



# **Disclosure of Beneficial Ownership and Control in Listed Companies in Asia**

**2016**



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## *Foreword*

A sound corporate governance infrastructure should combine transparency, accountability and integrity. This requires knowledge of beneficial ownership and ownership and control structures in listed companies. In line with Chapter 5 of the *G20/OECD Principles of Corporate Governance* concerning the development of frameworks for disclosure and transparency, the OECD-Asian Roundtable on Corporate Governance (Asian Roundtable) recognises the need for an adequate regulatory framework for disclosure of beneficial ownership and control in Asian jurisdictions.<sup>1</sup>

This report reviews the legal and regulatory landscape for disclosure of beneficial ownership and control in Asia. It compares enforcement practices in ten Asian jurisdictions and provides guidance and good practices to support policy makers and regulators.

The report was discussed by 14 Asian jurisdictions at the 2015 meeting of the Asian Roundtable in Bangkok, Thailand. Established in 1999, the Asian Roundtable serves as a valuable regional platform for exchanging experiences and advancing the reform agenda on corporate governance while promoting awareness and use of the *G20/OECD Principles of Corporate Governance* in Asia. It brings together policy makers, practitioners and experts on corporate governance from the Asian region, OECD countries and relevant international organisations. The roundtables are co-organised by the OECD and a host Asian country, in partnership with the Government of Japan.

This report aims to enhance the effectiveness of regulators and contribute to a culture of transparency by companies, in the interest of protecting investors and creating confidence in markets. It is a useful reference for reform efforts, self-assessment within national systems and for peer reviews at regional level. Beyond Asian Roundtable participating countries, the report could be an important benchmark for other APEC and ASEAN economies.

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<sup>1</sup> An adequate regulatory framework for disclosure of beneficial ownership and control in Asian jurisdictions is one of six priority areas identified by the OECD-Asian Roundtable on Corporate Governance in its 2011 report on *Reform Priorities in Asia: Taking Corporate Governance to a Higher Level*.

## ACKNOWLEDGEMENTS

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## About this Report

Conventional thinking suggests that investor confidence in financial markets depends, in large part, on the existence of an accurate disclosure regime that provides transparency in the beneficial ownership and control structures of publicly listed companies. This is particularly important in those corporate governance systems that are characterised by concentrated ownership, such as Asia or parts of Europe. In such systems, large investors with significant voting and cash flow rights may facilitate long-term growth and firm performance. However, there is a risk that controlling beneficial owners, with large voting blocks, may also have an incentive to divert corporate assets and exploit opportunities for personal gain (private benefits of control), at the expense of minority investors and to the detriment of the best interests of the company.<sup>2</sup> Consider related party transactions, asset stripping and share dilutions.

In responding to this risk, most jurisdictions have passed legislation, mandating shareholders to disclose and report the accumulation of a substantial ownership of shares. The rationale behind disclosure requirements seems clear: by alerting minority investors or potential investors to material changes in control and ownership structures, allowing them to make a more informed assessment about the company's prospects. However, devising an effective legal framework that facilitates the disclosure of the "ultimate" beneficial owner has not proven easy.<sup>3</sup> Even with a system of disclosure rules, the "true" ownership of a company can remain opaque or, in many cases, difficult or even impossible to establish.

Unsurprisingly, this regulatory failure has led to calls for even stricter disclosure requirements. For instance, the G20 (an international forum of twenty major economies) considers the transparency of beneficial ownership of legal persons and arrangements as well as the implementation of the FATF (Financial Action Task Force) standards on this topic as a high priority. During the G20 Summit in Brisbane that was held in November 2014, new "High Level Principles on Beneficial Ownership and Transparency" were adopted. The Principles, which build on existing international instruments and standards, encourage countries (1) to have a definition of "beneficial owner" that captures the natural person(s) who ultimately owns or controls the legal person or legal arrangement, (2) to ensure that beneficial ownership and control information is adequate, accurate, current and accessible, and (3) to have a legal framework that enables national authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to participate in information exchange on beneficial ownership both domestically and internationally. The importance of beneficial

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2 See Erik P.M. Vermeulen, *Beneficial Ownership and Control: A Comparative Study – Disclosure, Information and Enforcement*, OECD Corporate Governance Working Papers, No. 7 (2013).

3 See Fianna Jurdant, *Disclosure of Beneficial Ownership and Control in Indonesia: Legislative and Regulatory Policy Options for Sustainable Capital Markets*, OECD Corporate Governance Working Papers, No. 9 (2013).

ownership and control disclosure is again emphasised in the *G20/OECD Principles of Corporate Governance*.

In light of the recent regulatory developments, the question arises: how do the rules and regulations regarding beneficial ownership and control that are currently included in a country's corporate governance regime compare to the recently introduced principles? In order to answer this question and obtain a better idea about the current legislative and regulatory instruments and practices regarding the disclosure of beneficial ownership and control in listed companies, a questionnaire survey was conducted among the securities regulators of ten Asian economies.

The securities regulators were invited to respond to an extensive set of questions (Annex). In particular, the survey seeks to identify the key challenges, obstacles and best practices in this under-researched area of corporate governance. Who - which shareholders level - should report a stake in a listed company? When should the disclosure be made and to whom? What should be disclosed? Through which channels should beneficial ownership and control be reported? Who will have access to the reported information?

The questionnaire also focused on the supervision and enforcement of the legal and regulatory mechanisms. Although it is acknowledged that an effective and credible enforcement framework is shaped by the complementary and interdependent roles of both public and private enforcement authorities/bodies, the survey mainly addressed the state and development of public supervision and enforcement within Asia. The best practices are summarised in Table 1.

This report is based upon the responses to the questionnaires that were sent to the securities regulators of the following ten jurisdictions in November of 2014:

- Bangladesh
- People's Republic of China
- Chinese Taipei
- Hong Kong, China
- Malaysia
- Mongolia
- Pakistan
- Philippines
- Singapore
- Thailand

The report is divided into three sections: the first gives a comprehensive overview of the rules and regulations in the area of disclosure of beneficial ownership and control while the second discusses the practice of the ten jurisdictions in enforcing their respective disclosure laws. The report contains in-depth illustrations and examples provided by the responding jurisdictions. The third and final section illustrates how the relevant rules and regulations are implemented in practice and, more importantly, whether these rules are sufficient to offer minority investors a true and accurate picture of ownership and control structures, including the identity of the persons who should be considered as the ultimate beneficial owner.

