



MEMBERS' HANDBOOK

Update No. 230

(Issued 27 June 2019)

This Update relates to amendments to:

- Accounting Bulletin 3 (Revised) *Guidance on Disclosure of Directors' Remuneration*;
- Accounting Bulletin 5 *Guidance for the Preparation and Presentation of a Business Review under the Hong Kong Companies Ordinance Cap. 622*; and
- Accounting Bulletin 6 *Guidance on the Requirements of Section 436 of the Hong Kong Companies Ordinance Cap.622*.

The above Accounting Bulletins have been updated to reflect the relevant requirements in the Company Ordinance Cap. 622 as amended by the Companies (Amendment) (No. 2) Ordinance 2018, which came into effect on 1 February 2019.

<u>Document Reference and Title</u>	<u>Instructions</u>	<u>Explanations</u>
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Accounting Bulletin 5 <i>Guidance for the Preparation and Presentation of a Business Review under the Hong Kong Companies Ordinance Cap. 622</i>	Replace the cover page and pages 2 and 6 with revised cover page and revised pages 2 and 6.	Refer above
Accounting Bulletin 6 <i>Guidance on the Requirements of Section 436 of the Hong Kong Companies Ordinance Cap.622</i>	Replace the cover page and pages 2 - 4, 8, 9, 13 - 15 with revised cover page and revised pages 2 - 4, 8, 9, 13 - 15. Insert page 8A after page 8.	Refer above



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Accounting Bulletin 3 (Revised)

Guidance on Disclosure of Directors' Remuneration

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8. The definition of 'qualifying services' focuses on the services of a person while he or she is a director of the company that is preparing the financial statements. There is no distinction made in the Regulation between the disclosures to be made in the consolidated financial statements or company-level statements of that company. To illustrate, consider this example:

Company H has one subsidiary, company S. Mr A is a director of both company H and company S while Mr B is only a director of company S. Mr A's compensation is \$2million, \$500,000 of which relates to his services to company S, while Mr B's compensation is \$600,000. In this example the Regulation would require the following amounts to be disclosed in respect of these two individuals:

- In company H's financial statements the directors' emoluments to be disclosed are \$2 million i.e. relating only to Mr A's services to the group headed by company H. It is irrelevant whether company H is preparing consolidated or company-level financial statements: in both cases the amount to be disclosed is \$2 million. This disclosure includes the amount relating to the services that Mr A provides to company S.
- In company S's financial statements the amount of directors' emoluments to be disclosed is \$1.1 million i.e. the emoluments receivable by Mr A and Mr B for being directors of company S. The remainder of Mr A's emoluments are not discloseable by company S.

See paragraphs 29 to 30 and 44 to 54 below for further guidance on this area.

Meaning of 'subsidiary undertaking' is extended to non-controlled entities

9. Section 46357(4) of the CO, as amended by the Companies (Amendment) (No. 2) Ordinance 2018 (2018 Amendment Ordinance) states that a reference to 'parent undertaking' or 'subsidiary undertaking' is to be construed in accordance with Schedule 1 of the CO. Before the 2018 Amendment Ordinance came into effect on 1 February 2019, As Schedule 1 differs-differed in certain key respects from the requirements of Hong Kong Financial Reporting Standard (HKFRS) 10 Consolidated Financial Statements, and it is-was therefore possible that the term 'subsidiary undertaking' as used in the Regulation may have included entities that would not fall within the definition of a controlled 'subsidiary' under HKFRS 10. This could be the case, for example, when a company owns more than 50% of the equity shares of another company but a shareholders' agreement restricts the company's ability to exercise unilateral control. In this case the investee is a 'subsidiary undertaking' within the meaning of Schedule 1, even though for accounting purposes the investee is a joint venture or an associate, not a subsidiary. In these circumstances, the Company is encouraged to explain in the financial statements the different meaning of these terminologies. The 2018 Amendment Ordinance amends the definition of 'parent undertaking' in Schedule 1 to be 'a parent of that other undertaking for the purposes of the accounting standards applicable to its financial statements'. Consequently, the difference in definitions of 'parent undertaking' and 'subsidiary undertaking' between Schedule 1 and HKFRS 10 were eliminated with effective from 1 February 2019.

