

## Chapter 1 Outline of the English-Language Disclosure System

### Section 1 Outline of the English-language Disclosure System

#### 1. English-language Disclosure System under the Financial Instruments and Exchange Act

Under the Financial Instruments and Exchange Act (hereinafter "FIEA"), issuers of certain securities are obligated to submit Registration Statements, Annual Reports, and other disclosure documents in principle in the Japanese language. The English-Language Disclosure System is a system which allows foreign companies to submit English documents (limited to those which were actually disclosed in a foreign country pursuant to laws and regulations, including rules of a stock exchange or an equivalent institution, in the foreign country (hereinafter called the "Foreign Regulations") in place of the above-mentioned Japanese documents in cases where these English documents are deemed not to be inadequate in consideration of the public interest and investor protection in Japan.

In cases where a foreign company submits these English documents (including those which are required as supplementary documents), such company shall be deemed to have submitted Registration Statements, Annual Reports, and other disclosure documents.

The English-Language Disclosure System was introduced in 2005 when the FIEA (then known as the Securities and Exchange Act) was amended. Following a gradual expansion of its scope, the system currently applies to almost all documents submitted by foreign companies which have disclosure obligations under the FIEA.

#### 2. Documents eligible for the English-Language Disclosure

##### (1) Foreign Company Registration Statement

Type of the disclosure documents	Corresponding documents under the English-Language Disclosure System
<b>Registration Statement</b> (limited to those prepared in the regular method) and its amendment statements	<b>Foreign Company Registration Statement</b> and supplementary documents as well as their amendment statements

(Note) In cases where a foreign company disclosed a Securities Registration Statement in English, relevant prospectus shall also be in English.

##### (2) Continuous Disclosure Documents

Type of the disclosure documents	Corresponding documents under the English-Language Disclosure System
<b>Annual Report</b> and its amendment statements	<b>Foreign Company Annual Report</b> and supplementary documents as well as their amendment statements
<b>Quarterly Report</b> and its amendment statements	<b>Foreign Company Quarterly Report</b> and supplementary documents as well as their amendment statements

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Type of the disclosure documents	Corresponding documents under the English-Language Disclosure System
<b>Semiannual Report</b> and its amendment statements	<b>Foreign Company Semiannual Report</b> and supplementary documents as well as their amendment statements
<b>Confirmation Letter</b> and its amendment statements	<b>Foreign Company Confirmation Letter</b> and supplementary documents as well as their amendment statements
<b>Internal Control Report</b> and its amendment statements	<b>Foreign Company Internal Control Report</b> and supplementary documents as well as their amendment statements
<b>Extraordinary Report</b> and its amendment statements	<b>Foreign Company Extraordinary Report</b> and its amendment statements
<b>Status Report of Parent Company</b>	<b>Status Report of Foreign Parent Company</b> and supplementary documents

### 3. Requirements and Points of Consideration related to the English-Language Disclosure

#### (1) Requirements for the English-Language Disclosure

For the use of the English-Language Disclosure System, the requirements specified in the following a. to f. in accordance with the classification of the documents listed in each item shall be met.

(Article 5, Paragraph 6; Article 24, Paragraph 8 of the FIEA, and others)

#### a. Foreign Company Registration Statement

##### (a) The document shall be prepared in English.

"Foreign Company Registration Statement (excluding securities information)" submitted in place of a Registration Statement must be prepared in English.

##### (b) The documents were disclosed pursuant to the laws and regulations in the foreign country.

"Foreign Company Registration Statement (excluding securities information)" submitted in place of a Registration Statement must be the document which was disclosed in a foreign country pursuant to the Foreign Regulations (i.e. a document which was made available for public inspection in such foreign country within a regulatory regime as opposed to a voluntary regime).

As such, in cases where a document was prepared in English on a voluntary basis not pursuant to the Foreign Regulations such document does not qualify as a Foreign Company Registration Statement.

In addition, if a foreign company whose home country's official language is not English disclosed documents written in English pursuant to the Foreign Regulations of a third country whose official language is English, such foreign company may submit such documents written in English disclosed in the third country as a Foreign Company Registration Statement.

