been qualified, modified or contained a matter of emphasis or any of the specified statements. However, it would be informative for users of the 'non-statutory accounts' if a brief description is provided of the particular matter or matters addressed in the auditor's report and in some cases such a description may be required by other requirements which apply to the 'non-statutory accounts' in question³. This additional information about the audit qualification or modification can be provided without contravening section 436(4), by reproducing some, but not all, of the qualified or modified auditor's report. For example, in the case of a qualified auditor's report the "Basis for

¹ The meaning of 'qualified' in the CO is equivalent to the meaning of 'modified' in the context of clarified Hong Kong Standard on Auditing (HKSA). The terms 'qualified' or 'modified', and 'unqualified' or 'unmodified', are used interchangeably in this Accounting Bulletin. Guidance on types of modified opinions is set out in HKSA 705 'Modifications to the Opinion in the Independent Auditor's Report'.

² An auditor's report has to contain a statement under:

- Section 406(2) - where, in the auditor's opinion, the information in the directors' report for a financial year is not consistent with the financial statements for that year;
- Section 407(2) - where, in the auditor's opinion, adequate accounting records have not been kept, or the financial statements are not in agreement with the accounting records in any material respect; and/or
- Section 407(3) - where the auditor has failed to obtain all the information or explanations necessary and material for the purpose of the audit.

³ For example, a preliminary announcement of results for a financial year satisfied solely by meeting the requirements of Appendix 16, paragraph 45(1) to the SEHK's Listing Rules or GEM Rule 18.50(i) constitute 'non-statutory accounts' for both the current and comparative financial years. It should be noted that in such cases Appendix 16, paragraph 45(7) to the SEHK's Listing Rules and GEM Rule 18.51 require that details of any proposed qualification or modification of the auditor's report on the underlying annual financial statements must be provided in the preliminary announcement. Further guidance on this matter is given in paragraph IE7 of Appendix 2 to this Bulletin.

qualification” paragraph(s) could be extracted, as well as stating whether the auditor's opinion was an “except for” opinion, a disclaimer of opinion or an adverse opinion. It should be remembered that section 436(4) expressly prohibits attaching the full auditor's report itself to the 'non-statutory accounts'.

14. Attaching the statutory auditor's report on the 'specified financial statements' to any 'non-statutory accounts' for the financial year covered in the 'non-statutory accounts' or failing to attach the required section 436(3) statement on the matters listed in paragraph 11(b) above will mean that the company and every responsible person of the company, commits an offence and each is liable to a fine of \$150,000 (section 436(5)).

WHEN IS SECTION 436 APPLICABLE?

15. The scope of section 436 is set out in section 436(1). This sub-section states that section 436 applies if a company:
 - (a) circulates, publishes or issues:
 - (i) any 'specified financial statements' in relation to the company; or
 - (ii) any 'non-statutory accounts' in relation to the company; or
 - (b) otherwise makes such financial statements or accounts available for public inspection in a manner calculated to invite members of the public generally, or any class of them, to read the financial statements or accounts.

Section 436 only applies to actions by the company. It therefore does not apply if a company's 'specified financial statements' or any 'non-statutory accounts' in relation to the company are circulated, published or issued by a third party and the company has neither consented to nor been involved in such action.

16. It can be seen from this that, in order to understand when the provisions of section 436 might apply to a company's actions, it is necessary to understand the following key matters:
 - (a) the meaning of the term 'specified financial statements' (paragraphs 17 to 20);
 - (b) the meaning of the term 'non-statutory accounts' (paragraphs 21 to 25); and
 - (c) what actions would or would not be considered circulating, publishing, issuing or otherwise making 'specified financial statements' or 'non-statutory accounts' available to others within the scope of section 436 (paragraphs 26 to 33).

Each of these matters is discussed in turn below

What does the term 'specified financial statements' mean?

17. Section 436(6) states that '**specified financial statements**' in relation to a company means any financial statements prepared by the directors:
 - (a) a copy of which is required by section 429(1) to be laid before the company in general meeting; or
 - (b) a copy of which is required by section 430(3) to be sent to every member⁴ or is otherwise circulated, published or issued by the company.

⁴ Copies of the statutory financial statements and other reporting documents are required to be sent to every member when a company is not required to hold an annual general meeting under section 612(2).

18. Sections 429(1) and 430(3) in turn refer to 'reporting documents', which include a company's annual financial statements or, if the company is a holding company, its annual consolidated financial statements.
19. Consequently, a company's 'specified financial statements' are in effect its annual audited financial statements prepared for the statutory purpose of reporting to its members. These are often referred to as 'statutory financial statements' and may be company-level or consolidated financial statements depending on whether or not the company prepares consolidated financial statements under section 379(2).
20. It should also be noted that section 436 applies irrespective of whether a company is eligible for the reporting exemption under section 359. Therefore a company's 'specified financial statements' may have been prepared under the full 'true and fair' reporting regime (i.e. in accordance with HKFRS issued by the HKICPA) or under the simplified reporting regime (i.e. in accordance with the Small and Medium-sized Entity Financial Reporting Framework and Financial Reporting Standard (~~Revised 2014~~)-issued by the HKICPA).

What does the term 'non-statutory accounts' mean?

21. Section 436(6), as amended by the Companies (Amendment) (No.2) Ordinance 2018, states that '**non-statutory accounts**' in relation to a company ~~- means:~~

(a) means:

- (a) any statement of financial position or statement of comprehensive income, otherwise than as part of any financial statements prepared by the directors, relating to, or purporting to deal with, a financial year of the company; or
- (b) accounts in any form, otherwise than as part of any financial statements prepared by the directors, purporting to be a statement of financial position or statement of comprehensive income for a group of companies consisting of the company and its subsidiary undertakings relating to, or purporting to deal with, a financial year of the company; but

(b) excludes any summary financial report^{4a}.

22. Therefore, the term 'non-statutory accounts' includes:

- a company's or group's statement of comprehensive income for any financial year; or
- a company's or group's statement of financial position as at the end of any financial year,

provided⁵ by the company or group otherwise than as part of a company's or group's 'specified financial statements' (i.e. its statutory financial statements).

^{4a} The requirements relating to summary financial reports are found in a separate Division of Part 9 of the CO (Division 7) compared to section 436 (which is in Division 6). This Division, together with the Companies (Summary Financial Reports) Regulation (Cap. 622E), covers a comprehensive range of matters including the content of summary financial reports as well as their distribution.