In particular, this report addresses the following five themes:

1. Layers of beneficial ownership in listed companies.

2. Recognition of beneficial owners and parties with reporting obligations.
3. Instruments and practices for disclosing beneficial ownership and control structures.
4. Types of sanctions available for enforcing disclosure of beneficial ownership and control structures.
5. Collaboration of law enforcement authorities, both within and across borders.

Table 1. **Best practices distilled from the questionnaire survey**

	<b>Principles</b>	<b>Where in the Report</b>
<b>Definition</b>	In general, three groups of natural persons/legal entities should comply with the disclosure of beneficial ownership requirements: (1) directors and chief executives / senior officers should require to make disclosure of their interests in the company, regardless of their actual shareholding percentage; (2) substantial shareholders, which are classified by a minimum shareholding percentage, should report their beneficial ownership (both voting rights and cash flow rights should be taken into account) - such minimum shareholding is usually fixed at 5%; and (3) listed companies should include information about the names of their major shareholders as well as the beneficial owners in their annual reports.	Pages 8-12
<b>“De facto” Beneficial Ownership</b>	Beneficial ownership should be understood as a material concept. The definition of beneficial ownership should include <i>de facto</i> beneficial ownership structures and: <ol style="list-style-type: none"> <li>a. Securities held by a person’s spouse and/or minor children should be counted as securities held by that person;</li> <li>b. Ultimate beneficial ownership (through deemed and indirect ownership) should be disclosed;</li> <li>c. Beneficial owners who have crossed the 5% threshold through “acting in concert”, “trust” or “control enhancing” arrangements should be required to disclose their beneficial ownership position to the company and the competent authorities.</li> </ol>	Pages 13-20
<b>Disclosure by Service Providers</b>	Certain service providers should have obligations to identify the ultimate beneficial owners of the client companies under “customer due diligence” (CDD) rules and regulations.	Pages 17-18
<b>Enforcement</b>	Private actors and groups, such as minority groups and investors associations should be able to enforce disclosure rules and regulations regarding beneficial ownership and control structures.  A country’s enforcement regime should allow investors, regulatory authorities and stock exchanges to initiate enforcement proceedings against substantial beneficial owners if non-disclosure could be construed as “shareholder oppression”.  A country’s enforcement regime should allow listed companies, regulatory authorities and stock exchanges to obtain access to beneficial ownership and control information.	Pages 24-29

	<b>Principles</b>	<b>Where in the Report</b>
<b>Penalties</b>	A country's enforcement regime should include penalties for non-or-flawed compliance in one or more of the following categories: disciplinary, administrative, and/or criminal.	Pages 30-32
	Regulatory authorities should develop a practice of disclosing the sanctions and measures in press releases and on their respective websites. Disclosure should be discretionary (unless criminal sanctions are imposed).	
<b>Collaboration</b>	A system, which allows regulatory authorities to work together and collaborate with tax authorities and other authorities (including law enforcement authorities) to collectively initiate and participate in investigations and share information, should be developed to encourage a culture of transparency and compliance.	Pages 33-35
	National – unilateral – legal and regulatory provisions to encourage cross-border co- operation and information sharing regarding beneficial ownership and control structures should be implemented.	

Source: Questionnaire on Beneficial Ownership in Listed Companies (see Annex)

## 1. The Legal and Regulatory Landscape

This section provides an overview and description of the legal and regulatory instruments that listed companies, within the selection of Asian countries, must comply with when disclosing their beneficial ownership and control structures. The main focus is on the definition of beneficial ownership and the differences between “*de jure*” and “*de facto*” ownership. More specifically, this section provides an overview of the most important regulatory parameters in relation to the disclosure of beneficial ownership information, including parties with reporting obligations, thresholds for disclosure, triggering events and time windows for disclosure, as well as the layer of ownership reached by the disclosure. Moreover, a number of topics pertaining to *de facto* beneficial ownership, such as acting in concert, shareholdings by trusts, use of control enhancing structures, and the specific rules that apply to “service providers” are discussed. But first, this section delineates the statutory and regulatory basis of the discussions by enumerating the applicable laws and regulations as well as the regulatory authorities that are responsible for the implementation and enforcement of the disclosure rules and regulations in the surveyed jurisdictions.

### 1.1 Governing laws and regulatory authorities

In dealing with beneficial ownership and control issues, the responding countries have implemented an array of legal and regulatory instruments. In most jurisdictions, these instruments are included in their securities laws and regulations (including listing rules). This is reflected in Table 2. Interestingly, the securities laws and regulations are converging. Consider the disclosure rules in **Hong Kong, China** which, with the exception of **Mongolia**, can also be found in the securities laws and regulations in **Bangladesh, China, Chinese Taipei, Malaysia, Pakistan, the Philippines, Singapore,** and **Thailand**. Company law provisions sometimes complement the legal and regulatory framework on disclosure of beneficial ownership and control. For instance, detailed and extensive disclosure obligations are found in the Companies Act 1965 in **Malaysia**.

Securities regulators and/or stock exchanges are usually responsible for drafting and implementing (and enforcing) the legal and regulatory instruments. In most jurisdictions, a regulatory authority, such as the Securities & Exchange Commission (SEC) in the United States, is generally viewed as the principal regulator. Their “regulatory work” is supplemented by the stock exchanges, which are viewed as the frontline regulators. The regulators in the respective jurisdictions are also listed in Table 2.