This shall include the cases where a foreign company conducts an offering or secondary offering of securities in Japan and in another country at the same time, or such company will be simultaneously listed on

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a Japanese stock exchange and a foreign stock exchange, and the Foreign Company Registration Statement (excluding securities information) is scheduled to be made available for public inspection pursuant to the Foreign Regulations of such foreign country.

**(c) The documents are not inadequate in terms of the public interest or investor protection.**

Wherever a foreign company submits a Foreign Company Registration Statement in place of a Registration Statement, the Commissioner of the Financial Services Agency (hereinafter the "FSA Commissioner") shall determine whether the document is inadequate in terms of the public interest and investor protection in light of the terms, forms, and preparation method taking into account the country or region where such document was disclosed. The FSA Commissioner shall consider the following matters for such determination.

**(i) Whether the terms, forms and preparation methods are not inadequate in light of investor protection.**

Whether the preparation/disclosure criteria in the disclosure system under the laws and regulations of a foreign country or those prescribed by a foreign financial instruments exchange or the equivalent institution are not inadequate in terms of the public interest and investor protection in light of the preparation/disclosure criteria in the disclosure system under the FIEA of Japan.

**(ii) Whether the documents were appropriately disclosed in a foreign country**

Whether the documents were appropriately disclosed in a foreign country pursuant to the laws and regulations of such country or rules prescribed by a foreign financial instruments exchange or the equivalent institution.

**Table 1 Example where English-Language Disclosure was allowed on the basis of disclosure documents in English in such country or region (as of March 30, 2012)**

<ul style="list-style-type: none"><li>• The United States of America</li></ul>
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\* The actual submission of such disclosure documents is allowed in "cases where the FSA Commissioner deems that the documents are not inadequate in terms of the public interest or investor protection" for each individual case.

\* As the submission of Foreign Company Registration Statements has been allowed from April 1, 2012, all previous cases where English-Language Disclosure was allowed were related to disclosure of Foreign Company Reports. The same criteria are also considered to apply to the Foreign Company Registration Statements.

**b. Foreign Company Annual Report, Foreign Company Quarterly Report, and Foreign Company Semiannual Report**

These reports are handled in the same manner as the Foreign Company Registration Statements in the preceding a.

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**c. Foreign Company Confirmation Letter**

Only a foreign company which submitted a Foreign Company Annual Report may submit a Foreign Company Confirmation Letter in which matters required in the form of such letter are provided in English.

Such company shall be allowed to submit either a newly prepared document or an existing document which was disclosed in a foreign country.

**d. Foreign Company Internal Control Report**

Only a foreign company which submitted a Foreign Company Annual Report may submit a Foreign Company Internal Control Report in which matters required in the form of the Internal Control Report are provided in English.

Such company shall be allowed to submit either a newly prepared document or an existing document which was disclosed in a foreign country.

**e. Foreign Company Extraordinary Report**

In cases where a foreign company satisfies the requirements in the following (a) and (b), it may submit a Foreign Company Extraordinary Report in which matters required in the form of the Extraordinary Report are provided in English.

Such company shall be allowed to submit either a newly prepared document or an existing document which was disclosed in a foreign country.

**(a) The reason for submission is provided in Japanese.**

The "reason for submission" of a Foreign Company Extraordinary Report shall be provided in Japanese.

The details of such reason are the same as those for a case where a foreign company prepares an Extraordinary Report in Japanese.

**(b) The report is not inadequate in terms of the public interest or investor protection.**

A Foreign Company Extraordinary Report shall be deemed by the FSA Commissioner that it is not inadequate in terms of the public interest or investor protection.

**f. Status Report of Foreign Parent Company**

In cases where the parent company of a listed company (a company which holds a majority of the voting rights of such listed company) is a foreign company, such parent company of the listed company may submit a Status Report of Foreign Parent Company in which matters required in the form of the Status Report of Parent Company are provided in English.

Such company shall be allowed to submit either a newly prepared document or an existing document which was disclosed in a foreign country.

In addition, such company does not need to be a foreign company which submitted a Foreign Company

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Annual Report.

## **(2) Requirements regarding application of foreign accounting standards**

As a general rule, approval by the FSA Commissioner has been required in case a foreign company intends to include financial statements prepared in accordance with the terminologies, forms and preparation method under the rules of a foreign country in a Registration Statement, Annual Report, or other disclosure documents. Such approval will also be required for financial statements which are included in a Foreign Company Registration Statement, Foreign Company Annual Report, and other disclosure documents (hereinafter collectively "Foreign Company Registration Statement, etc." in this chapter).