Prior to the Companies (Amendment) (No. 2) Ordinance 2018 (the 2018 Amendment Ordinance), section 436(6) did not explicitly exclude summary financial reports from the scope of section 436 which gave rise to concerns as to whether or not summary financial reports are subject to the requirements under section 436. This matter was discussed in paragraphs 34 to 38 of the June 2015 Issue of AB6. As a result of the amendment to section 436(6) under the 2018 Amendment Ordinance, it is now clear that summary financial reports are outside the scope of section 436. The 2018 Amendment Ordinance came into effect on 1 February 2019 and consequently paragraphs 34 to 38 have been deleted.

⁵ Meaning circulated, published etc in a manner set out in section 436(1).

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23. The term 'non-statutory accounts' also includes accounts in any form (otherwise than as part of a group's 'specified financial statements') 'purporting to be' a statement of comprehensive income covering a whole financial year or a statement of financial position at a financial year end. The CO does not provide any definitive guidance on what level of detail would mean that the accounts are 'purporting to be' a statement of comprehensive income or statement of financial position dealing with a financial year of the company. The dictionary definition of 'purport' is 'to appear to be', 'convey the impression of' or 'has the substance of', which indicates that the level of detail would need to be sufficient for the accounts to be recognisable as a statement of comprehensive income or a statement of financial position dealing with a financial year. This would capture, for example, a condensed statement of financial position, within the meaning of Hong Kong Accounting Standard (HKAS) 34 *Interim Financial Reporting*.
24. As the term 'non-statutory accounts' captures any accounts in any form provided⁵ by a company or group that purport to be a statement of comprehensive income or statement of financial position for any financial year, this would include the following:
- any such accounts that are prepared using full HKFRS, HKFRS for Private Entities, HK SME-FRF & SME-FRS (~~Revised 2014~~) or any other accounting framework and/or accounting standards (for example, IFRS or US GAAP) or even those prepared on a non-GAAP or a cash or non-accruals basis;
 - any accounts or financial statements prepared under the requirements of another Hong Kong Ordinance (for example, the Insurance Companies Ordinance (Cap. 41)) for a company's financial year if these are in addition to the 'specified financial statements' prepared in accordance with the CO (see paragraph IE11 of Appendix 2 to this Bulletin);
 - a 'convenience translation' of a company's or group's 'specified financial statements' into a currency that is neither the company's functional currency nor the company's or group's presentation currency;
 - voluntary company level or consolidated financial statements for a financial year prepared by a company in addition to a company's statutory financial statements (see paragraphs IE9 to IE10 of Appendix 2 to this Bulletin);
 - detailed profit forecasts (including profit estimates) and pro-forma financial information⁶, if they are prepared for a company's or group's financial year or financial position as at its year end date; or
 - any ad hoc or piecemeal financial information that may comprise tabular information that appears to be a statement of comprehensive income for a financial year or a statement of financial position as at the end of a financial year.

⁶ An example could be a pro-forma statement of assets and liabilities.

25. Accounts do not qualify as 'non-statutory accounts' and are outside the scope of section 436 if they only contain a statement of financial position drawn up at a date that is not the company's financial year end or a statement of comprehensive income that covers only part of a company's financial year. For example:
- if the accounts only include a statement of comprehensive income dealing with just the first three months of a financial year and/or a statement of financial position as at the end of that three month period, then these would not be regarded as 'non-statutory accounts'; however
 - if the accounts also include, for example as comparative information, a statement of comprehensive income dealing with a full financial year, and/or a statement of financial position as at the end of a full financial year, then these accounts would be regarded as 'non-statutory accounts' for the purposes of section 436.

Consequently, interim financial reports prepared in accordance with HKAS 34 fall within the scope of section 436 as a form of 'non-statutory accounts', as it is a requirement of HKAS 34 that the interim financial report contains the statement of financial position as of the end of the preceding financial year. Appendix 3 to this Bulletin sets out a guide to when section 436 first becomes applicable to interim financial reports of listed companies.

What actions by a company would or would not be considered making 'specified financial statements' or 'non-statutory accounts' available to others within the scope of section 436?

26. Section 436 applies if the company does any one or more of the following acts:
- (a) 'circulates, publishes or issues' any of the company's 'specified financial statements' or 'non-statutory accounts' (section 436(1)(a)); or
 - (b) 'otherwise makes such financial statements or accounts available for public inspection in a manner calculated to invite members of the public generally, or any class of them, to read the financial statements or accounts' (section 436(1)(b)).

Consequently, section 436's scope is potentially a wide one.

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27. For example, section 436(1)(a) may capture situations where 'non-statutory accounts' are provided under a bilateral arrangement or under contract, such as completion accounts (if they contain a statement of financial position as at the end of a financial year and /or a statement of financial performance dealing with a full financial year) prepared under the requirements of a sale and purchase agreement if this could be considered an act of circulating or issuing the non-statutory accounts. Similarly, other examples falling under section 436(1)(a) may include:
- (a) providing 'non-statutory accounts' or 'specified financial statements' to the company's bankers under the terms of a loan agreement;
 - (b) filing 'non-statutory accounts' or 'specified financial statements' with a regulator whether or not the filings are placed on public record; or
 - (c) sharing annual financial information with employees, for example as part of an internal annual staff news bulletin.
28. Section 436(1)(b) addresses those actions where a company or group directly or indirectly makes its 'specified financial statements' or 'non-statutory accounts' available in any form for public dissemination, whether in general or to any class of members of the public.
29. For 'specified financial statements' (i.e. the company's or group's statutory financial statements), public dissemination under section 436(1)(b) would include, but is not limited to, the company directly or indirectly making those financial statements available in the following ways:
- publicly displaying a copy of an annual report, for example, in the reception area of a company or the public area of a bank either in hard copy or 'on-screen' through a digital display device;
 - displaying the soft copy of the annual report on a part of the company's website which is broadly accessible, either to the public at large or to a general group of employees;
 - including the financial statements in other publications, for example, publicity brochures;
 - in the case of a listed company,
 - making them available through the SEHK website or that of a stock exchange outside of Hong Kong; and
 - filing them on public record with the Hong Kong Companies Registry⁷ or equivalent overseas body.
30. Examples of documents or publications which may contain financial information that constitutes 'non-statutory accounts' and which would be considered to be available to the public within the meaning of section 436(1)(b) would include but are not limited to:
- Prospectuses or Listing Documents;
 - Stock Exchange Circulars (see paragraph 31);

⁷ As one of the documents required by Schedule 6 and section 664 to accompany the company's Annual Return delivered to the Registrar under section 662(3).