Table 2. Laws, regulations and regulatory authorities

Jurisdiction	Laws and Regulations	Regulatory Authorities/Stock Exchanges
<b>Bangladesh</b>	BSEC Circular	Bangladesh Securities and Exchange Commission (BSEC)
<b>China</b>	Securities Law The Standards Concerning the Content and Formats of Information Disclosure by Companies Offering Securities to the Public No.2 – Contents and Formats of Annual Reports (2014 Revision)	China Securities Regulatory Commission (CSRC)
<b>Chinese Taipei</b>	Securities and Exchange Act FSC's rules governing the Consolidated Business Report	Financial Supervisory Commission (FSC) Taiwan Stock Exchange (TWSE) GreTai Securities Market (GTSM)
<b>Hong Kong, China</b>	Securities and Futures Ordinance Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Exchange Listing Rules)	Securities and Futures Commission (SFC)
<b>Malaysia</b>	Companies Act 1965 ("CA"); Securities Commission Act 1993 ("SCA"); Capital Markets and Services Act 2007 ("CMSA"); Securities Industry (Central Depositories) Act 1991 ("SICDA"); Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001" (AMLATFPUAA) Listing Requirements of Bursa Malaysia Securities Berhad ("Listing Requirements"); Rules of Bursa Malaysia Depository Sdn Bhd ("Bursa Malaysia Depository"); Rules of Bursa Malaysia Securities Berhad ("Bursa Malaysia Securities" or "the Exchange"); Malaysian Code on Takeovers and Mergers 2010 ("TOM Code"); The Prospectus Guidelines- Equity and Debt ("Prospectus Guidelines"); and Guidelines on Prevention of Money Laundering and Terrorism Financing for Capital Market Intermediaries ("SC AML/CFT Guidelines")	Companies Commission of Malaysia ("CCM"), responsible for ensuring compliance with disclosure requirements under the CA; Securities Commission of Malaysia, responsible for ensuring compliance with disclosure requirements under the securities laws, i.e. the CMSA, SCA, SICDA and their respective guidelines; The Exchange, responsible for ensuring compliance with the Listing Requirements and its Rules; and Bursa Malaysia Depository, responsible for ensuring compliance with its Rules
<b>Mongolia</b>	Securities Market Law Custodian Activities Regulation	Financial Regulatory Commission (FRC)
<b>Pakistan</b>	Companies Ordinance	Securities and Exchange Commission of Pakistan
<b>Philippines</b>	Securities Regulation Code	Philippines Securities Exchange Commission (Phil. SEC)
<b>Singapore</b>	Securities and Futures Act (SFA) Securities and Futures (Disclosure of Interests) Regulations	Monetary Authority of Singapore (MAS)
<b>Thailand</b>	Security and Exchange Act	Securities and Exchange Commission Stock Exchange of Thailand (SET)

Source: Questionnaire on Beneficial Ownership in Listed Companies (see Annex)

## 1.2 The definition of beneficial ownership

In simple terms, a beneficial owner is the natural person who is ultimately entitled to the benefits accruing from the beneficial ownership of the securities, and/or has power to exercise controlling influence over the voting rights attached to the shares (even if the legal title is held by another person). Although it is usually argued that a beneficial owner is *always* a natural person, it must be noted that a legal person can also be the ultimate owner if the ultimate beneficial owner is the State or a state-owned entity.

In some jurisdictions, the definition of beneficial ownership is restricted to certain benefits. Consider the law in **Pakistan**, where beneficial ownership hinges on the direct or indirect pecuniary interest in the shares. In **Pakistan**, beneficial owners are required to file the returns generated through beneficial ownership positions.

In the same vein, **Mongolia** defines a beneficial owner as the actual owner of securities that has registered securities in its ownership in the name of the nominee, and has the right to enjoy the benefits attaching to the concerned securities. Four types of accounts of ownership of entities are distinguished in **Mongolia**, where entities licensed to provide custodian services are required to disclose beneficial ownership provisions, namely: (1) fully disclosed accounts (beneficiary), (2) nominee accounts (managed on behalf of the beneficiary and as instructed by the beneficiary), (3) mixed accounts (managed on behalf of the beneficiary and may permit transaction without beneficiary's instruction) and (4) trustee accounts (managed in the interest of the beneficiary without any specific instruction by the beneficiary). Disclosures must be made irrespective of the type of ownership.

A more detailed and encompassing definition is found in **Malaysia's** SICDA, where a beneficial owner is the ultimate owner of the deposited securities and is entitled to all rights, benefits, powers and privileges and subject to all liabilities, duties and obligations in respect of, or arising from, the deposited securities, and does not include a nominee of any description. Despite this broad definition, there is actually no express requirement for beneficial owners to update their ownership information in **Malaysia**. Instead, only a substantial shareholder in a company, which is also a beneficial owner, is required to notify the company of his interests and subsequently any change in his interests. This is also the case in **Hong Kong, China**, where no express terms of "beneficial ownership" or "beneficial owner" as such exist, and beneficial ownership in listed companies is captured by the Disclosure of Interests Regime under Part XV of the Securities and Futures Ordinance (SFO). Based on these regimes, disclosure is required from persons who have an interest in 5% or more of the *voting* shares of a listed company; and directors and chief executives who have an interest in *any* shares of a listed company.

Note that there are, in general, three groups of natural persons/legal entities for which the disclosure of beneficial ownership information is mandated. The first are directors and chief executives / senior officers required to make disclosure of their interests in the company, regardless of their actual shareholding percentage. In the **Philippines**, for example, a company officer needs to file a beneficial ownership report even if he/she does not own a single share in the listed company.

Secondly, substantial shareholders, which are classified by a minimum shareholding percentage, also need to report their beneficial ownership. Such minimum shareholding is usually fixed at 5%, for example in **China; Hong Kong, China; Malaysia; Singapore;** and **Thailand**, but in some jurisdictions at 10%, such as **Bangladesh, Chinese Taipei,** and **Pakistan**. The **Philippines** demand the disclosure of beneficial ownership at both 5%

and 10% levels. The only exceptional case is **Mongolia**, where the disclosure of beneficial ownership is only required from all entities licensed to provide custodian services on an as-it-changes basis. Correspondingly, no minimum shareholding percentage is stipulated there.

