

Updates on the Frequently Asked Questions Regarding Notification Requirements for Foreign Audit Firms, etc.

The FSA has published this update on the Frequently Asked Questions regarding Notification Requirements for Foreign Audit Firms, etc., to help foreign audit firms enhance their understandings of our notification system, which has been enforced since April 2008. This update supplements the relevant formal provisions stipulated in the Certified Public Accountants Act (hereafter referred to as “CPA Act”) and the Cabinet Office Ordinance regarding Notification Requirements for Foreign Audit Firms, etc. (hereafter referred to as “Cabinet Office Ordinance”). If you wish to gain more comprehensive understandings of the requirements, it is recommended that you should read this with [the previous FAQs](#), which were published in March 2008.

Questions:

[Matters to be contained in the notification document]

1. Which notified matters will be made public in the official gazette?
2. Are the “amounts of stated capital or total amounts of equity” written in the notification document publicly disclosed?
3. What is the scope of the “amounts of stated capital or total amounts of equity” for calculation purposes of notification requirements? Should stated capital, capital surplus, and retained earnings be included?
4. The “names of the board members” are also listed as one of the notified matters. Does this mean the FSA requires the names of all the partners?
5. Would it be a violation of the CPA Act if it were revealed that there was something to correct or a need to submit additional information after the submission of the notification, but a notifying person had already started to provide audit and attestation services?
6. Where can we find the list of foreign audit firms, etc., which have made notifications to the FSA?

[Matters to be contained in the attachment]

7. When is it possible for a notifying person to omit the description of an outline of the audit systems in the attachment?
8. While submission of information on the names and professional histories of individuals responsible for performing services is also required, if multiple names are applied and their positions are not equal, is it sufficient for the notifying person to submit information only on the person in the highest position?

9. Is it necessary for a notifying person to include information on minor violations against laws and regulations relevant to audit and attestation services in the attachment? Further, in doing so, is there any possibility that the notification will be denied?

[Languages that may be used for the attachment]

10. In the cases where attachments are originally made in languages other than Japanese or English, is it sufficient to translate them into English and then submit them to the FSA?

[Matters to be contained in the notification document]

Q1 Which notified matters will be made public in the official gazette?

Article 34-35(1) of the CPA Act stipulates that, when a relevant notifying person intends to provide audit and attestation services concerning financial documents, which are to be submitted by an issuer of securities listed in Article 2(1)(xvii) of the Financial Instruments and Exchange Act (i.e., foreign issuer)¹, he/she shall make a notification to the FSA in advance.

Furthermore, in the case that such notification is made, that effect shall be made public in the official gazette, as stated in Article 34-35(2) of the CPA Act.

Specifically, the matters that will be made public in the official gazette are as follows:

1. Date of notification
2. Name of the juridical person or names of persons
3. Location of the principal office
4. Names of the board members, in the case of a juridical person
5. Date of incorporation and the name of the jurisdiction of the governing law applicable to the incorporation of said juridical person
6. Names and location of the principle office of the foreign issuers for whom the financial documents notifying person provides audit and attestation services²

It should be noted, however, that when there are changes in the notified matters, they shall be notified to the FSA within two weeks; and once such changes are notified, that effect shall also be made public in the official gazette in conformity with Articles 34-37 of the CPA Act.

¹ For the list of such securities, please see Section C (2) of [the previous FAQs](#).

² For the definition of “audit and attestation services,” please see Section (C) (1) of [the previous FAQs](#).

Q2 Are the “amounts of stated capital or total amounts of equity” written in the notification document publicly disclosed?

As stipulated in Article 34-36(1)(iv) of the CPA Act, the information on the “amounts of stated capital or total amounts of equity” is one of the matters to be provided to the FSA. Hence, a notifying person shall submit the information on the amounts of stated capital to the FSA but, as can be seen from the answer for Q1, such information will not be disclosed publicly.

Q3 What is the scope of the “amounts of stated capital or total amounts of equity” for calculation purposes of notification requirements? Should stated capital, capital surplus and/or retained earnings be included?

Article 34-36(1) of the CPA Act requires notifying persons to contain the “amounts of stated capital or the total amount of equity” in the notification document, in the case of juridical persons. It is intended that if the notifying person takes the form of a stock company, the amount of stated capital should be provided; on the other hand, if he/she takes the form of a partnership, the total amount of equity participation, which may encompass stated capital, capital surplus, and retained earnings, should be provided.

However, we understand that the “amounts of stated capital or total amounts of equity” stipulated in Article 34-36(1) can be interpreted differently from jurisdiction to jurisdiction. Accordingly, we encourage notifying persons to exercise reasonable judgments based on the provisions of each jurisdiction, bearing in mind our original intentions.

Q4 The “names of the board members” are also listed as one of the notified matters. Does this mean the FSA requires the names of all the partners to be listed in the notification document?

In Article 34-36(1)(iii) of the CPA Act, the names of the board members are listed as one of the notified matters if the relevant notifying person is a judicial person. While it is considered necessary to be provided with the names of all partners whose responsibilities are prominent in a juridical person, we do not aim to be provided with all the names of partners. The FSA encourages notifying persons to exercise reasonable judgment in determining who should be covered within the scope.