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- Preliminary announcements of Results for a financial year of companies listed on the Main Board/GEM of the SEHK complying with Listing Rules 13.49(1) or GEM Rules 18.49 respectively^{8, 9};
- Financial statements prepared in accordance with HKAS 34¹⁰, such as:
 - Preliminary announcements of interim results of companies listed on the Main Board/GEM of the SEHK complying with Listing Rules 13.49(6) or GEM Rules 18.78 respectively¹¹;
 - Half-yearly interim reports or summary interim reports of companies listed on the Main Board/GEM of the SEHK complying with Listing Rule 13.48(1) or GEM Rule 18.53 respectively¹²;
 - Voluntary quarterly Financial and Business Reviews or quarterly interim reports or quarterly summary interim reports of companies listed on the Main Board of the SEHK or Quarterly reports of GEM companies complying with GEM Rule 18.66¹³;
- Special purpose financial statements if made publicly available;
- Financial information published on a part of the company's website which is broadly accessible, either to the public at large or to a general group of employees;
- Company communication documents, such as:
 - Briefing materials provided to analysts and/or investors (including 'road show' materials);
 - Newspaper advertisements;
 - Press releases;
 - Company publicity brochures.

This list is not exhaustive.

31. The SEHK's Listing Rules and GEM Rules require that certain stock exchange circulars (for example, notifiable transactions) include the company or group's financial information. This can be done in one of three ways:

⁸ Where the financial information provided in a preliminary announcement of results for a financial year is satisfied solely by meeting the requirements of Appendix 16, paragraph 45(1) to the SEHK's Listing Rules or GEM Rule 18.50(i), that financial information will constitute 'non-statutory accounts' for both the current and comparative financial years. Similarly, providing the primary financial statements (together with comparatives) with some or all supporting notes that are less than the full audited annual statutory financial statements will constitute 'non-statutory accounts' for both financial years.

However, providing the full audited statutory financial statements for the current year (which include the financial statements for the preceding financial year as comparatives) in a preliminary announcement of results for the current financial year is not a form of 'non statutory accounts'. Instead this would be an act of circulating, publishing or issuing the company's 'specified financial statements', in which case, this will trigger the requirement to attach the full auditor's report under section 436(2), rather than attaching a statement under section 436(3).

^{9, 11, 12, 13} Or under similar requirements or practices of stock exchanges or markets outside of Hong Kong on which a Hong Kong incorporated company may be listed or quoted.

¹⁰ As explained in paragraph 25, these would fall under the concept of "non-statutory accounts" for the purposes of section 436 because HKAS 34 requires them to contain a statement of financial position as of the end of the preceding financial year as comparative information. Identical requirements can be found in International Accounting Standard (IAS) 34 'Interim Financial Reporting' from which HKAS 34 is derived.

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- (a) *Incorporation by cross-reference*: the requirement may be met by incorporating the audited statutory financial statements for the relevant number of years by cross-reference to where the company's annual reports are available on the company's and the SEHK's websites. Incorporation by cross-reference to published audited annual financial statements does not trigger section 436, as the annual reports have already been circulated, published or issued together with the auditor's report.
- (b) *Reproduction in full*: the requirement may be met by reproducing the company's full audited statutory financial statements in the stock exchange circular. If this approach is chosen they must be accompanied by the auditor's reports for the relevant financial years as the reproduction would fall within section 436(1) as a public dissemination of 'specified financial statements' triggering the need to meet the requirement of section 436(2).
- (c) *Extracted information*: the requirement may be met by extracting the required information from the company's audited statutory financial statements. In this case, if the financial information in the stock exchange document is set out in tabular form (in a manner that could be said to purport to be statements of comprehensive income or statements of financial position) the financial information would meet the definition of 'non-statutory accounts' and therefore the requirements of section 436(3) must be met.
32. Deciding whether or not the company's actions fall within the scope of section 436(1) may require the use of judgement and will depend on the facts and circumstances. For example, distributing a company's draft unaudited annual statutory financial statements internally to and between the company's management or finance personnel and staff involved in their preparation, its auditors and other relevant professional advisers and its directors would not usually be considered an act of "circulating, publishing or issuing" under section 436(1)(a), or public dissemination under section 436(1)(b) provided care is taken to restrict the distribution, for example by treating it as confidential information whose distribution is controlled within the organisation. Similarly, where voluntary financial statements¹⁴ are kept within the group for intra group reporting purposes, these 'non-statutory accounts' would be outside the scope of section 436(1) as they are not being circulated, published or issued or otherwise publicly disseminated. However, if such voluntary financial statements are made available outside of the group, then they should include a statement that explains what they are and what they are not (i.e. that they are not the statutory financial statements required by the Companies Ordinance). Such a statement would form the basis of the required section 436(3) statement that must accompany 'non-statutory accounts'.
33. If the directors of a company are in doubt as to whether financial information that they are intending to share or otherwise make available to others might be caught by section 436(1)(a) as an act of circulating, publishing or issuing or might fall into the public domain and therefore be caught by section 436(1)(b), then it is advisable that they satisfy the requirements of section 436 by attaching the auditor's report under section 436(2) (if the financial information is the company's 'specified financial statements') or by making the necessary statement under section 436(3) (if the information could be considered to be 'non-statutory accounts'), as is appropriate to the information in question. Legal advice should be sought if necessary as failing to comply with section 436 will make the company and each of its directors (responsible persons) liable to a fine of \$150,000 (section 436(5)).

¹⁴ See paragraph 24: voluntary financial statements include

- (a) consolidated financial statements prepared by wholly owned subsidiaries of another body corporate that have applied section 379(3) and have prepared company level financial statements as their statutory financial statements; and
- (b) company level financial statements prepared by a holding company which is required to prepare consolidated financial statements under section 379(2).

Further guidance is provided in paragraphs IE9 to IE10 of Appendix 2 to this Bulletin.

