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The Hong Kong Institute of Chartered Secretaries

(Incorporated in Hong Kong with limited liability by guarantee)

Submission on HKICPA's "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"*"

Dear Sirs,

Introduction

HKICS is the industry organisation representing Chartered Secretaries as governance professionals in Hong Kong and China. HKICS is rooted with the Institute of Chartered Secretaries and Administrators (ICSA) in the United Kingdom with 9 divisions and some 33,000 members. It is also a founder member of the Corporate Secretaries International Association (CSIA), an international organisation comprising 19 national member organisations to promote good governance globally.

AB6 is Welcome

We refer to your 16 January 2015 "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"" (AB6). We start with the overall comment that the publication of AB6 is welcome and timely as guidance in relation to the dealing with the requirements under Section 436 of the Companies Ordinance in connection with specified financial statements and non-statutory accounts.

Our Comments

We also have the following specific comments on AB6:

1. In general, it applies to Hong Kong incorporated companies and not overseas companies, although it being unclear if an existing overseas company is also within s.19(1) of the Companies Ordinance which AB6 should clarify. In any event, there is no level playing field between Hong Kong and overseas incorporated companies. Following the issue of AB5, Hong Kong Exchanges and Clearing Limited (HKEx) did seek to level the playing field for overseas incorporated companies listed on The Stock Exchange of Hong Kong Limited (HKSE) in relation to Directors Report/Business Review reporting requirements under Appendix 16 of the Listing Rules. Would HKICPA kindly consider working with regulators to seek to expand the application of AB6 to overseas incorporated listed issuers on HKSE, and if possible, all overseas incorporated companies?
2. It does not seem to address the situation of modified audit opinions. As the full audit report could not be attached, it would be difficult for readers to assess the relevancy and significance of the audit qualifications without the full report. That is, for "non-statutory accounts", s436(3)(d)(i) only requires the statement to indicate "whether the auditors' report was qualified or otherwise modified". It does not require disclosure as to further details on the audit qualifications. We would suggest that paragraph 12 of AB6 be expanded to recommend disclosure of the directors' assessment of the implications of the modified audit opinions, in addition to the recommendation to disclose a "brief description" of the particular matters addressed under the audit report, as currently contained in paragraph 12 of AB6.
3. It only regulates a full set of financial statements and non-statutory accounts (note: non-statutory accounts under s436 could be other than a "full set" of financial statements, e.g., a single statement of comprehensive income for a financial year). Ad hoc or piecemeal

financial information along with non-GAAP financials seem to be not within its scope. Could there be any recommendations to deal with these matters under AB6?

4. The word "circulate" is a concern. It is not uncommon that unaudited annual financial statements are circulated to directors, staff and professional advisors. By means of mere circulation, the company and directors might offend the section, which seems unduly onerous. Should clarification be provided as to what is the intention in relation to what constitutes circulation and under what circumstances that a statement is required to be added to the annual financial statements? Perhaps HKICPA should clarify with the CR as to the intention (although paragraph 11 of AB6 does try to explain the intention with respect to non-statutory accounts).
5. The law imposes obligations on the company and its officials. However, it does not offer a clear picture as to the scope of liability. What if the full set of financial statements is included in an analyst report without the relevant audit report, would the company and directors be responsible? What would be the position with respect to secondary or derived financial information? Could the company discharge its obligations by requesting a statement be included in any secondary publication? S436(1)(a) states that the section applies if a company circulates, publishes or issues any specified financial statements or non-statutory accounts in relation to the company. A question arises as to whether or not any secondary or derived financial information of the company circulated, published or issued by third parties would mean the company "circulates, publishes or issues" the specified financial statements or non-statutory accounts under s436(1)(a). These issues could be considered under AB6.

Should you have any queries, please feel free to contact Mohan Datwani, Senior Director and Head of Technical and Research at 2881 6177 or mohan.datwani@hkics.org.hk

Yours faithfully,

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