

Summary of Accounting Bulletin 6 published by HKICPA
– Guidance on the Requirements of Section 436 of New Companies Ordinance (“NCO”)

I. The Law—s.436, NCO (regarding publication of non-statutory accounts)

1. Purpose:

The new requirements relating to “non-statutory accounts” are intended to ensure that “non-statutory accounts” are clearly distinguished from the company’s statutory financial statements and to also ensure that the reader is informed of certain important matters relating to the company’s statutory financial statements.

2. “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.
- NCO does not provide any specific definition on the expression “purporting to be”. AB 6 provides guidance and examples in this regard (paragraphs 23 to 33).

3. Disclosure requirements triggered:

If a company does any one or more of the following acts:

- (a) “circulates, publishes or issues” 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”.

4. Disclosure requirements:

- (a) 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"); and
- (b) 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 qualified 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)

II. Scope and impact

(a) Only catch full-year financial statements:

Accounts that 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 are not affected.

(b) Potentially catches a wide range of corporate documents:

Examples (given in paragraph 30 of AB 6) include:

- Prospectuses or Listing Documents;
- Stock Exchange Circulars (see paragraph 31)
- Preliminary announcements of (full-year) Results for a financial year of companies listed on the Main Board/GEM of the Hong Kong Stock Exchange complying with Listing Rules or GEM Rules respectively;

Why preliminary announcement of full-year results are caught: financial statements meeting the minimum requirements of Appendix 16 of Main Board Rules or GEM Rule 18.50 constitute "non-statutory accounts" for **both years**. They are not full statutory accounts. The supporting notes are not full notes in the full audited statements.

- Financial statements prepared in accordance with HKAS 34, such as:
 - Preliminary announcements of interim results of companies listed on the Main Board/GEM of the SEHK complying with Listing Rules or GEM Rules respectively;
 - Half-yearly interim reports or summary interim reports of companies listed on the Main Board/GEM of the SEHK complying with Listing Rules or GEM Rules respectively;
 - Voluntary quarterly Financial and Business Reviews or quarterly interim reports or quarterly summary interim reports of companies listed on the Main Board or quarterly reports of GEM companies complying with GEM Rules;

Why they are caught: HKAS 34 requires them to contain a statement of financial position as of the end of the preceding financial year as comparative information.

- There are other examples in paragraph 30 of AB6, and the list is stated as non-exhaustive.

III. Sample of disclosure language

- AB 6 (Appendix 2) gives useful illustrative examples of disclosure statements. Two useful examples (covering quarterly / half-year interim financial report; preliminary full-year results announcement) are extracted and attached in the Appendix.

IV. When will your company be first affected

- For existing December year- end companies, the first year affected is the year ended 31 December 2015, i.e. preliminary announcement of 2015 full-year results.
- For other year-end companies, they will be affected in 2015 for their interim / quarterly reports:

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

Extracted from AB 6 (Appendix 2)

Part of one financial year and the whole of another

Listed company

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

The financial information relating to the year ended 31 December 20XY that is included in the [1st Quarter/Half-year]* Interim Report 20XZ as comparative information does not constitute the Company's statutory annual consolidated financial statements for that year but is derived from those financial statements. Further information relating to these statutory financial statements required to be disclosed in accordance with section 436 of the Companies Ordinance is as follows:

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

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

** delete as appropriate*

More than one financial year

Listed company

Example 6 - Preliminary announcement of audited annual results

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

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

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

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