As a general rule, when using the terminologies, forms, and preparation methods under the rules of a foreign country to prepare financial statements, the foreign company, in general, is required to prepare those in accordance with the standards of its home country (Article 129, Paragraphs 1 and 2 of the Regulation for Terminology, Forms and Preparation of Financial Statements (hereinafter "Regulation for Financial Statements")). However, in cases where a foreign company who has disclosed financial statements written in its own language other than English in its home country has disclosed financial statements written in English in a third country whose official language is English, and the standards of such third country is approved by the FSA Commissioner, the foreign company might be allowed, under Article 129, Paragraph 2 of the Regulation for Financial Statements, to include financial statements prepared in accordance with the standards of such third country in Foreign Company Registration Statements, Foreign Company Annual Report, or other disclosure documents.

## **(3) Points of consideration**

### **a. Cases where the English-Language Disclosure System is not allowed**

In cases where the FSA Commissioner deems that the foreign company which submitted a Foreign Company Registration Statement, etc. does not fall under cases where it may submit such Foreign Company Registration Statement etc., the FSA Commissioner notifies the company of such result after conducting hearings with the company.

For example, this includes cases where a Foreign Company Registration Statement, etc. was prepared in accordance with standards which are inadequate in terms of the public interest or investor protection even though such document was made available for public inspection in a foreign country.

(Article 5, Paragraph 9; Article 24, Paragraph 12 of the FIEA, and others)

### **b. Whether a foreign company may submit a portion of disclosure documents by way of the English-Language Disclosure**

Foreign companies with disclosure obligations are allowed to submit only a portion of the documents by way of the English-Language Disclosure (For example, submitting only the Quarterly Report by way of the

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English-Language Disclosure while submitting Annual Report and the other disclosure documents in the ordinary way is not prohibited.)

However, only a foreign company which submitted a Foreign Company Annual Report shall be allowed to submit a Foreign Company Confirmation Letter and a Foreign Company Internal Control Report.

In addition, for a foreign company which submitted a Registration Statement and the other disclosure documents in Japanese, submitting an Extraordinary Report in English as a first disclosure document in English may be inadequate in terms of the public interest or investor protection. As such, it is considered appropriate that only foreign companies which submitted a Foreign Company Registration Statement, etc. (excluding a Foreign Company Extraordinary Report) are allowed to submit a Foreign Company Extraordinary Report.

**c. Whether multiple documents disclosed in a foreign country may be submitted as a Foreign Company Registration Statement, etc.**

A foreign company may submit multiple documents disclosed in a foreign country as a Foreign Company Registration Statement, etc. As such, for example, it may submit both of an Annual Report and a Quarterly Report subsequently disclosed in a foreign country as Foreign Company Registration Statement, etc. and list the items which are not provided in any of such documents in supplementary documents as "non-described items".

#### **4. Supplementary Documents**

Foreign companies are required to submit supplementary documents enumerated in the following (1) to (6) with a Foreign Company Registration Statement, etc. (excluding a Foreign Company Extraordinary Report; the same shall apply in this "4. Supplementary Documents").

As for the supplementary documents, foreign companies are allowed either to prepare individual documents for each item or to prepare one document which provides all or a portion of the items. (For example, as for "Transition of major management indicators, etc." for which a Japanese translation of the summary including figures of the indicators for the past five years is required, in cases where only the figures for the last three years are actually included in a Foreign Company Report, those for such three years shall be summarized in Japanese and those for the remaining two years shall be provided in Japanese as non-described items or provided in English with a Japanese translation of the summary attached. The foreign companies are also allowed to prepare a single document which includes all the items.)