Q5 Would it be a violation of the CPA Act if it were revealed that there was something to correct or a need to submit additional information after the submission of the notification, but a notifying person had already started to provide audit and attestation services?

There is no article which stipulates the process of screening or requisites for approval of the notification document. However, if there are any significant deficiencies, the FSA may request additional information. In this case, the notification would become effective after such deficiencies had been corrected.

Please refer to [the previous FAQs](#) published on 19 March 2008, which shows the interpretations of when the notification will become effective.

Q6 Where can we find the list of foreign audit firms, etc., which have made notifications to the FSA?

The list of foreign audit firms, etc., which had made notifications to the FSA, is available at [the List of Licensed \(Registered\) Financial Institutions](#) on our website. Please note that the list will be updated on a frequent basis.

[Matters to be contained in the attachment]

Q7 When is it possible for a notifying person to omit the description of an outline of the audit systems in the attachment?

Article 5(1)(iii) of the Cabinet Office Ordinance stipulates that an “outline of the audit system in the jurisdiction where the principal office of the notifying person is located” shall be described in the attachment.

The FSA allows the method of providing reference to websites on this requirement. Furthermore, if the website of a relevant audit oversight body sufficiently provides information on the audit system, an outline of the audit systems is deemed to have been described in the attachments by providing reference to the website of each of the audit oversight body. However, such websites are limited to those offered in English or in Japanese.

Furthermore, Article 5(1) of the Cabinet Office Ordinance also stipulates that notifying persons may provide “other information that the Commissioner of the FSA deems appropriate,” instead of submitting descriptions from the notifying persons respectively. The FSA may determine whether responses from relevant audit oversight authorities to our questionnaire on “Audit Regulation Questionnaire,” which was sent to those authorities in March 2008, meet certain criteria on a case-by-case basis, depending on the contents of their responses. After that, the FSA may allow some notifying person to substitute the answer by providing reference to the website of an oversight body and/or by stating that the relevant oversight body has submitted sufficient information to the FSA and the Certified Public Accountants and Auditing Oversight Board in their attachments. However, the FSA may request additional information from that notifying person at a later time.

Please note that, in cases where the principal offices of the notifying person are located in more than one country and the notifying person provides audit and attestation services to foreign issuers in multiple jurisdictions, the notifying person shall submit the outlines of the audit systems of each jurisdiction.

Q8 While submission of information on the names and professional histories of individuals responsible for performing services is also required, if multiple names are applied and their positions are not equal, is it sufficient for the notifying person to submit information only on the person in the highest position?

Article 5(1)(ii) of the Cabinet Office Ordinance stipulates that it is a requirement to give the names and describe the professional histories of individuals responsible for performing services that are found to correspond to the services prescribed in Article 2(1) of the CPA Act, for financial documents of foreign issuers, etc³.

This provision aims to obtain information on person(s) who take certain responsibilities for audit and attestation services, which may not necessarily be one person. If more than one person are responsible, the FSA would request that the notifying person submit information on these persons, in the absence of special circumstances that makes the submission of such information unnecessary or inappropriate.

Q9 Is it necessary for a notifying person to include information on minor violations against laws and regulations relevant to audit and attestation services in the attachment? Further, in doing so, is there any possibility that the notification will be denied?

In Article 5(1)(iv) of the Cabinet Office Ordinance, it is stipulated that a notifying person shall provide a document which confirms that the notifying person is compliant with all the relevant laws and regulations, and that the notifying person maintains proper operations in providing audit and attestation services that are found to correspond to the services provided in Article 2(1) of the CPA Act.

In cases where there have been minor violations against laws and regulations, which did not receive administrative measures, etc., it is not appropriate for the notifying person to make judgments on the materiality of such violations. We may suggest that such facts be stated as reference information in attachments.

³ For general guidance regarding this issue, please refer to Section C(8)(b) of [the previous FAQ](#).

[Languages that may be used for the attachment]

Q10 In cases where attachments are originally made in languages other than Japanese or English, is it sufficient to translate them into English and then submit them to the FSA?

Article 1 of the Cabinet Office Ordinance allows notifying persons to submit attachments in English or Japanese. On the other hand, this does not apply if attachments are prepared in foreign languages other than English; in cases where documents or attachments, including a notifying person's articles of incorporation, are written in foreign languages other than English, the notifying person is required to provide translations in Japanese. However, for example, if such documents are translated into English and then attested to be official by a person who holds an official certification as a translator or a person who can be regarded as equivalent thereto, such documents may be treated as official attachments.

In this case, it is deemed as appropriate for the foreign audit firm to produce and submit documents explaining why the particular translator, etc., was chosen, and confirming that the contents of the translated documents are the same as the original, and to submit these documents with the attachments and, for example, the attestation prepared by the translator, etc., who has translated the attachments into English. Please note that the notification document itself shall be prepared in Japanese only.