Finally, listed companies in the responding jurisdictions must include information about the names of their major shareholders (not necessarily beneficial owners) in their annual reports. There are, however, certain differences in the application of the rules that should not be ignored. For example, in **Pakistan**, the focus is on the disclosure of a pattern of shareholdings. The disclosure rules and regulations in the **Philippines** and **Thailand** “only” require the companies to disclose the largest shareholders, whereas “deemed ownership”, consisting of both direct and indirect (beneficial) ownership, must also be disclosed in **China; Hong Kong, China; Malaysia; and Singapore**. In **Chinese Taipei**, listed companies are required to disclose the major shareholders, holding 5% or more of shares or being the top 10 shareholders in terms of their shareholding, in the annual report. If any of those 10 largest shareholders is an institutional shareholder serving as a director or a supervisor, the name of the corporate shareholder and the names of its 10 largest shareholders and the holding percentage of each shall be noted.

Unsurprisingly, an issue related to the thresholds for beneficial ownership disclosure is the kind of underlying securities pertaining to them, in particular, whether they refer to the entire equity securities of an issuer, or only the voting rights thereof. The former approach is adopted in **Bangladesh, China, Chinese Taipei, Pakistan** and the **Philippines**; while in **Hong Kong, China; Malaysia; Singapore; and Thailand**, the 5% disclosing threshold refers specifically to the *voting* rights of a listed company. For instance, the laws of the **Philippines** explicitly stipulate that both voting rights and economic rights on the securities of the issuer must be disclosed. This includes the disclosure of the “number of shares as to which there is a sole power to vote or to direct the vote, shared power to vote or to direct the vote, sole or shared power to dispose or to direct the disposition”; and “[i]f any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of such securities, a statement to that effect should be included and if such interest relates to more than 5% of the class, such person should be identified”. More particulars regarding the disclosure of beneficial ownership of the ten responding jurisdictions, in particular the timing of the disclosure, are compared and presented in Table 3.



Table 3. Legal and regulatory framework for beneficial ownership disclosure in Asian countries

Jurisdiction	Parties over which beneficial ownership information need to be disclosed	Minimum reporting ownership percentage	The nature of “Shares” related to the percentage	Events requiring disclosure	The period within which disclosure or update is required
<b>Bangladesh</b>	Sponsors and directors	No minimum	Shares	Not specified	Within first 10 days of every month
	Shareholders	10%	Shares	When reaching 10% ownership When any change thereof occurs	
<b>China</b>	Directors and senior managers	No minimum	Shares and stock options	As of publishing annual and semi-annual reports	Not applicable
	Shareholders	5%	Shares	When shareholding is over 5%	3 days
<b>Chinese Taipei</b>	Directors, supervisors, and managerial officers	No minimum	Any shares	When initially acquiring the shares When transferring the shares When pledging the shares	Within 10 days after acquisition of the shares 3 days before the intended transfer Immediately when shares are pledged
	Shareholders	10%	Total shares	When the number of shares held changes	By the 5th day of each month, disclosing changes in the number of shares held

Jurisdiction	Parties over which beneficial ownership information need to be disclosed	Minimum reporting ownership percentage	The nature of “Shares” related to the percentage	Events requiring disclosure	The period within which disclosure or update is required
Hong Kong, China	Directors and chief executives	No minimum	Interests and short positions in any shares AND Interests in any debentures of the issuer AND any of its associated company	<p>When becoming interested</p> <p>When ceasing to be interested</p> <p>When selling any such shares</p> <p>When assigning the right of subscribing for such shares</p> <p>When nature of interest in such shares changes</p> <p>When coming or ceasing to have a short position in the shares</p> <p>If having an interest, or a short position at the time when the issuer becomes listed</p> <p>If having an interest, or a short position when becoming a director or chief executive</p>	<p>3 business days after the occurrence of the relevant event</p>
	Substantial shareholders	5%	Interests in voting shares of the issuer	<p>When first becoming interested in 5% or more of the voting shares (a “notifiable interest”)</p> <p>When such interest drops below 5%</p> <p>When there is an increase or decrease in the percentage figure of the holding that results in his interest crossing over a whole percentage number which is above 5%</p> <p>When the nature of such notifiable interest changes</p> <p>When a person has a notifiable interest and:</p> <ul style="list-style-type: none"> <li>○ He becomes or ceases to have, a short position of more than 1%; OR</li> <li>○ There is an increase or decrease in the percentage figure of his short position that results in his short position crossing over a whole percentage number which is above 1%</li> </ul> <p>If the 5% threshold or the 1% threshold for short positions is reduced, the interest is still notifiable</p>	<p>In case of initial notification made when the shares of the issuer are first listed, 10 business days after the occurrence of the relevant event</p>

Jurisdiction	Parties over which beneficial ownership information need to be disclosed	Minimum reporting ownership percentage	The nature of "Shares" related to the percentage	Events requiring disclosure	The period within which disclosure or update is required
Malaysia	Directors and chief executive	No minimum	Shares, debentures, options and contracts in the company or its associated company	immediately after the reduction When being appointed as a director or chief executive When purchasing, selling or assigning his shareholding interests When ceasing to have interest	Not specified
	Shareholders	5%	Voting rights	When becoming a substantial shareholder When any change occurs to his interests When ceasing to be a substantial shareholder.	7 days of the occurrence of the relevant event
Mongolia	Entities licensed to provide custodian services	Non existent	Not applicable	Upon any change in beneficial ownership	On an as-it-changes basis
Pakistan	Director, company secretary, chief financial officer, chief executive officer	No minimum	Not specified	Within becoming director / specified officer Upon any change in beneficial ownership	Within 30 days of becoming director / specified officer / more than 10% shareholder
	Shareholders	10%	Equity securities	When becoming such shareholder Upon any change in beneficial ownership	Within 15 days of the change in beneficial ownership
Philippines	Directors and officers	No minimum	Equity securities	When acquiring shares When disposing of shares	Within 5 days of acquisition / disposition
	Shareholders	5%	Equity securities	When acquiring 5% beneficial ownership When 5% beneficial ownership ceases to be such	5 days from initial acquisition; 3 days of cessation
		10%	Equity securities	When acquiring 10% beneficial ownership When any change in the 10% beneficial ownership occurs	10 days of initial acquisition; 10 days of any change
Singapore	Substantial shareholders	5%	Voting rights	When a becoming substantial shareholder Upon a change in a full percentage of the substantial shareholding When ceasing to be a substantial shareholder	2 business days after the occurrence of the relevant event

