



16 January 2015

To: **Members of the Hong Kong Institute of CPAs**
All other interested parties

**INVITATION TO COMMENT ON EXPOSURE DRAFT OF
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'"**

Comments to be received by 16 March 2015

The Hong Kong Institute of Certified Public Accountants' (Institute or HKICPA) Financial Reporting Standards Committee (FRSC) is seeking comments on the Exposure Draft of Accounting Bulletin 6 which has been posted on the Institute's website at:

<http://www.hkicpa.org.hk/en/standards-and-regulations/standards/financial-reporting/exposure-drafts/>

Background

On 3 March 2014 the new Hong Kong Companies Ordinance (Cap. 622 or CO) came into operation. Section 436 of the CO replaces the requirements of section 129C(1) and (3) of the predecessor Hong Kong Companies Ordinance, Cap.32, on the publication of a company's balance sheet. It also introduces new requirements on the publication of a company's 'non-statutory accounts'.

Essentially, section 436 requires that:

- 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
- 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 applies in relation to 'specified financial statements' and 'non-statutory accounts' for financial years beginning on or after 3 March 2014. Failure to observe the requirements 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.



Objective of the proposed guidance

The Institute proposes to issue Accounting Bulletin 6 (Bulletin) to provide guidance for members by addressing the following questions:

- What does section 436 require companies to do?
 - Requirements that apply when making 'specified financial statements' or 'non-statutory accounts' available to others
- When is section 436 applicable?
 - What is the meaning of 'specified financial statements' and 'non-statutory accounts'?
 - What actions would or would not be considered making 'specified financial statements' or 'non-statutory accounts' available to others?
- Does section 436 apply to Summary Financial Reports prepared under sections 437-446 of CO?

The proposed guidance also contains illustrative examples of the section 436(3) statements to be attached to 'non-statutory accounts'.

The proposed Bulletin is for guidance only and does not introduce additional accounting, disclosure or legal requirements.

Invitation to comment on the proposed guidance

In accordance with the Institute's due process, comments are invited from any interested party. The FRSC would like to hear from both those who do agree and those who do not agree with the guidance contained in the Exposure Draft. Comments should be supported by specific reasoning and should be submitted in written form.

Any comments should be submitted to the Institute on or before **16 March 2015**.

Comments may be sent by mail, fax or e-mail to:

Standard Setting Department
Hong Kong Institute of Certified Public Accountants
37/F., Wu Chung House
213 Queen's Road East
Hong Kong

Fax number (+852) 2865 6776
E-mail: commentletters@hki CPA.org.hk

Comments will be acknowledged and may be made available for public review unless otherwise requested by the contributor.

16 January 2015
Exposure Draft

Response Due Date
16 March 2015

Exposure Draft of 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'"**



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

CONTENTS

Exposure Draft of 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'"

The Exposure Draft can also be found on the Institute's website at:

<http://www.hkicpa.org.hk/en/standards-and-regulations/standards/financial-reporting/exposure-drafts/>

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 [] 2014)

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.

CONTENTS

	Paragraphs
INTRODUCTION.....	1-6
WHAT DOES SECTION 436 REQUIRE COMPANIES TO DO?.....	7-13
<i>Requirements that apply when making 'specified financial statements' available to others</i>	9-10
<i>Requirements that apply when making 'non-statutory accounts' available to others</i>	11-13
WHEN IS SECTION 436 APPLICABLE?	14-30
<i>What does the term 'specified financial statements' mean?</i>	16-19
<i>What does the term 'non-statutory accounts' mean?</i>	20-24
<i>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?</i>	25-30
DOES SECTION 436 APPLY TO SUMMARY FINANCIAL REPORTS PREPARED UNDER SECTIONS 437-446?	31-35
APPENDICES:	
<i>Appendix 1: Definitions</i>	
<i>Appendix 2: Example statements to be attached to 'non-statutory accounts' for the purpose of section 436(3)</i>	

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.
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 and Illustrative Examples of the section 436(3) statement to be attached to 'non-statutory accounts'.
6. This Accounting Bulletin is for guidance only and does not introduce additional disclosure or legal requirements. 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 14 to 24 of this Bulletin, 'specified financial statements' are the company's statutory financial statements (see paragraph 18), 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 25 to 30). 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 25 to 28 and 30, 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 the 'non-statutory accounts' are not mistaken by those receiving them or having access to them as being 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:
- (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 paragraphs IE1 to IE8 in the Illustrative Examples attached to this Bulletin.