10. Section 3(4) of the Regulation extends this definition further for the purposes of disclosure requirements for directors' remuneration set out in sections 3 to 12 of the Regulation⁴. According to sections 3(4) for this purpose, the term 'subsidiary undertaking' also includes any other undertaking, not just a subsidiary undertaking of the company as defined in Schedule 1 of the CO, if the person is or was a director of the company and also a director of that undertaking by virtue of the company's nomination (whether direct or indirect). Section 2(c) says that a reference to an undertaking has the meaning given by section 1(1) of Schedule 1 of the CO i.e. a body corporate, a partnership or an unincorporated association carrying on a trade or business, whether for profit or not.
11. This means that if a company has nominated one or more of its directors to sit on the boards of any of the company's investees, whether they are subsidiaries, joint ventures, associates or other investments, then any remuneration paid to or receivable by that person or persons in respect of that extra role may need to be included in the directors' remuneration disclosed by the investor company, unless the director occupies that position for reasons other than because of nomination rights held by the company. To illustrate, consider this example:

Company A has nominated one of its directors to the board of its associate, company B. Company B pays \$250,000 per year to the director in respect of his services to the company.

As the director has been nominated by company A as a director of the associate, the associate is deemed to be a subsidiary undertaking (for the purposes of directors' remuneration disclosure). The director is performing qualifying services for company A by being its representative on company B's board. So, in this situation, the director must disclose to company A, the \$250,000 that he receives as remuneration from company B. Company A includes the \$250,000 in its aggregate disclosure of emoluments paid to or receivable by its directors in respect of their qualifying services under section 4(2) and (3)(a).

If the \$250,000 were paid directly to company A (that is, as a sum to be accounted for to the company) and not to the director personally, this amount would not be included as directors' emoluments in company A's financial statements (section 11(1)(a)). Company B should disclose the payment of \$250,000 in its own financial statements as a sum paid to a third party in respect of the director's services (section 7).

Although nomination rights are likely to be held where the company is an investor, this may not necessarily be the only case. Section 3(4) applies wherever a company nominates one of its directors to be a director of any other undertaking. For example, an asset management company may nominate one of its directors to be a director of one or more of the funds, which it manages but in which it has no investment.

⁴ Section 3(4) refers to these sections collectively as "this Part" i.e. Part 2 of the Regulation.

15. **Consideration provided to or receivable by any third party (section 7)**

This category captures consideration provided to or receivable by certain 'third parties' for making available the services of a person as a director of a company, or in any other capacity while a director. This would include the estimated money value if the payments are not in cash.

The reference to 'any third party' in this section is a reference to any person other than:

- the director;
- a connected entity of the director (see paragraph 16(c) below for the definition);
- the company; or
- a subsidiary undertaking of the company.

This list of excluded entities is much shorter than the list of entities that fall within the definition of 'related party' under Hong Kong Accounting Standard (HKAS) 24. This means that some parties that are regarded as 'related parties' under HKAS 24 will nevertheless fall within the scope of section 7, as under section 7 they are regarded as 'third parties'. For example, a parent company or fellow subsidiary of the company would fall within the scope of this section as a 'third party', even though HKAS 24 would regard it as a related party. Under these circumstances, ~~as with paragraph 9,~~ the company is encouraged to explain in the financial statements the different meaning of these terminologies.

It follows that management fees payable to other group companies, may be discloseable under this section. See paragraphs 36 to 38 and 52 to 54 below for further guidance on this area.

However, note that, as stated above, pursuant to section 10(2) a payment would not be classified as a 'payment to third parties', when the payment is directly or indirectly made to or receivable by an entity connected to the director (such as his/her family or business associates). Instead, the amounts should be included in 'directors' emoluments', 'retirement benefits' or 'payment in respect of termination of services depending on the circumstances surrounding the payment. See paragraph 16(c) below for further guidance on this area.

Supplementary provisions in the Regulation

16. Sections 8 to 12 of the Regulation contain supplementary provisions relating to the above requirements:

- (a) *Section 8: Only information contained in company's records to be given*

Section 8 states that the Regulation only requires information to be disclosed in the financial statements only in so far as:

- (a) the information is contained in the company's records (as defined in section 838(1) of the CO); or
(b) the company has the right to obtain it from the persons concerned¹³.

-
- 13 Section 383(5) of the CO states that a person who is, or has been during the preceding 5 years, a director or shadow director of a company must give notice to the company of any matter that -

- (a) is prescribed by the Regulation;
(b) relates to the person; and
(c) is necessary for the purposes of subsection (1), i.e. for the purposes of making disclosure in the financial statements in compliance with the Regulation.

Section 383(6) of the CO states that any person who contravenes section 383(5) commits an offence and is liable to a fine at level 5. This statutory obligation to disclose information to the company is in addition to any other obligation to disclose information contained in any contract with the director.

For example, Company A appoints one of its employees as a director of one of its investee companies. The obligation of the employee to give notice under s.383(5) of the CO to the investee company will depend on whether any sum paid to him by, or receivable by him from, Company A is "in respect of his qualifying services" rendered to the investee company (section 4(2)(a)). If it is stated expressly in the employment contract of the employee with Company A that a certain sum is paid for his services as a director in the investee, the employee must give a notice to the investee under s.383(5) of the CO. However, if the employee acts as a director of the investee company incidental to his services to Company A and no emolument is received by him from Company A for such service to the investee company, the employee is not required to give a notice under s.383(5) of the CO to the investee company. Each case will depend on the facts of the particular case.