Jurisdiction	Parties over which beneficial ownership information need to be disclosed	Minimum reporting ownership percentage	The nature of "Shares" related to the percentage	Events requiring disclosure	The period within which disclosure or update is required
Thailand	Director, executives and auditors	No minimum	Securities	When being nominated as a director, executive or auditor; OR When acquiring or disposing of listed securities	30 days after nomination; OR 3 business days after acquisition or disposition
	Shareholders	5%	Voting rights	When increasing or decreasing the number of securities held to which aggregately reaches any multiple of 5% of the total number of voting rights; OR When the commencement or termination of a status of a concert party or a status of related person resulting to aggregate holding that reaches any multiple of 5% of total number of voting rights	3 business days after date of the acquisition, disposition, commencement, or termination.

Source: Questionnaire on Beneficial Ownership in Listed Companies (see Annex)

### 1.3 The difference between *de jure* and *de facto* beneficial ownership

Almost all of the responding jurisdictions distinguish between “*de jure*” and “*de facto*” beneficial ownership. Section 4(5) of **Singapore**’s SFA, which demands disclosure by a person who can exercise at least 20% of the voting rights in a substantial shareholder of a listed company, is an example of *de jure* ownership. In contrast, section 4(1) of the same statute requires a person who exercises authority over the disposal of the voting shares of a listed company to disclose his interest in those voting shares held by another person, which is apparently based on *de facto* ownership. Similarly, although **Thailand**’s SEC generally recognises beneficial owners on the basis of *de facto* beneficial ownership structures, an exception is made for takeovers, where the *de jure* beneficial ownership structure will be used as a criterion.

In contrast, two jurisdictions, namely **Mongolia** and the **Philippines**, do not follow the common practice and make no distinction between *de facto* and *de jure* ownership. If examined more closely, however, the two exceptions actually are not quite different from the other responding countries. The **Mongolian** legal system considers the beneficial owner as the ultimate layer of ownership of shares in listed companies; and ultimate beneficial owners must disclose their ownership positions when demanded by the securities issuer, although they don’t have to make the disclosure to the public. In the **Philippines**, as long as one has the option to exercise a right to acquire 5% or 10% within 30 days from the date of the beneficial ownership reports, the option is already considered a beneficial owner. Given that both direct and indirect interests are taken into account when disclosing beneficial ownership in the **Philippines**, it could be argued that the difference between *de jure* and *de facto* ownership is no longer important as it does not affect the disclosure obligations.

### 1.4 *De facto* beneficial ownership as the common regulatory approach

Because it is the rule rather than the exception to look at *de facto* beneficial ownership in addition to *de jure* beneficial ownership, a directly pertinent issue is in the content of such *de facto* ownership. In very general language, applying such a concept will result in shares held under the name of third parties also being counted under the control of the beneficial owner. In **Chinese Taipei**, the term “shares held under the name of third parties” (referred to in paragraph 3 of Article 22-2 of the Securities and Exchange Act Enforcement Rules) refers to any person who satisfies the following qualifications: (a) directly or indirectly provides stocks to third parties, or provides funds to third parties to purchase such stocks; (b) be entitled to manage, utilise, or dispose the stocks held under the name of such third parties; or (c) be allocated the complete or partial portions of profits or losses of stocks held under the name of such third parties. Based on the questionnaire and the responses given by the surveyed jurisdictions, there are six categories of disclosure where beneficial ownership is particularly examined with a *de facto* focus. The categories are discussed in more detail below.

#### 1.4.1 *Shares held by spouses and children*

The first and most straightforward category is when the shareholders are natural persons. Applying the concept of *de facto* beneficial ownership results in the securities held by a person’s spouse and/or minor children being counted as securities held by that person. To be sure, this is a common practice adopted amongst almost all of the

responded jurisdictions. For example, in **Malaysia**, the interests of a director's spouse and children (including adopted and stepchildren) in the shares or debentures of a company are treated as the interest of the director. Similarly, the beneficial ownership structure of listed securities in **Pakistan** includes the securities beneficially owned, held or controlled by the person or his spouse, or by any of his dependent lineal ascendants or descendants who is making the declaration.

#### **1.4.2 Levels of disclosure of beneficial ownership**

The second category is when another company holds the shares of a listed company. The *de facto* approach would certainly require disclosure being made beyond the level of the signatory of the “institutional” shareholder, but the key issue here is how far the disclosure could reach. Is a beneficial owner recognised at the first, second, or the ultimate layer of beneficial ownership of shares in listed companies? Although most jurisdictions do mandate the disclosure to be made to the level of ultimate beneficial owner(s), their answers to this question still vary a great deal in terms of the technical particularities about how to reach the ultimate beneficial owners. One example is the threshold of shareholding that would constitute “control” in a company, which vary from 20% to 33% amongst the responding jurisdictions. More information is summarised and presented in Table 4.

#### **1.4.3 Acting in concert**

*De facto* beneficial ownership also covers the situations where more than one person jointly holds shares. Except for **Pakistan**, all the other responding jurisdictions do impose disclosure obligation on beneficial owners “acting in concert”. In **Singapore**, for example, if a person has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of shares held by another person, the first person is deemed to be interested in those shares and has to include them for the purpose of substantial shareholding disclosure, if the thresholds are exceeded.

The **Philippines** recognises the existence of “acting in concert” by looking at the agreement between/among persons – when two or more persons agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer, the group formed is deemed to have acquired beneficial ownership for purposes of reporting a 5% ownership, as of the date of such agreement.

This same approach is also shared by **Hong Kong, China**. In terms of the content to be disclosed, **Chinese Taipei** obligates that any person who acquires, either individually or jointly with other persons, more than 10% of the total issued shares of a public company to file a statement with the Financial Supervisory Commission (FSC) within 10 days after such acquisition, stating the purpose and the sources of the funds for the purchase of shares and any other matters required to be disclosed by the FSC. Moreover, if an “acting in concert” relationship has affected a **Thailand** company's strategic policy or management, the company is obligated to disclose such relationship in the securities offering documents.

