



**Asia-Pacific  
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## **Challenges and Issues in Beneficial Owner Verification in Japan**

Submitted by: Japan



**Capacity Building Workshop on Exposing the  
Unseen Hands: Tackling Concealment of  
Beneficial Ownership  
19 October 2020**

# Challenges and Issues in Beneficial Owner Verification in Japan

*Capacity Building Workshop on Exposing the Unseen Hands:  
Tackling Concealment of Beneficial Ownership*

*October 20, 2020*

*Session 5: Latest development and best practices experience in  
regulating, investigating and exposing beneficial ownership*

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*Disclaimer:*

*The views and opinions expressed in this presentation are those of the author and do not necessarily reflect the official policy or position of the organization the author belongs to.*

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- 2014: Regional Head of the Middle East and Senior Executive Office of the DIFC (Dubai) Branch, Sumitomo Mitsui Banking Corporation
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# Outline of Today`s Presentation

1. Verification of Beneficial Owner in Japan
2. Definition of BO by APTCP
3. How to verify at the time of transaction and required documents
4. JFSA AML/CFT Guidelines
5. FATF Requirements for BO
6. Multi-pronged Approach by FATF
7. Registry Approach Use Case in Japan
8. New measures under consideration in Ministry of Justice



# 1. Verification of Beneficial Owner in Japan



## **FATF Recommendation:**

The FATF Recommendation 24, “Transparency and beneficial ownership of legal persons” states that ‘ “countries” should ensure that there is adequate, accurate and timely information on the beneficial ownership (BO) and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities’.

## **Law in Japan; APTCP:**

Act on Prevention of Transfer of Criminal Proceeds (APTCP) requires that the beneficial owner (BO) of a legal person or legal arrangement should be verified up to the natural person who controls the legal person through holding voting rights therein or through other means. (Amended on October 1, 2016)

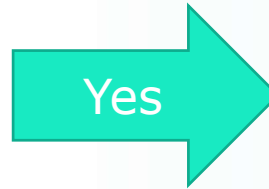
## **AML/CFT Guidelines by JFSA, which is an enforceable mean:**

- JFSA issues “Guidelines for Anti-Money Laundering and Combating the Financing of Terrorism” (AML/CFT Guidelines) as an enforceable mean and obliges FIs to take AML/CFT measures, beyond the requirements by the APTCP.
- The Guidelines set out “required actions” to be undertaken by each FI. Administrative sanctions such as business improvement/suspension orders are imposed in case of inadequate implementation of required actions.

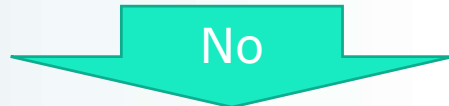
## 2. Definition of BO by APTCP (1/2)

- In case of a legal person or legal arrangement with a majority rule of voting rights. (e.g. Stock Company, Investment Corporation, SPC)

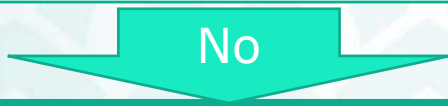
Is there natural person(s) who ultimately owns or holds controlling ownership interest by **holding the voting rights exceeding 25% (\*) of the total voting rights** of the legal person or legal arrangement?



(\*) Determined by the sum of direct and indirect



Is there natural person(s) who ultimately owns or exercises effective **control over policy-making for its finance and management or operation.**



The relevant natural person(s) **holding the position of senior managing official** over the legal person or legal arrangement is the BO.

The natural person(s) is the BO.

Source: APTCP



## 2. Definition of BO by APTCP(2/2)

- In case of other legal person or legal arrangement.  
(e.g. General Incorporated Association, General Incorporated Foundations, Incorporated Educational Institution, Religious Corporation, GPC, LPC, LLC)

Is there natural person(s) who **has the right to receive dividends or allotment exceeding 25% of the total profit or asset** over the legal person or legal arrangement?

or

Is there natural person(s) who ultimately owns or exercises effective **control over policy-making for its finance and management or operation.**

Yes

Yes

The natural person(s) is the BO.

No

The relevant natural person(s) **holding the position of senior managing official** over the legal person legal arrangement is the BO.

Source: APTCP



### 3. How to verify at the time of transaction and required documents

#### APTCP's requirements how to verify BO

Matters to be verified	Required documents	
	Ordinary transactions	High-risk transactions
Customer identification data of BO  - name, - address, - date of birth	<u>Declaration</u> on matters concerning customer identification data of BO made by the representative person, etc.	Shareholder register Securities report, etc.  AND  <u>Declaration</u> on matters concerning customer identification data of BO made by the representative person, etc.