(b) *Section 9: Amounts paid or receivable in which period to be shown*

Section 9 states that an amount required to be shown in the notes to the financial statements for a financial year must be the amount of -

- (a) All relevant sums receivable in respect of that year (whenever paid); or
- (b) In the case of sums not receivable in respect of a period, the sums paid during that year.

Section 9 also states that if an amount is disclosed for the financial year then the corresponding amount for the immediately preceding financial year must also be shown in the notes. See paragraphs 31 to 35 below for further guidance.

(c) *Section 10: Payments made by or to which person to be shown*

Section 10 states that the amounts to be disclosed should include all relevant sums, whether paid by or receivable from the company, the subsidiary **or any other person** (emphasis added). Section 10(3) states that this also includes payments made by another person at the direction of the person. In other words, when identifying relevant payments to be disclosed, the focus should be on what the payment is for, not on who made the payment.

In addition, section 10(2) states that a reference to a payment to or receivable by a director includes -

- (a) a payment to or receivable by a connected entity of the director; and
- (b) a payment to a person made or to be made at the direction of, or for the benefit of, the director or a connected entity of the director.

As explained in paragraph 15 above, pursuant to section 10(2) a payment would not be classified as a payment to third parties when the payment is directly or indirectly made to or receivable by the director or an entity connected with him/her (such as his/her family or business associates).

Accounting Bulletin 5

Guidance for the Preparation and Presentation of a Business Review under the Hong Kong Companies Ordinance Cap. 622

This Accounting Bulletin is based on the Reporting Statement: Operating and Financial Review issued by the UK's Financial Reporting Council (FRC), adapted by the Hong Kong Institute of Certified Public Accountants (HKICPA) to the Hong Kong context and contains material in which the FRC owns the copyright. The HKICPA gratefully acknowledges the permission given for the use of the material by the FRC.

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12. Under section 388(3), the following companies are exempted from preparation of a business review which complies with Schedule 5:
- (a) the company falls within the reporting exemption for the financial year¹; or
 - (b) the company is a wholly owned subsidiary of another body corporate² ~~in~~ at the end of the financial year^{2a}; or
 - (c) the company is a private company³ that does not fall within the reporting exemption for the financial year, and a special resolution (as defined in section 564 of the CO) is passed by the members to the effect that the company is not to prepare a business review required by Schedule 5 for the financial year.
13. In accordance with section 358(1) of the CO, section 388 of the CO applies in relation to a financial year beginning on or after the commencement date of that section i.e. it applies to financial years beginning on or after 3 March 2014.

REQUIREMENTS OF SCHEDULE 5 "CONTENTS OF DIRECTORS' REPORT: BUSINESS REVIEW"

14. The following sets out the requirements of Schedule 5:

Paragraph 1 of Schedule 5 states that a directors' report for a financial year must contain a business review that consists of:

- (a) a fair review of the company's business;
- (b) a description of the principal risks and uncertainties facing the company
- (c) particulars of important events affecting the company that have occurred since the end of the financial year; and
- (d) an indication of likely future development in the company's business.

Paragraph 2 of Schedule 5 states that to the extent necessary for an understanding of the development, performance or position of the company's business, a business review must include:

- (a) an analysis using financial key performance indicators;
- (b) a discussion on:

¹ Further details on which companies are eligible for the reporting exemption can be found in the Small and Medium-Sized Enterprise Financial Reporting Framework (~~Revised 2014~~ February 2019) issued by the HKICPA.

² As stated in section 357(3) of the CO, a body corporate is a wholly owned subsidiary of another body corporate if it has only the following as its members:

- (a) that other body corporate
- (b) a wholly owned subsidiary of that other body corporate
- (c) a nominee of that other body corporate or such a wholly owned subsidiary.

"Body corporate" is defined in section 2 of the CO as including a company (i.e. a Hong Kong incorporated company) and a company incorporated outside Hong Kong, but excluding a corporation sole.

^{2a} As amended by the Companies (Amendment) (No. 2) Ordinance 2018, effective 1 February 2019.

³ As stated in section 11 of the CO, a private company is a company not limited by guarantee whose articles restrict a member's right to transfer shares, limit the number of members to 50 and prohibit any invitation to the public to subscribe for any shares or debentures of the company.

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)

Accounting Bulletins reflect the views of the Financial Reporting Standards Committee on subjects of topical interest. They are intended to assist members or stimulate debate on accounting issues. They do not have the authority as either Hong Kong Financial Reporting Standards or Accounting Guidelines.

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.

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

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.

~~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.