#### **1.4.4 Trust as shareholder**

A special kind of shareholder is a trust. Consistent with the above, if a jurisdiction requires disclosure of beneficial ownership up to the ultimate level, this usually already covers the obligation of disclosing trust arrangements. For example, **Chinese** law requires that, if the actual owner controls a company through a trust or some other arrangements

of assets management, the main content of the trust contract or such other arrangement shall be disclosed. This includes the specific form of the trust or similar arrangement, the authority of the trust management (including the exercise of the voting right of the company's shares), the number of the involved shares, the percentage that these shares take up in the company's outstanding shares, the fees for the trust or similar arrangement, the duration of the contract, the conditions of changing or terminating the contract, the arrangement of the trust assets, the date of signing the contract and other specific provisions.

In **Chinese Taipei**, besides the general disclosure of the first two layers of beneficial ownership to be made in annual reports, a securities or futures business is particularly burdened with extra investigation obligation if its customer is a trustee. It shall obtain the identity of the settlor(s), the trustee(s), the trust supervisor, the beneficiaries, and any other person exercising ultimate effective control over the trust. Similarly, the Anti-Money Laundering Act in the **Philippines** requires "covered transaction reports" to be submitted to the Anti-Money Laundering Council by banks, financial institutions or covered persons on all transactions of P500,000 or more, involving among others, trust accounts.

In **Hong Kong, China**, a person is generally considered to be interested in the shares of a listed company held by a trust, of which he is a beneficiary, or a discretionary trust, of which he is the founder. In calculating the total number of shares in which he is interested, such a person must include any interests and derivative interests in the shares of the same listed company that the trust owns. The name and address of a trust that a person has an interest in, either as a trustee or beneficiary of the trust or as a founder in relation to a discretionary trust must be disclosed. If the person considers that this information is private, he is not obligated to state the name and address of a trust. However, he must still complete certain information in respect of each trust (e.g., the number of shares in which the trust is interested). It is worth noting that, because there is no public trust register in Hong Kong, China, the public will not have access to information about a trust if the trustee/beneficiary has not made the relevant disclosure.

There are also a number of exceptions. Recall that **Bangladesh** has no particular legal provisions about what level of beneficial ownership of listed companies should be disclosed. As a result, trust arrangements are not necessarily disclosed. Only the regulator is empowered by law to access information about the beneficial owners of a private trust. In **Pakistan**, the particulars of the beneficial owners of a trust are not required to be disclosed by the trust at the time of filing the returns of beneficial ownership. Finally, **Thailand** does not recognise private trusts. However, if a trust is used in a capital market transaction, information about the beneficial owners must be disclosed.

#### **1.4.5 Use of control (enhancing) arrangements**

To the end of attaining more voting/control rights in excess of the cash flow rights, a set of control-enhancing mechanisms may be employed. Typically, such mechanisms include pyramid structures, cross-shareholdings, dual class shares and non-voting shares, derivative products of shares (depository receipts), and shareholder coalitions and agreements. Certainly, while using mechanisms to enhance control in general is not uncommon, one jurisdiction can differ from another in terms of the extent of regulatory acceptance of these mechanisms, resulting in one or more of them being illegal or, at least, somehow conditioned in certain countries. For example, **Singapore's** SFA demands a listed company to, at the time of listing application, resolve or eliminate control-

enhancing mechanisms prior to listing and disclose them in the prospectus, if they could result in conflict of interests situations. Where control-enhancing mechanisms are proposed post-listing in connection with matters subject to shareholders' vote (such as major acquisitions entitling the purchaser to board seats), they should be disclosed in the shareholders' circular to allow shareholders to make an informed decision.

With respect to the question of whether there is an obligation for listed companies to provide information about ownership and control structures, all of the ten responding jurisdictions' answers are positive. In terms of what needs to be disclosed, most jurisdictions do not demand for extra disclosure items, in that the relevant information about ownership and control structures is normally covered by the disclosure regime for beneficial ownership (and for that most jurisdictions already take the *de facto* approach to require disclosure to be made to the ultimate layer). For instance, all listed companies in **Pakistan** are required to file on an annual basis with the SEC a complete list of shareholders as well as the pattern of shareholding/beneficial ownership structure. Information concerning control structure as such is not specifically required.

This being said, a number of responding jurisdictions do take the effort of explaining in more detail the position of their national regulator(s) in dealing with certain complex / controversial control-enhancing mechanisms, such as derivatives and dual-class shares. In **Chinese Taipei**, for example, a listed company should also provide information on the issuance of corporate bonds, convertible bonds, preferred shares, depository receipts, employee subscription warrants and private placement. Such disclosed information should also include the issuance conditions, their effect upon shareholders' equity and the specified persons selected in the private placement. If beneficial owners are located offshore, the Financial Supervisory Commission reserves the discretion to require foreign investors to submit, amongst other things, detailed information on derivative products issued or traded offshore for which the stock of domestic public companies serves as the underlying securities; or detailed information on domestic public company stock held on behalf of a principal engaging in derivatives trading.

Similar rules can be found in the **Philippines**, where the disclosure of beneficially owned derivative securities (e.g., warrants, options, convertible securities) is required if the 10% beneficial ownership threshold has been reached. This is also the case in **Hong Kong, China**, where a listed company can make enquiries to establish the knowledge of who owns its shares. This includes the power to investigate the ownership of equity derivatives where the underlying shares of the equity derivatives are shares in the listed company.

Finally, in terms of dual-class shares, the Listing Requirements of Bursa **Malaysia** Securities Berhad explicitly provide that the rights attached to shares of a class other than ordinary shares shall be disclosed in the company's articles of association. Similarly, if a company seeks to be listed on the **Singapore** Exchange Limited, it should disclose in its prospectus whether it is directly or indirectly owned or controlled by any person and the nature of such control, and whether the shareholding interests held by each substantial shareholder, director and the CEO carry different voting rights from the shares being offered.