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**Table 2 List of Supplementary Documents**

Supplementary Documents	Required Supplementary Documents by Type of the English-Language Disclosure Document						
	Foreign Company Registration Statement	Foreign Company Annual Report	Foreign Company Quarterly Report	Foreign Company Semiannual Report	Foreign Company Confirmation Letter	Foreign Company Internal Control Report	Status Report of Foreign Parent Company
Japanese translation of summary	○	○	○	○	○	○	○
Japanese translation of summary of non-described items	(○) *	(○) *	(○) *	(○) *	×	×	×
Non-described items	○	○	○	○	×	×	○
Comparison table	○	○	○	○	○	○	○
Certificate of incumbency, Power of attorney	(×) **	○	○	○	○	○	○
Others	×	Cover sheet	Cover sheet	Cover sheet	Cover sheet and others	Cover sheet and others	Cover sheet

\* Out of non-described items, a foreign company is required to attach a Japanese translation of the summary for such items in cases where it provides the items in English which require such translation of a summary in Japanese.

\*\* For a Foreign Company Registration Statement, these documents shall be submitted as attachments, not as supplementary documents.

**(1) Japanese Translation of Summary**

A foreign company is required to attach a Japanese translation of a summary as one of the supplementary documents on the following items stated in a Foreign Company Registration Statement, etc. (excluding a Foreign Company Extraordinary Report).

**Table 3 Items which require a Japanese translation of a summary**

Name of English-Language Disclosure Documents	Items which require a "Japanese translation of a summary"
Foreign Company Registration Statement	- Transition of major management indicators, etc. - Outline of business - Risk Factors - Items other than the above which a foreign company submitting the Registration Statement deems necessary and appropriate in terms of the public interest or investor protection
Foreign Company Annual Report	- Transition of major management indicators, etc. - Outline of business - Risk Factors
Foreign Company Quarterly Report	- Transition of major management indicators, etc. - Outline of business (where there was a material change in the consolidated cumulative quarter) - Risk Factors (where there was an event which may have a material impact on investment decisions including unusual changes in financial

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Name of English-Language Disclosure Documents	Items which require a "Japanese translation of a summary"
	position, business performance, and cash flow situation in such consolidated cumulative quarter or there was a material change in " Risk Factors" described in the Annual Report (Foreign Company Annual Report) of the previous fiscal year)
Foreign Company Quarterly Report	<ul style="list-style-type: none"> <li>- Transition of major management indicators</li> <li>- Outline of business (where there was a material change in the interim consolidated accounting period)</li> <li>- Risk Factors (where there was an event which may have a material impact on investment decisions including unusual changes in financial position, business performance, and cash flow situation in such consolidated interim accounting period or there was a material change in " Risk Factors" described in the Annual Report (Foreign Company Annual Report) of the previous fiscal year.)</li> </ul>
Foreign Company Confirmation Letter	<ul style="list-style-type: none"> <li>- Items related to appropriateness of entries in the Annual Report</li> <li>- Special items</li> </ul>
Foreign Company Internal Control Report	<ul style="list-style-type: none"> <li>- Items on basic frameworks of internal control related to financial reporting</li> <li>- Items related to evaluation scope, base date, and evaluation procedures</li> <li>- Items related to evaluation results</li> <li>- Additional items</li> <li>- Special items</li> </ul>
Status Report of Foreign Parent Company	- Financial statements, etc.

**(2) Non-described items falling under the items for which Japanese translation of a summary should be prepared**

In cases where there is no description for items which are required to be included in each form corresponding to a Foreign Company Registration Statement, Foreign Company Annual Report, Foreign Company Quarterly Report, and Foreign Company Semiannual Report, and such items fall under those for which a Japanese translation of a summary should be prepared (specifically, the items enumerated in the preceding (1)), documents which include such items in Japanese or English are required to be attached as supplementary documents. A Japanese translation of a summary must be attached in cases where these documents are prepared in English.

**(3) Non-described Items**

In cases where there is no description for items which are required to be included in each form equivalent to a Foreign Company Registration Statement, Foreign Company Annual Report, Foreign Company Quarterly Report, Foreign Company Semiannual Report, and Status Report of Foreign Parent Company (excluding the items specified in the above (2)), documents which include such items in Japanese or English are required to be

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attached as one of the supplementary documents (however, for a Status Report of Foreign Parent Company, non-described items which should be translated and summarized in Japanese specified in the above (1) should be prepared in Japanese).

#### **(4) Comparison Table**

For a Foreign Company Registration Statement, etc. (excluding a Foreign Company Extraordinary Report), foreign companies are required to prepare a comparison table for items in each corresponding form and those in a Foreign Company Registration Statement, etc. (excluding a Foreign Company Extraordinary Report) to be submitted.