12. 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 (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. It should be remembered that section 436(4) expressly prohibits attaching the full auditor's report itself to the 'non-statutory accounts'.
13. 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 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?

14. 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.
15. 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 16 to 19);

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.

- (b) the meaning of the term 'non-statutory accounts' (paragraphs 20 to 24); 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 25 to 30)?

Each of these matters is discussed in turn below

What does the term 'specified financial statements' mean?

16. 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 member³ or is otherwise circulated, published or issued by the company.
17. 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.
18. 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 is required to prepare consolidated financial statements under section 379(2).
19. 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?

20. Section 436(6) states that '**non-statutory accounts**' in relation to a company 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.

³ 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).

21. Therefore, the term 'non-statutory accounts' refers to:

- 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,

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

The term 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.

22. 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*.

23. As the term 'non-statutory accounts' captures any accounts in any form 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 cash or non-accruals basis;
- 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 consolidated financial statements for a financial year prepared by a company that is exempt from preparing such financial statements under section 379(3);
- profit forecasts and pro-forma financial information, if they are prepared for a company's or group's financial year or financial position at its year end date.

24. 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.

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?

25. 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)).
26. Consequently, section 436's scope is potentially a wide one. 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:
- providing 'non-statutory accounts' or 'specified financial statements' to the company's bankers under the terms of a loan agreement;
 - filing 'non-statutory accounts' or 'specified financial statements' with a regulator whether or not the filings are placed on public record; or
 - sharing annual financial information with employees, for example as part of an internal annual staff news bulletin.
27. 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.
28. 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, 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 Registry⁴ or equivalent overseas body.

⁴ 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).

29. 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
- 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 respectively⁵
- Financial statements prepared in accordance with HKAS 34⁶, 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 respectively⁷
 - 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 respectively⁸
 - 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 18.66⁹
- 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:
 - Newspaper advertisements
 - Press releases
 - Company publicity brochures

This list is not exhaustive.

30. 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 consider satisfying 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 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)).

^{5, 7, 8, 9} 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.

⁶ As explained in paragraph 24, 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.

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

31. 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.
32. 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.
33. 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)¹⁰. 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.
34. 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."

35. 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).

¹⁰ 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".

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.

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 20 of this Bulletin.

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 366. 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 16 of this Bulletin.

Statement of comprehensive income is the term used by the CO instead of the term 'profit and loss account' used in the predecessor Ordinance (Cap. 32). 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*.

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

Statutory financial statements have the meaning given in paragraph 18 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** 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**.

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 11-12 and 20-30 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).
- 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 required section 436(3) statements illustrated in the following examples to cover such qualification, modification, matter of emphasis or statements as the case may be.
- 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 622(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 622(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 24 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, Half-yearly Interim 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.

Listed company

Example 5 - Half-yearly Interim financial report prepared under HKAS 34

The financial information relating to the year ended 31 December 20XY that is included in the 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.

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 contain 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 622(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.

The Company has delivered the financial statements for the year ended 31 March 20XX to the Registrar of Companies as required by section 622(3) of, and Part 3 of Schedule 6 to, the Companies Ordinance.

The Company's auditor has reported on the 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 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 11.

Public company

Example 8 - 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 622(3) of, and Part 3 of Schedule 6 to, the Companies Ordinance.

The Company's auditor has reported on the 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.

Listed company

Example 9 - 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 622(3) of, and Part 3 of Schedule 6 to, the Companies Ordinance.

The Company's auditor has reported on the 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 10 - 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 622(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 11 - 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 the 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*