### 1.4.6 Disclosure obligations by service providers

Table 4. Level of disclosure of beneficial ownership

Jurisdiction	Level of Disclosure Required	Detailed Content of to be Disclosed
<b>Bangladesh</b>	No legal provisions existent	Shareholding and any change thereof by sponsor/director; and beneficial ownership of 10% above.
<b>China</b>	Ultimate layer	The natural person, the state-owned asset management department, or the other institution that could be considered as the ultimate controlling shareholder must be disclosed. If the ultimate controlling shareholder(s) cannot be determined, the ultimate beneficial owners who own more than 5% must be disclosed.
<b>Chinese Taipei</b>	Ultimate layer	Beneficiary's information to be disclosed includes: the purpose of the acquisition, sources of capital, method and date of the acquisition, and the identity of the acquirer.
<b>Hong Kong, China</b>	Ultimate layer	<p>Any person whose interest exceeds the 5% threshold, and any director or chief executive of the listed company will come under a disclosure obligation. A person is taken to be interested in shares in which his "controlled company" is interested. In calculating the total number of shares in which a person is interested, he must include any interests and derivative interests in shares of the same listed company that his controlled company has. If a holding company controls a chain of companies and the company at the bottom of the chain has 6% of the shares in a listed company, the holding company and each company in the chain are taken to be interested in 6%. There is no limit on the number of companies in the chain; and each company in the chain is required to make disclosure unless an exemption applies.</p> <p>A company is a "controlled company" if a person controls, directly or indirectly, 1/3 or more of the voting power at general meetings of the company, or if the company or its directors are accustomed to act in accordance with his directions.</p>
<b>Malaysia</b>	Ultimate layer	<p>Disclosure, generally needs to be made up to the level of ultimate beneficial owner. According to the Malaysia Securities Commission's Guidelines on Prevention of Money Laundering and Terrorism Financing for Capital Market Intermediaries, beneficial owner is defined as the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes that person who exercises ultimate effective control over a legal person or arrangement. "Ultimately owns or controls" and "ultimate effective control" refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.</p> <p>Control is defined as the acquisition or holding of, or entitlement to exercise or control the exercise of, voting shares or voting rights of more than 33% (Section 216 of Capital Markets and Services Act (CMSA) 2007). Joint control is defined as control exercised by two or more persons who have concluded an agreement which may lead them to adopt a common policy in respect of the company (Paragraph 9.02 of the Prospectus Guidelines).</p>
<b>Mongolia</b>	Ultimate layer	Beneficiary's information to be disclosed includes: owner's name, family names, registration number, residential address, phone, email, corresponding tax office, family situation, number of children, financial resources, copy of ID, in case of legal entity, the signatory.
<b>Pakistan</b>	Ultimate layer	However, companies are NOT required to record information on individuals who ultimately own or control 25% of a company's shares or voting rights, or who otherwise exercise control over the company or its management.

Jurisdiction	Level of Disclosure Required	Detailed Content of to be Disclosed
		In terms of interest in the securities of the issuer, the following information needs to be disclosed:
Philippines	Ultimate layer	<ol style="list-style-type: none"> <li>1 The aggregate number and percentage of the class of securities beneficially owned;</li> <li>2 Those shares which there is a right to acquire within 30 days from the date of the report;</li> <li>3 If the acquirer is a company, partnership or a part of a syndicate: each executive officer and director of such company; each person controlling such company; and each executive officer and director of any company or other person ultimately in control of such company.</li> </ol>
Singapore	Ultimate layer	<p>Disclosure rules extend to a person who does not directly hold any shares in the listed company. All ultimate beneficial owners are required to disclose their ownership positions. This includes situations where:</p> <ol style="list-style-type: none"> <li>(a) The person has a controlling interest in a substantial shareholder of a listed company;</li> <li>(b) The substantial shareholder or directors of the substantial shareholder are accustomed or under an obligation to act in accordance with the directions, instructions or wishes of the person; or</li> <li>(c) The person and his associates can exercise at least <b>20%</b> of voting power in the substantial shareholder.</li> </ol>
Thailand	Ultimate layer	<p>In annual reports, information must be made available about the number of shares (and its corresponding percentage) of the top ten shareholders. This includes the shareholders under common control as the same group, and the defined related persons.<sup>1</sup></p> <p>A company is required to provide material information on its ownership and control, and shall periodically update any material information about change in a control structure such as any change in ultimate beneficial ownership.</p>

1. Based on section 258 of Thailand's Security and Exchange Act B.E. 2535, Securities of a business held by the following persons or partnerships shall be regarded as securities held by the person:

- (1) A spouse or minor child
- (2) A natural person who is a shareholder of the acquirer in amount exceeding **30%** of the total voting rights of such acquirer (such voting rights also include his person's spouse and minor child)
- (3) A juristic person who is a shareholder of the acquirer in an amount exceeding 30% of the total voting rights of such acquirer
- (4) A shareholder in a juristic person under (3) and shareholders at all levels of upward shareholding beginning from the shareholder in a juristic person under (3), where the shareholding at each level exceed 30% of total voting right in the immediately lower level (in the case where the shareholder of any level is a natural person, the voting right of his shareholders' spouse and minor child will be included)
- (5) A juristic person in which the acquirer or the persons under (1) – (3) collectively hold shares in an amount exceeds 30% of the total voting right of such juristic person
- (6) A juristic person in which the juristic person under (5) hold its shares and shareholders in all levels of downward shareholding, beginning from the shareholder in the juristic person under (5), providing that shareholders in each level exceeds 30% if the total voting rights
- (7) An ordinary partnership in which the acquirer or the person under (1) – (6) or the limited partnership under (8) is a partner
- (8) A limited partnership in which the acquirer or the person under (1) – (7) is an unlimited liability partner
- (9) A juristic person over which the acquirer has the power of management in respect of investment in securities

Source: Questionnaire on Beneficial Ownership in Listed Companies (see Annex)

## 2. Compliance and Enforcement

In the first part, the key legal and regulatory mechanisms and instruments with respect to beneficial ownership and control were summarised and discussed. A particular focus was given to the *de facto* approach in recognising and disclosing beneficial ownership and control structures. This part continues to examine how such mechanisms are enforced in order to prevent non-or-flawed compliance.