~~DOES SECTION 436 APPLY TO SUMMARY FINANCIAL REPORTS PREPARED UNDER SECTIONS 437- 446?~~

34. ~~In accordance with section 439, the directors of a company, other than one that falls within the reporting exemption, may prepare for a financial year a financial report, in summary form, derived from the reporting documents for the financial year. The Companies (Summary Financial Reports) Regulation (Cap. 622E) specifies that a company's or group's summary financial report must contain all the information and particulars included in the company's or group's statement of comprehensive income for the financial year and statement of financial position as at the end of that financial year.~~
35. ~~A summary financial report is not a company's or group's 'specified financial statements' nor does it form part of their 'specified financial statements'. Consequently, a summary financial report apparently falls within the definition of 'non-statutory accounts'. There is no exemption in the CO that excludes summary financial reports from the application of section 436.~~
36. ~~On the other hand, the requirements relating to Summary Financial Reports are found in a separate Division of Part 9 of the CO (Division 7)¹⁵. This Division, together with the Companies (Summary Financial Reports) Regulation, covers a comprehensive range of matters relating both to the content of Summary Financial Reports as well as their distribution. In particular, section 4(1)(b) of the Companies (Summary Financial Reports) Regulation, states that if the auditor's report is qualified or otherwise modified, then the full auditor's report should be reproduced in the Summary Financial Report. This would not be acceptable under section 436(4) as discussed above in paragraphs 11-13.~~
37. ~~The Companies Registry has published the following Frequently Asked Question to clarify the position of summary financial reports in relation to section 436.~~

~~"Section 436 of the new CO stipulates the requirement in connection with publication of financial statements including any non-statutory accounts. What is the meaning of 'non-statutory accounts' in this section?"~~

~~"Section 436 applies to the circulation, publication or issuance of 'specified financial statements' or 'non-statutory accounts'. Under section 436(6) 'non-statutory accounts' basically means any statement of financial position or statement of comprehensive income, otherwise than as part of the financial statements; or accounts in any form, otherwise than as part of the financial statements, purporting to be a statement of financial position or statement of comprehensive income for a group of companies. Section 436 is not intended to cover summary financial reports."~~

38. ~~This clarification of the scope of section 436 is important as it indicates that the position under section 129C(4) of the predecessor Companies Ordinance, Cap. 32, is maintained. In particular, it implies that a company would not be considered to have contravened section 436(4) if it publishes a summary financial report that contained the full auditor's report in accordance with section 4(1)(b) of the Companies (Summary Financial Reports) Regulation (i.e. in situations where the auditor's report is qualified or otherwise modified).~~

¹⁵ ~~By comparison section 436 is found in Division 6 of Part 9 of the CO, which deals more generally with the "Laying and publication of financial statements and reports". Paragraphs 34 to 38 of this Bulletin were deleted in June 2019 as a result of amendments to section 436(6) of the Companies Ordinance which were made by the Companies (Amendment) (No. 2) Ordinance 2018. Refer to paragraph 21(b) of this Bulletin for further details of the amendments made.~~

APPENDIX 1: DEFINITIONS

The following terms are used in this Accounting Bulletin with the meanings specified. Defined terms are shown in bold text.

Annual financial statements, annual consolidated financial statements and financial statements means the financial statements as defined in section 357(1) and required to be prepared under sections 379(1) and (2) respectively.

Annual report means a document that collectively contains at least the company's **reporting documents**.

Auditor's report means the report as defined in section 357(1) and which is prepared by the auditor of a company under section 405 for the members on any financial statements prepared by the directors, a copy of which is laid before the company in general meeting under section 429, or is sent to a member under section 430 or otherwise circulated, published or issued by the company.

Body corporate is as defined in section 2 and includes companies incorporated under the Companies Ordinance and companies incorporated overseas. For the avoidance of doubt, the definition in section 2 is not exhaustive and, therefore, a body corporate could also include entities that are incorporated in Hong Kong under other Ordinances, provided they are not corporations sole.

Communication document is as defined in the Companies (Disclosure of Company Name and Liability Status) Regulation Cap. 622B and, in relation to a company, amongst other things, means an official publication of the company.

Company is as defined in section 2 and includes, for the avoidance of doubt, any of the following that are incorporated in Hong Kong: an unlimited company (section 10), a private company (section 11), a public company (including a listed company) (section 12) and a company limited by guarantee (section 9).

Companies Ordinance (or **CO**) or **Cap. 622** refers to Chapter (Cap.) 622 of the Laws of Hong Kong, which came into force on 3 March 2014.

~~**Companies (Summary Financial Reports) Regulation** refers to the Companies (Summary Financial Reports) Regulation Cap. 622E.~~

Financial year means any financial year for which a company has prepared its 'specified financial statements'. A financial year of a company is determined in accordance with sections 367 to 371. A financial year is usually 12 months but need not necessarily be 12 months, if the company is newly incorporated or when the directors decide to alter the company's accounting reference date.

GEM and **GEM Rules** mean the Growth Enterprise Market of the **SEHK** and its Rules governing the listing of securities on GEM.

~~**HK SME-FRF & SME-FRS (Revised 2014)** means the Hong Kong Small and Medium-sized Entity Financial Reporting Framework and Financial Reporting Standard (Revised 2014) issued by the HKICPA.~~

Listed company means a company that has any of its shares listed on the **SEHK** or on any stock exchange or market outside Hong Kong, such as the New York Stock Exchange or the London Stock Exchange.

Listing Document means a **prospectus**, a circular and any equivalent document (including a scheme of arrangement and introduction document) issued or proposed to be issued in connection with an application for listing, as defined, for example, in paragraph 1.01 of Chapter 1 of the Main Board **Listing Rules** of the **SEHK**.

Listing Rules are the Rules of the **SEHK** governing the listing of securities on its Main Board.

Non-statutory accounts are defined in paragraph 21 of this Bulletin.

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Prospectus as defined in section 2 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, ~~Cap. 32~~, is any prospectus, notice, circular, brochure or advertisement or other document (i) offering any shares in or debentures of a company to the public for subscription or purchase for cash or other consideration; or (ii) calculated to invite offers by the public to subscribe or purchase for cash or other consideration shares in or debentures of a company.

Publication as defined in the Interpretation and General Clauses Ordinance, Cap. 1, means –

- (a) all written and printed matter;
- (b) any record, tape, wire, perforated roll, cinematograph film or other contrivance by means of which any words or ideas may be mechanically, electronically or electrically produced, reproduced, represented or conveyed;
- (c) anything whether of a similar nature to the foregoing or not, containing any visible representation, or by its form, shape, or in any manner, capable of producing, reproducing, representing or conveying words or ideas;
- (d) every copy and reproduction of any publication as defined in paragraphs (a), (b) and (c) of this definition.