Source: JAFIC Website, APTCP





# 4. JFSA AML/CFT Guidelines

## Required actions regarding BO verification by JFSA Guidelines

II-2(3)(ii)iii

**Seek reliable evidence when surveying information relevant to a customer and its beneficial owner** and the purpose of transaction, including identity information of the customer and beneficial owner and other information such as the occupation and business details, personal history, the state of assets and incomes, source of funds, country/region of residence, etc.

II-2(3)(ii)iv

Comply with, and take other necessary measures against, applicable economic and trade sanction laws and regulations enforced by Japanese and other foreign authorities, such as by **screening the names of a customer and beneficial owners against the sanction lists published by each regulator.**

Reliable Evidence includes, not limited to, but the followings;

- a. Company registry information,
- b. Attachment II of Corporate Tax Payment Document,
- c. Third Party Database, and
- d. Shareholder List provided by the company.

FIs collect these information with evidences based on the risk assessment of the company.



# 5. FATF Requirements for BO

## Technical Compliance (Recommendation 24)

Under R.24, countries should take measures to prevent the misuse of legal persons for ML/TF. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.

**a.Registry Approach:** requiring company registries to obtain and hold up-to-date information on the companies' beneficial ownership

**b.Company Approach:** requiring companies to obtain and hold up-to-date information on the companies' beneficial ownership or companies to take reasonable measures to obtain and hold up-to-date information on the companies' beneficial ownership

**c.Existing Information Approach:** using existing information.

## Effectiveness (IO 5)

IO.5 states clearly that an effective system should put in place measures to:  
*a.prevent* legal persons and legal arrangements *from being used for criminal purposes*;

*b.make* legal persons and legal arrangements *sufficiently transparent*,

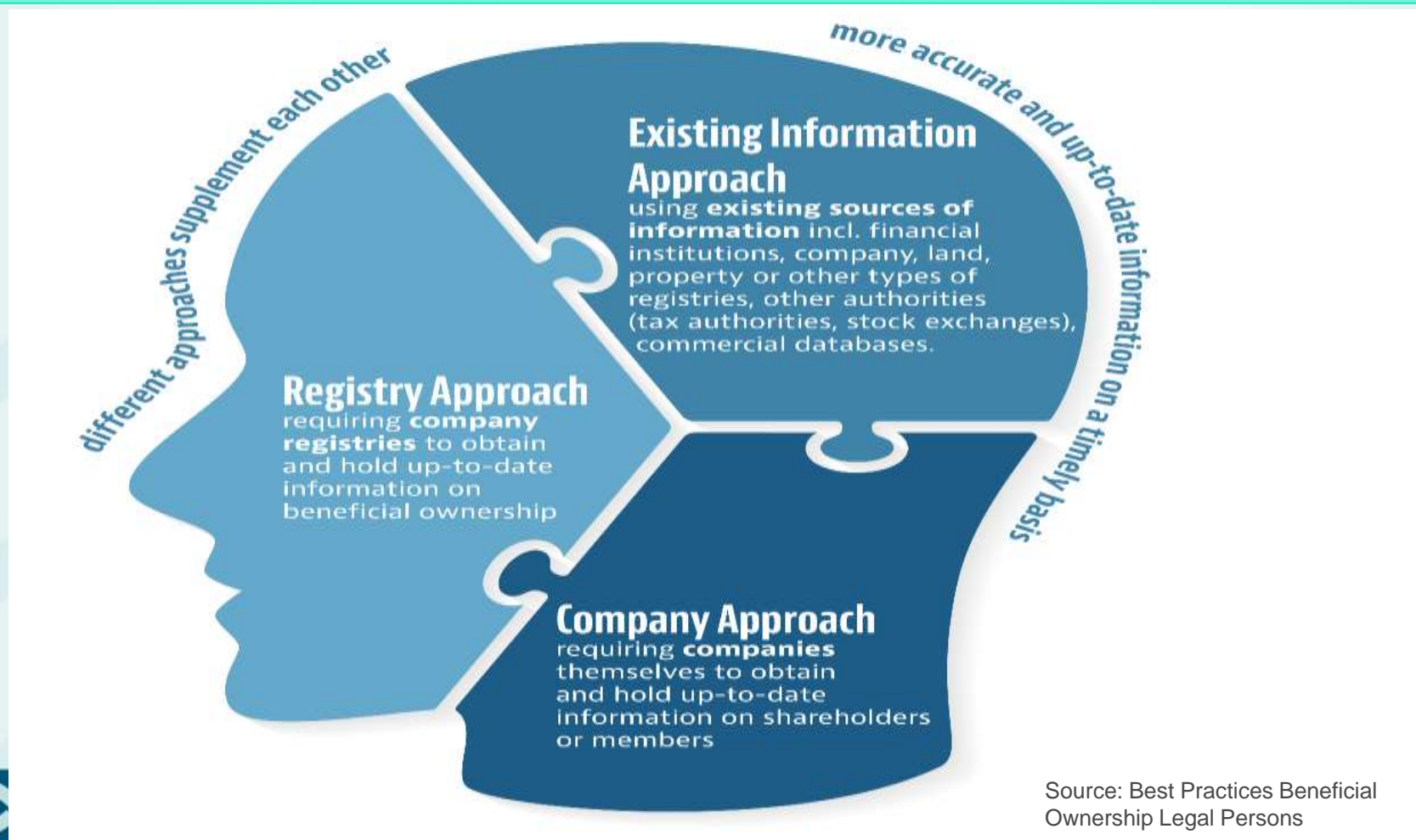
*c.and ensure that accurate and up-to-date* basic and beneficial ownership information is available *on a timely basis*.