In cases where one item in such form is referred to in two or more items in a Foreign Company Report, etc., all such items are required to be referred in the comparison table.

In addition, description on non-described items is also required to be provided in the comparison table.

#### **(5) Certificate of incumbency and power of attorney**

For a Foreign Company Registration Statement, etc. (excluding an Amendment Statement of a Registration Statement, Amendment Statement of an Annual Report, and Amendment Statement of a Confirmation Letter), foreign companies are required to submit a written statement that proves that the representative of such foreign company has legitimate authority related to the submission of a Foreign Company Registration Statement, etc. and a written statement that proves that a Japan-domiciled party is granted the authority to represent the company for all acts related to the submission of a Foreign Company Registration Statement, etc. (As for a Foreign Company Registration Statement, these documents shall be submitted as attachments, not as supplementary documents.)

A foreign company is required to select a party who is domiciled in Japan and has authority to represent the company for all acts related to the submission of a Foreign Company Registration Statement, etc.

(Article 7 of the Cabinet Office Ordinance on Disclosure of Corporate Information, etc.)

#### **(6) Others**

Foreign companies are required to attach a cover page in a prescribed form as one of the supplementary documents with respect to a Foreign Company Registration Statement, etc. (excluding a Foreign Company Registration Statement). As for a Foreign Company Registration Statement, foreign companies are required to prepare a cover sheet as well as securities information in the prescribed form.

In addition, foreign companies submitting a Foreign Company Confirmation Letter or Foreign Company Internal Control Report may be required to submit a document which includes items that the FSA Commissioner deems necessary in light of the public interest or investor protection.

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## 5. Attachments

The following documents are required to be attached to a Foreign Company Registration Statement.

(Article 5, Paragraph 10 of the FIEA, and others)

**Table 4 List of Attachments**

Classification of English disclosure document	Statutory attachments
Foreign Company Registration Statement	<ul style="list-style-type: none"> <li>- Minutes of board of directors meetings, etc. (a copy of the minutes, etc. of board of directors meetings or general shareholders' meeting in cases where the issuance of such security is resolved at such board of directors meetings or general shareholders meeting, or a written statement that proves that the company was authorized by administrative agencies (a written statement containing description sufficient to understand that the company obtained consent from all incorporators prescribed in Article 32, Paragraph 1 of the Companies Act); or written statements similar thereto )</li> <li>- A certificate of authorization related to changes in the amount of capital (a written statement containing description sufficient to understand that the company obtained permission, authorization, or approval from administrative agencies in cases where such permission, authorization, or approval from the administrative agencies is required for changing the amount of capital of the company (including a designated corporation) due to the issuance of such security)</li> <li>- Written legal opinion by a legal expert (written legal opinion by a legal expert on the legality of such offering or secondary offering of securities)</li> <li>- Certificate of incumbency (a written statement that proves that the representative of a foreign company submitting such Securities Registration Statement is a person who has legitimate authority regarding the registration of such offering or secondary offering of securities)</li> <li>- Power of attorney (a written statement that proves that such foreign company granted the authority to represent the company for all acts regarding the registration of such offering or secondary offering of securities to a party domiciled in Japan.)</li> <li>- Certificate of authorization pursuant to the Foreign Exchange and Foreign Trade Act (a written statement that proves that such foreign company obtained such permission in cases where it is necessary pursuant to Article 21, Paragraph 1 or 2 of the Foreign Exchange and Foreign Trade Act)</li> <li>- A copy of the principal underwriting agreement (a copy of the principal underwriting agreement that was concluded between such foreign company and a financial instruments business operator)</li> <li>- A copy of the corporate bond management agreement (in cases where such security is a corporate bond, etc., a copy of the agreement that such foreign company entrusts, to another party, acts to manage obligations and other acts for creditors or acts for the foreign company as well as a copy of the agreement related to the payment of the principal and interest.)</li> </ul>

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## **6. Submission Deadline**

### **(1) Principles**

In cases where a foreign company submits a Foreign Company Report in place of an Annual Report, the foreign company is required to submit such report within four months after the end of its fiscal year (please note that the period is shorter compared to a case where a foreign company submits an Annual Report. In contrast, a foreign company is allowed to submit an Annual Report within six months after the end of its fiscal year taking into account the burden of translating into Japanese.).