Reporting documents are as defined in section 357(2), as a reference to all of (a) the annual financial statements or annual consolidated financial statements for the financial year; (b) the directors' report for the financial year; (c) the auditor's report on those annual financial statements or annual consolidated financial statements.

Reporting exemption means the exemption available to certain small or medium-sized private or guarantee companies that are qualified to prepare simplified financial statements and directors' reports in accordance with sections 359 to 366A. The exemption is only in respect of specific requirements relating to the contents of the statutory financial statements, directors' report and auditor's report and there is no exemption from the preparation of **reporting documents** per se.

Responsible person of a company is as defined in section 3 and includes any officer (a director, manager or company secretary) or shadow director (a person in accordance with whose directions or instructions (excluding advice given in a professional capacity) the directors or a majority of the directors are accustomed to act) or any officer or shadow director of a body corporate that is an officer or shadow director of the company.

SEHK refers to the Stock Exchange of Hong Kong, which is a recognized stock market within the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

Specified financial statements are defined in paragraph 17 of this Bulletin.

Statement of comprehensive income ~~It is not defined in the CO but is taken to mean a separate statement of profit or loss, a separate statement of profit or loss together with a separate statement of other comprehensive income or a single statement of profit or loss and other comprehensive income, as described in Hong Kong Accounting Standard (HKAS) 1 *Presentation of Financial Statements*. This is the term used by the CO instead of the term 'profit and loss account' which was used in the predecessor Ordinance (Cap. 32).~~

Statement of financial position ~~It is not defined in the CO but is taken to mean the same as described in HKAS 1. This is the term used by the CO instead of the term 'balance sheet' which was used in the predecessor Ordinance (Cap. 32).~~

Statutory financial statements have the meaning given in paragraph 19 of this Bulletin.

Stock Exchange Circular means a circular, announcement or notice or equivalent document that is required to be published under the **Listing Rules** or **GEM Rules** of the **SEHK** or a stock exchange outside of Hong Kong concerning, but not limited to, matters such as, a 'Major transaction', a 'Very substantial disposal or acquisition' or a 'Reverse takeover'.

Summary financial report is as defined in section 439 and which complies with the Companies (Summary Financial Reports) Regulation Cap. 622E.

APPENDIX 2: EXAMPLE STATEMENTS FOR 'NON-STATUTORY ACCOUNTS' FOR THE PURPOSE OF SECTION 436(3)

- IE1. The following examples illustrate the statements that might be made in order to comply with section 436(3) when a Hong Kong incorporated company circulates, publishes or issues or otherwise makes available to others various forms of 'non-statutory accounts' as discussed in paragraphs 11-13 and 21-33 of this Bulletin. These examples are illustrative only and other forms of wording may be used, provided that the wording covers at least those matters required to be stated by section 436(3).
- IE2. These examples assume that the auditor's report on the related 'specified financial statements' is unqualified or unmodified and did not contain a matter of emphasis or any of the statements under sections 406(2) (information in the directors' report is inconsistent with the financial statements), 407(2) (accounting records inadequate or financial statements not agreeing with accounting records) or 407(3) (failure to obtain necessary information and explanations). Section 436(4) expressly prohibits the full auditor's report on the related 'specified financial statements' accompanying the 'non-statutory accounts'.
- IE3. If the auditor's report on the related 'specified financial statements' is qualified or modified or the auditor has drawn attention to a matter by way of emphasis or it contains any of the statements under sections 406(2), 407(2) or 407(3), it will be necessary to adapt the illustrated wording in the examples to give the information required by section 436(3)(d), as appropriate. As indicated in paragraph 13, it would be informative if a brief description is provided of the matter or matters addressed in the auditor's report. This may be achieved by an extraction of the qualification or modification paragraph (i.e. the "Basis for qualification" paragraph) in the auditor's report.
- IE4. Section 436(3) only stipulates that the required statement must 'accompany' any 'non-statutory accounts'. It can therefore be attached as a separate statement, or included as a note to the relevant financial information.

One financial year and no comparative financial information

- IE5. Where the 'non-statutory accounts' deal with one financial year (and do not contain any comparative financial information), the required statement may take the form of one of the Examples 1 to 4 depending on the status of the company and whether the financial information is audited or unaudited.

Private companies

Example 1 – Financial information relating to a financial year that has been audited

The [figures and financial information][#] relating to the year ended 31 December 20XX included in [this document]⁺ are not the Company's statutory [annual financial statements]^{*} [annual consolidated financial statements]^{*} for that year. Further information relating to those statutory financial statements required to be disclosed in accordance with section 436 of the Companies Ordinance is as follows:

As the Company is a private company, the Company is not required to deliver its financial statements to the Registrar of Companies, and has not done so.

The Company's auditor has reported on those financial statements. The auditor's report was unqualified; did not include a reference to any matters to which the auditor drew attention by way of emphasis without qualifying its report; and did not contain a statement under sections 406(2), 407(2) or (3) of the Companies Ordinance.

Example 2 – Financial information relating to a financial year that has not yet been audited

The unaudited [figures and financial information][#] relating to the year ended 31 December 20XX included in [this document]⁺ are not the Company's statutory [annual financial statements]^{*} [annual consolidated financial statements]^{*} for that year. Further information relating to these

statutory financial statements required to be disclosed in accordance with section 436 of the Companies Ordinance is as follows:

As the Company is a private company, the Company is not required to deliver its financial statements to the Registrar of Companies, and will not do so.

The Company's auditor has yet to report on these financial statements.

Public companies (including listed companies) and companies limited by guarantee

Example 3 – Financial information relating to a financial year that has been audited

The [figures and financial information][#] relating to the year ended 31 December 20XX included in [this document]⁺ are not the Company's statutory [annual financial statements]^{*} [annual consolidated financial statements]^{*} for that year. Further information relating to those statutory financial statements required to be disclosed in accordance with section 436 of the Companies Ordinance is as follows:

The Company has delivered those financial statements to the Registrar of Companies as required by section 662(3) of, and Part 3 of Schedule 6 to, the Companies Ordinance.

The Company's auditor has reported on those financial statements. The auditor's report was unqualified; did not include a reference to any matters to which the auditor drew attention by way of emphasis without qualifying its reports; and did not contain a statement under sections 406(2), 407(2) or (3) of the Companies Ordinance.