Source: Best Practices Beneficial Ownership  
Legal Persons



## 6. Multi-pronged Approach by FATF

- Multi-pronged approach using several sources of information is often more effective in preventing the misuse of legal persons for criminal purposes and implementing measures that make the BO of legal persons sufficiently transparent.



# 7. Registry Approach Use Case in Japan

Fls, in Japan, are now able to use the shareholders' information at the initial registry with the certification by the notary.  
This is the additional information for registry approach.

- On 30 November 2018, the amendment of the Ordinance for the Enforcement of the Notary Act came into force.
- Under the amended ordinance, to incorporate stock companies (the most commonly used form of legal entity), general incorporated associations and general incorporated foundations (hereinafter called 'stock companies etc.'), the founders (clients) are required to report to notaries the information regarding the identity of the person who ultimately owns or controls the legal person they establish when notaries certify articles of association.
- In Japan, the articles of association must be certified by notaries to incorporate these legal entities. The clients also need to report to notaries whether the person who ultimately owns or controls the legal person is a member of organised crime groups or international terrorists.
- The notary database is kept in a centralised and systemic way. Competent authority can access the information in the database through notaries. Notaries are required to check the accuracy of the reported information regarding the identity of the person who ultimately owns or controls the legal person by examining the submitted articles of association and other documents.
- Notaries also make use of their database on organised crime groups and international terrorists and when the person who ultimately owns or controls the legal person falls into these categories, the notaries refuse to certify the articles of association. The information regarding the identity of the person who ultimately owns or controls the legal person acquired by notaries is stored in their database to which competent authorities can refer upon their request.

Source: Best Practices Beneficial Ownership Legal Persons, October 2019, page 35



## 8. New measures under consideration in Ministry of Justice

The Ministry of Justice of Japan is considering the additional measures to record and certify information regarding BOs of legal persons at the commercial registries, not only the initial registry but also on-going basis.

*The proposal by the independent experts to MOJ, Japan in summer of 2020:*

- 1) There should be a new system in which certificates on the beneficial ownership of legal persons are issued at the commercial registries upon application by the legal persons (the “System”). Under the System:
  - a) To make the application, legal persons shall declare the identity of their beneficial owners and submit supporting documents to the commercial registries so that the commercial registries can verify the declared information.
  - b) The declared information is recorded in the centralized database of the commercial registries and the commercial registries issue certificates of the information to the legal persons.
  - c) Legal persons are expected to use the certificates issued at commercial registries when they are required to verify their beneficial owner in the course of commercial transactions. The verification process becomes more efficient and reliable by the use of the certificates.
- 2) This proposal is expected to improve the due diligence practice on beneficial ownership of legal persons by adopting the registry approach and is also expected to effectively increase transparency of legal persons in Japan.

Source: Proposals on the Measures to Identify Beneficial Owners of Legal Persons at Commercial Registries in Japan, Ministry of Justice



***THANK YOU***