Foreign companies are required to submit other English-Language Disclosure documents by the same deadline in accordance with which Japanese companies submit corresponding documents.

### **(2) Application for extension of submission deadline**

Foreign companies shall be allowed to extend the deadline for submission of a Foreign Company Annual Report, Foreign Company Quarterly Report, and Foreign Company Semiannual Report by obtaining approval of the FSA Commissioner in cases where it is deemed that they are unable to submit such reports by the respective deadline due to unavoidable reasons such as the laws and regulations or practices in their home country.

A foreign company wishing to extend the deadline is required to submit an application for approval and attachments including legal opinions of legal experts, etc. which certifies that descriptions on the laws and regulations or common practices of their home country are true and accurate. These attachments may be prepared in English.

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## **Section 2 Position, etc. of the Preparation Guidelines**

### **1. Position of the Preparation Guidelines**

Ahead of the amendment to the FIEA in 2011 which included the expansion of the English-Language Disclosure System, academics, legal experts, securities companies, and other working-level parties discussed the expansion of the scope for the English-Language Disclosure in the "Disclosure System Working Group" established by the Financial Services Agency (hereinafter "FSA") in November 2010 (chaired by Professor Etsuro Kuronuma, Graduate School of Law, Waseda University).

The contents of the discussions in the working group were compiled as the "Disclosure System Working Group Report -Expansion of Scope of the English-Language Disclosures System-" (released on December 17, 2010). In the report, the working group indicated the direction related to the expansion of the scope of the English-Language Disclosure to offering disclosure documents as well as extraordinary reports. At the same time, from the viewpoint of firmly establishing practical operations, the working group made the recommendation that "As for the 'Japanese language summary', there were many opinions seeking preparation of guidelines which will be the standard for the scope of summarized information and degree of summary and related matters. Regarding how this can be handled, it is expected that a forum be established for the urgent study of this matter by the FSA and other market participants, and that concrete progress be made".

Based on the above proposal, the preparation guidelines ("Preparation Guidelines") are created aiming for providing a guide for preparation of the supplementary documents which require Japanese translations as well as practical handling of the English-Language Disclosure System from the viewpoint of encouraging the use of the English-Language Disclosure System.

The FSA specifies in its English-Language Disclosure Guidelines that "It shall be noted that 'Japanese translation of a summary', 'non-described items prepared in Japanese or English', and 'a comparison table for issuer information (items in the relevant form) and described items in a Foreign Company Registration Statement which correspond to such issuer information' may be prepared in accordance with the preparation guidelines jointly created and publicized by Tokyo Stock Exchange and Japan Securities Dealers Association". These "Preparation Guidelines" correspond to such preparation guidelines referred to in the English-Language Disclosure Guidelines.

In addition, even though some handling is not described in "Points in Preparation" or other sections, it does not preclude the possibility of such different handling depending on the situation within the scope of laws and regulations and the like. This does not constitute a change to the operational handling which is currently accepted when a foreign company submits a Securities Registration Statement, an Annual Report, and other disclosure documents in Japanese.

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## **2. Revision Policy for Preparation Guidelines**

The Preparation Guidelines shall be revised in the following cases from the viewpoint of maintaining the relevance of its contents.

In revising the guidelines, the Study Group for Preparation Guidelines of a Foreign Company Annual Report, etc. shall examine the revisions to the Preparation Guidelines.

### **(1) Where there are amendments to the FIEA and related laws and regulations**

As a general rule, revisions shall be made on the effective date of the amendments to laws and regulations.

### **(2) Others**

Revisions shall, as a general rule, be made annually (at the end of December) with respect to updates in connection to amendments to the laws and regulations of a foreign country as well as changes in the submission history of Foreign Company Registration Statements, etc.

In addition, a foreign company which discloses documents pursuant to the laws and regulations of a foreign country other than the US may submit a Foreign Company Registration Statement, etc. with reference to the "Points in Preparation" and other sections of the Preparation Guidelines. In the future, the study group will also examine handling for each disclosure document pursuant to the laws and regulations, etc. of foreign countries other than the US.

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