Example 4 – Financial information relating to a financial year that has not yet been audited

The unaudited [figures and financial information][#] relating to the year ended 31 December 20XX included in [this document]⁺ are not the company's statutory [annual financial statements]^{*} [annual consolidated financial statements]^{*} for that year. Further information relating to these statutory financial statements required to be disclosed in accordance with section 436 of the Companies Ordinance is as follows:

The Company will deliver these financial statements to the Registrar of Companies in due course as required by section 662(3) of, and Part 3 of Schedule 6 to, the Companies Ordinance.

The Company's auditor has yet to report on these financial statements.

[#] this wording should be adapted to identify the 'non-statutory accounts', as appropriate

⁺ identify the document in which the 'non-statutory accounts' are included

^{} delete as appropriate*

Part of one financial year and the whole of another

IE6. As explained in paragraph 25 of the Bulletin, where the 'non-statutory accounts' deal with part of one financial year and the whole of another, the document contains 'non-statutory accounts' for that other financial year. This would include, for example, Quarterly and Half-year interim financial reports, or summary interim reports, of listed companies, as these must include a comparative statement of financial position under HKAS 34 as at the end of the immediately preceding financial year. However, the half year financial information for the current financial year does not constitute 'non-statutory accounts', as it does not deal with an entire financial year and is out of scope of section 436. Where this situation applies, the required statement may take the form in Example 5. Appendix 3 to this Bulletin sets out a guide to when section 436 first becomes applicable to interim financial reports of listed companies.

Listed company

Example 5 – Quarterly/Half-year interim financial report prepared under HKAS 34

The financial information relating to the year ended 31 December 20XY that is included in the [1st Quarter/Half-year]^{*} Interim Report 20XZ as comparative information does not constitute the

Company's statutory annual consolidated financial statements for that year but is derived from those financial statements. Further information relating to these statutory financial statements required to be disclosed in accordance with section 436 of the Companies Ordinance is as follows:

The Company has delivered the financial statements for the year ended 31 December 20XY to the Registrar of Companies as required by section 662(3) of, and Part 3 of Schedule 6 to, the Companies Ordinance.

The Company's auditor has reported on those financial statements. The auditor's report was unqualified; did not include a reference to any matters to which the auditor drew attention by way of emphasis without qualifying its report; and did not contain a statement under sections 406(2), 407(2) or (3) of the Companies Ordinance.

** delete as appropriate*

More than one financial year

IE7. Where the 'non-statutory accounts' deal with more than one financial year (for example, preliminary announcements of the annual results of listed companies that must include comparative figures for the previous year), the one document contains two sets of 'non-statutory accounts'. Where this applies, the required statement may take the form of either Example 6 or 7 depending on whether the financial information is audited or unaudited.

Listed company

Example 6 - Preliminary announcement of audited annual results

The [financial information][#] relating to the years ended 31 March 20XY and 20XX included in this preliminary announcement of annual results 20XY do not constitute the Company's statutory annual consolidated financial statements for those years but is derived from those financial statements. Further information relating to these statutory financial statements required to be disclosed in accordance with section 436 of the Companies Ordinance is as follows:

The Company has delivered the financial statements for the year ended 31 March 20XX to the Registrar of Companies as required by section 662(3) of, and Part 3 of Schedule 6 to, the Companies Ordinance and will deliver the financial statements for the year ended 31 March 20XY in due course.

The Company's auditor has reported on the financial statements of the Group for both years. The auditor's reports were unqualified; did not include a reference to any matters to which the auditor drew attention by way of emphasis without qualifying its reports; and did not contain a statement under sections 406(2), 407(2) or (3) of the Companies Ordinance.

Example 7 - Preliminary announcement of unaudited annual results

The unaudited [financial information][#] relating to the year ended 31 March 20XY and the financial information relating to the year ended 20XX included in this preliminary announcement of annual results 20XY does not constitute the Company's statutory annual consolidated financial statements for those years but, in respect of the year ended 20XX, is derived from those financial statements. Further information relating to these statutory financial statements required to be disclosed in accordance with section 436 of the Companies Ordinance is as follows:

The financial statements for the year ended 31 March 20XY have yet to be reported on by the Company's auditor and will be delivered to the Registrar of Companies in due course.¹⁶

The Company has delivered the financial statements for the year ended 31 March 20XX to the Registrar of Companies as required by section 662(3) of, and Part 3 of Schedule 6 to, the Companies Ordinance.

The Company's auditor has reported on these financial statements for the year ended 31 March 20XX. The auditor's report was unqualified; did not include a reference to any matters to which the auditor drew attention by way of emphasis without qualifying its report; and did not contain a statement under sections 406(2), 407(2) or (3) of the Companies Ordinance.

this wording should be adapted to identify the 'non-statutory accounts', as appropriate

Prospectus, listing document or Stock Exchange circular

IE8. In the case of a prospectus, listing document or Stock Exchange circular, financial information covering a number of periods can be found in different parts of these documents, including the tabular presentation of income statements and statements of financial position in the 'Financial Information' section, accountants' reports, pro-forma financial information and some profit forecasts that have a detailed statement of comprehensive income. Such financial information qualifies as 'non-statutory accounts' within the meaning of section 436 of the Companies Ordinance if it relates to a full financial year. Consequently, the required statement may take the form illustrated in Examples 8 to 12.

Public company

Example 8 – Existing company seeking a listing or issue of shares or debentures

The [financial information][#] contained in this [Prospectus]*[Listing Document]* does not constitute the Company's statutory annual consolidated financial statements for any of the financial years ended 31 December 20XX, 20XY and 20XZ but is derived from those financial statements. Further information relating to these statutory financial statements required to be disclosed in accordance with section 436 of the Companies Ordinance is as follows:

The Company has delivered the financial statements for all three years to the Registrar of Companies as required by section 662(3) of, and Part 3 of Schedule 6 to, the Companies Ordinance.

The Company's auditor has reported on these financial statements for all three years. The auditor's reports were unqualified; did not include a reference to any matters to which the auditor drew attention by way of emphasis; and did not contain a statement under either sections 406(2), 407(2) or (3) of the Companies Ordinance.

Example 9 – Newly formed company ('listco') seeking a listing

The [financial information][#] contained in this [Prospectus]*[Listing Document]* does not constitute the Company's statutory annual consolidated financial statements for any of the financial years ended 31 December 20XX, 20XY and 20XZ.

¹⁶ In the case of unaudited annual results, if the underlying annual financial statements are likely to be qualified or modified etc., Appendix 16, paragraph 45(7) of the SEHK Listing Rules and GEM Rule 18.51 require disclosure of the details. In such cases, it would be informative to include a cross reference from the section 436(3) statement to where the details are provided in accordance with Appendix 16, paragraph 45(7) of the SEHK's Listing Rules or GEM Rule 18.51. This is not, however, a requirement of section 436(3), given that the auditor's report in question has not yet been issued at the time of the preliminary announcement.

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Further information required to be disclosed in accordance with section 436 of the Companies Ordinance is as follows:

The Company was incorporated on [date] and has not prepared and presented any statutory financial statements since incorporation. Consequently, the Company's auditor has not reported on any statutory financial statements and none have been delivered to the Registrar of Companies.

Note: In the situation where the newly formed 'listco' becomes the holding company of an existing group headed by a Hong Kong company, the financial information presented in the prospectus or listing document relates to that Hong Kong company and is derived from its statutory financial statements. Consequently, the section 436(3) statement illustrated above must be expanded to provide the information required by section 436(3) in respect of the Hong Kong company, in a similar manner to that illustrated in Example 8.

Listed company

Example 10 - Financial information in a Stock Exchange circular

The [financial information][#] contained in [this Stock Exchange circular]⁺ does not constitute the Company's statutory annual consolidated financial statements for either of the years ended 31 December 20XX or 20XY but is derived from those financial statements. Further information relating to these statutory financial statements required to be disclosed in accordance with section 436 of the Companies Ordinance is as follows:

The Company has delivered the financial statements for both years to the Registrar of Companies as required by section 662(3) of, and Part 3 of Schedule 6 to, the Companies Ordinance.

The Company's auditor has reported on these financial statements for both years. The auditor's reports were unqualified; did not include a reference to any matters to which the auditor drew attention by way of emphasis; and did not contain a statement under either sections 406(2), 407(2) or (3) of the Companies Ordinance.

Example 11 - Pro-forma financial information in a Stock Exchange circular

The pro-forma [consolidated statement of financial position][#] at 30 June 20XZ set out in [this Stock Exchange circular]⁺ does not constitute the Company's statutory annual consolidated financial statements for the year ended 30 June 20XZ but is derived from those financial statements. Further information relating to these statutory financial statements required to be disclosed in accordance with section 436 of the Companies Ordinance is as follows:

The Company has delivered these financial statements to the Registrar of Companies as required by section 662(3) of, and Part 3 of Schedule 6 to, the Companies Ordinance.

The Company's auditor has reported on these financial statements. The auditor's report was unqualified; did not include a reference to any matters to which the auditor drew attention by way of emphasis; and did not contain a statement under either sections 406(2), 407(2) or (3) of the Companies Ordinance.

Private company

Example 12 - Target company whose financial information is provided in a Stock Exchange circular (e.g. a Very Substantial Acquisition circular)

The [financial information][#] contained in [this Stock Exchange circular]⁺ does not constitute [Target]'s statutory financial statements for either of the years ended 31 December 20XX, 20XY or 20XZ but is derived from those financial statements. Further information relating to these statutory financial statements required to be disclosed in accordance with section 436 of the Companies Ordinance is as follows:

As [Target] is a private company, it is not required to deliver its financial statements to the Registrar of Companies, and has not done so.

[Target]'s auditor has reported on these financial statements for all three years. The auditor's reports were unqualified; did not include a reference to any matters to which the auditor drew attention by way of emphasis; and did not contain a statement under either sections 406(2), 407(2) or (3) of the Companies Ordinance.

this wording should be adapted to identify the 'non-statutory accounts', as appropriate

+ *identify the document in which the 'non-statutory accounts' are included*

* *delete as appropriate*

Voluntary company level or consolidated financial information prepared by a holding company

IE9. If the directors of a holding company comply with section 379(2) and prepare consolidated financial statements for a financial year as the company's statutory financial statements, then the company is exempt under section 379(2) from preparing company level financial statements under section 379(1)¹⁷. It follows that if the directors choose voluntarily to prepare some form of company level statement of financial position or statement of comprehensive income for a financial year in addition to the required statutory consolidated financial statements, such company level financial information meets the definition of 'non-statutory accounts' under section 436(6). If this non-statutory company level financial information is made available to others in a way that falls within section 436(1)(a) or (b), it must be accompanied by a section 436(3) statement. Such a statement may take the form illustrated in Example 13.

Example 13 – Voluntary company level financial information prepared by a holding company in addition to its statutory consolidated financial statements

The company level financial information for the year ended 31 December 20XY has been prepared for [*describe purpose*]. [ABC] Limited (the Company), as a holding company, has prepared consolidated financial statements for the Company as its statutory financial statements for the year ended 31 December 20XY. Consequently, this company level financial information and the comparatives do not constitute the Company's statutory financial statements for either of the years ended 31 December 20XX or 20XY. Information relating to the Company's statutory consolidated financial statements for the financial years ended 31 December 20XX and 20XY required to be disclosed in accordance with section 436 of the Companies Ordinance is as follows:

As the Company is a private company, it is not required to deliver its financial statements to the Companies Registrar, and has not done so.

The Company's auditor has reported on the consolidated financial statements for both years. The auditor's reports were unqualified; did not include a reference to any matters to which the auditor drew attention by way of emphasis; and did not contain a statement under either sections 406(2), 407(2) or (3) of the Companies Ordinance.

IE10. Conversely, where the directors of a holding company apply section 379(3) and prepare company level financial statements as the company's statutory financial statements for a financial year and in addition prepare some form of consolidated statement of financial position or statement of comprehensive income for the same year, the consolidated financial information meets the definition of 'non-statutory accounts' under section 436(6). If this consolidated financial information is made available to others in a way that falls within section 436(1)(a) or (b), it must be accompanied by a section 436(3) statement. Such a statement may take the form illustrated in Example 14.

¹⁷ This guidance is not intended to apply to the company level financial information included within the consolidated financial statements as required by Schedule 4 to the Companies Ordinance, as such information forms part of the statutory consolidated financial statements.

Example 14 – Voluntary consolidated financial information prepared by a wholly owned subsidiary of another body corporate

The consolidated financial information for the year ended 31 December 20XY has been prepared for [*describe purpose*]. [DEF] Limited (the Company), as a wholly owned subsidiary of [DEF Corporation Inc.] has applied section 379(3) of the Companies Ordinance to prepare company level financial statements as the Company's statutory financial statements. Consequently, this consolidated financial information and the comparatives do not constitute the Company's statutory financial statements for either of the years ended 31 December 20XX or 20XY. Information relating to the Company's statutory financial statements required to be disclosed in accordance with section 436 of the Companies Ordinance is as follows:

As the Company is a private company, it is not required to deliver its financial statements to the Registrar of Companies, and has not done so.

The Company's auditor has reported on the company level financial statements for both years. The auditor's reports were unqualified; did not include a reference to any matters to which the auditor drew attention by way of emphasis; and did not contain a statement under either sections 406(2), 407(2) or (3) of the Companies Ordinance.

Financial statements prepared under the requirements of another Hong Kong Ordinance

IE11. Some Hong Kong Ordinances (for example, the Insurance Companies Ordinance (Cap. 41)) require the preparation and filing of financial statements with a relevant regulator in addition¹⁸ to the company's annual statutory financial statements under the Companies Ordinance. These additional financial statements fall within the meaning of 'non-statutory accounts' under section 436(6) to which section 436(3) applies, as they are publicly available. Accordingly, a section 436(3) statement is required to accompany these additional financial statements and may take the form illustrated in Example 15.

Example 15 – Additional financial statements – public company

These financial statements for the year ended 31 December 20XY have been prepared for the purposes of the [Insurance Companies Ordinance (Cap. 41)]* and are in addition to those prepared for statutory reporting purposes under the Companies Ordinance (Cap. 622). Consequently, these financial statements and comparatives do not constitute the Company's statutory financial statements for the purposes of the Companies Ordinance for either of the years ended 31 December 20XX or 20XY. Information relating to the Company's [consolidated][#] financial statements prepared for the purposes of the Companies Ordinance (the "Companies Ordinance financial statements") required to be disclosed by section 436 of the Companies Ordinance is as follows:

¹⁸ If in fact the financial statements prepared under the requirements of another Hong Kong Ordinance also meet the requirements of the CO and these dual-compliance financial statements are the ones that are laid before members of the company in general meeting under section 429(1) or are sent to members of the company under section 430(3) then the guidance in IE11 does not apply as such financial statements are the company's 'specified financial statements' and are not 'non-statutory accounts' for the purposes of section 436.

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The Company has delivered its Companies Ordinance financial statements for the year ended 31 December 20XX to the Registrar of Companies as required by section 662(3) of, and Part 3 of Schedule 6 to, the Companies Ordinance and will deliver its Companies Ordinance financial statements for the year ended 31 December 20XY in due course¹⁹.

The Company's auditor has reported on the Companies Ordinance financial statements for both years. The auditor's reports were unqualified; did not include a reference to any matters to which the auditor drew attention by way of emphasis; and did not contain a statement under either sections 406(2), 407(2) or (3) of the Companies Ordinance.

* *specify the relevant Hong Kong Ordinance*

delete as appropriate

¹⁹ For a private company, this paragraph should be replaced with the following:
"As the Company is a private company, the Company is not required to deliver its Companies Ordinance financial statements to the Registrar of Companies, and has not done so for the year ended 31 December 20XX and will not do so for the year ended 31 December 20XY."

APPENDIX 3: FIRST APPLICATION OF SECTION 436 TO INTERIM FINANCIAL REPORTS OF LISTED COMPANIES

Section 436(3) deals with certain statements that need to be made in respect of 'non-statutory accounts'. Accounts qualify as non-statutory accounts and are in the scope of section 436 if they contain a statement of financial position drawn up as at a date that is the company's financial year end or a statement of comprehensive income for a company's full financial year. Accounts do not qualify as 'non-statutory accounts' and are outside the scope of section 436 if they only contain a statement of financial position drawn up as at a date that is not the company's financial year end or a statement of comprehensive income that covers only part of a company's financial year.

Appendix 16, paragraph 38 of the SEHK's Listing Rules and Note 1 to GEM Rule 18.55 require that interim financial reports are prepared in accordance with HKAS 34, a requirement of which is that the interim financial report contains the statement of financial position as of the end of the preceding financial year. Consequently, interim financial reports are a form of 'non-statutory accounts' within the scope of section 436.

Consequently, the question arises as to when is section 436 first effective for interim financial reports?

Section 358(3) states that section 436 is first effective for financial statements for a financial year that begins on or after the commencement date of that section. In other words section 436 is first effective in relation to financial statements for financial years beginning on or after 3 March 2014. For existing²⁰ March year end companies, the first financial year of the company that falls under section 436 is the year ended 31 March 2015. Similarly, for existing December year end companies, it is the year ended 31 December 2015.

Consequently, the first interim financial reports for a March year end company that qualify as 'non-statutory accounts' are those that contain the statement of financial position as at 31 March 2015, as comparative information. These are its June 2015 quarterly or September 2015 half-year interim financial reports. For a December year end company, the first quarterly and half-year interim financial reports to be affected are its March 2016 and June 2016 interims respectively.

In summary:

<i>First financial year end which falls under section 436</i>	<i>First quarterly interim report which qualifies as 'non-statutory accounts' under section 436</i>	<i>First half-year interim report which qualifies as 'non-statutory accounts' under section 436</i>
Year ended 31 March 2015	30 June 2015	30 September 2015
Year ended 30 June 2015	30 September 2015	31 December 2015
Year ended 30 September 2015	31 December 2015	31 March 2016
Year ended 31 December 2015	31 March 2016	30 June 2016

²⁰ This guidance note assumes that the company was incorporated before 3 March 2014 and has not changed its reporting date i.e. it is an existing company which is preparing annual financial statements for a 12 month period. If instead, the company was incorporated on or after 3 March 2014 or it recently changed its accounting reference date, the company's first financial year that falls under section 436 may be a financial reporting period ending in 2014. For example, if a company was incorporated on 1 April 2014 and adopted 31 December as its accounting reference date, then its first financial reporting period which falls under section 436 is the period from the date of incorporation (1 April 2014) to 31 December 2014. Consequently, its first interim financial reports to which section 436 applies are those that contain its 31 December 2014 statement of financial position as comparative information (ie its March 2015 quarterly and June 2015 half-year interims respectively). This is not expected to be common.