### 2.1. Accurateness of disclosure

As shown in Table 4, the information on shareholding patterns and control structures is publicly available in all responding jurisdictions. This remains true in respect of the information on beneficial ownership for most of the jurisdictions, provided of course that it is required to disclose the beneficial ownership (see Table 2 above). The exception is **Mongolia**, where information on beneficial ownership is only available to the regulators and not to the public.

It should come as no surprise that the disclosed information is usually made in the manner and form that is described in the relevant securities laws and regulations. The disclosure typically includes making changes to the shareholders register, the articles of association and/or the prospectus. Moreover, most responding jurisdictions require reports to be filed and public announcements to be made when changes in beneficial ownership arrangements occur through an acquisition or disposal of securities. Finally, an analysis of the responses to the questionnaires points out that beneficial ownership and control structures generally have to be included in annual reports, shareholder circulars and other periodical reports. Since proper disclosure of beneficial ownership information is crucial to existing and potential investors to enable them to make well-considered investment decisions, most jurisdictions require that the reports are accessible through the companies' website and often also through the websites of the national stock exchanges.

In terms of verifying the accuracy of the disclosed information, three regulatory approaches can be identified: (1) comparing the disclosed information with earlier and/or later reports (the **Philippines**), and/or with the information received from other sources (**Bangladesh, Chinese Taipei, Malaysia, and Pakistan**); (2) relying on the ability of the regulatory authority to investigate and verify the disclosed information (**Bangladesh, China, and Thailand**); and (3) ensuring the correctness, reliability, timing and accurateness of the information by imposing liability for failure to comply with the disclosure rules and regulations (**Chinese Taipei; Hong Kong, China; Mongolia; Malaysia; the Philippines; and Thailand**). Clearly, as is reflected in Table 4, these regulatory approaches are not mutually exclusive. An interesting provision can be found in **Singapore**, where a listed company's register of shareholders is available for inspection by any person, including the shareholders.

Table 5. Practices regarding disclosure of beneficial ownership and control structures

Jurisdiction	Mechanisms of Making Disclosure	Ways to Verify Accuracy of Beneficial Ownership Information
<b>Bangladesh</b>	For beneficial ownership: to be disclosed by written reports by the company For control structures: to be disclosed in annual reports	Reports can be verified with central depository, and also through investigation
<b>China</b>	In a prospectus, listing reports, and annual reports; AND Through Internet and public media	The CSRC will examine disclosed information
<b>Chinese Taipei</b>	In annual reports and prospectuses; AND Update the same on Market Observation Post System (MOPS). Investors could also use the Commerce Industrial Services Portal to find the basic information on registered companies to trace the potential beneficial owners.	TWSE and GreTai Securities Market (GTSM) can verify insiders' reporting shares with their depository book-entry account information supplied by Taiwan Depository & Clearing Company; Disclosure obligors should be responsible for the content disclosed; Otherwise will be liable for damages or administrative fine.
<b>Hong Kong, China</b>	Disclosure forms that are completed manually should be filed: (i) with the listed company; and (ii) with the Stock Exchange; The Stock Exchange publishes the disclosure information it receives on the website of HKEx; Every listed company should keep: (i) a register of the interests and short positions of substantial shareholders; and (ii) a register of the interests and short positions of directors and chief executives.	Disclosure obligors should be responsible for the content disclosed; Otherwise, it may constitute a criminal offense.
<b>Malaysia</b>	A company can require disclosure of beneficial interests in its voting shares; Reporting institutions under the AML/CFT framework should obtain satisfactory information about the beneficial owners of their customers; Central depository should be ready to issue a record of depositors at the request of an issuer, which should also be available for inspection by any member of the issuer; The Securities Commission has the power to require any person who has acquired or disposed of securities or derivatives to make the relevant disclosure of it; The Exchange can require a stock broking company to disclose whether any dealing in securities, in respect of the client's account, is carried out on another person's behalf; An authorised nominee is required to furnish the authorised depository agent / member with the particulars of the instructing client / beneficial owner; AND A company's prospectus should disclose direct and indirect shareholding, and state the ultimate beneficial ownership. Control structures are disclosed in a company's articles of association and annual reports. In addition, a listed company should immediately announce any received notice regarding substantial shareholding and any change of control in it.	Depositors' information is verified against their identification documents by the Depository Agent during the opening of CDS accounts or when these depositors update their information; Depositors are obliged to ensure that all information provided to the Depository is accurate and up to date.

Jurisdiction	Mechanisms of Making Disclosure	Ways to Verify Accuracy of Beneficial Ownership Information
<b>Mongolia</b>	Beneficial ownership information: to be disclosed by the entities license to provide custodian services to the securities issuer or upon the request of the central depository  Control structures: to be disclosed by the management of listed companies	Nominee account holder (custodian service provider) or trust (in case of trustee account) is responsible for the accuracy of information on beneficial ownership
<b>Pakistan</b>	The disclosures of beneficial ownership are to be filed simultaneously with the registrar of companies and Head Office of the Commission;  All listed companies should file a complete list of members with the Commission as well as patterns of shareholding/beneficial ownership structure annually.	By comparing with information filed by the company and with the trading data received from stock exchange(s).
<b>Philippines</b>	Beneficial ownership information to be disclosed to the central corporate registry with the SEC through the articles of association and the annual General Information Sheets, indicating top 20 shareholders;  Control structures to be disclosed to the SEC and PSE, by filing a Current Report or Beneficial Ownership Report, whichever is applicable	By verifying it against earlier or later reports / disclosures;  Reporting person should be ready to explain any inconsistency;  Otherwise may be subject to penalty
<b>Singapore</b>	Disclosure to be made on the relevant forms as prescribed by the Monetary Authority of Singapore; AND  To be published through SGXNet (for prospectuses, they are also publicly available on the Offers and Prospectuses Electronic Repository and Access (OPERA))	A company can require any shareholder to furnish information on the beneficial owners of its shares;  Shareholder register of listed companies is available for inspection by any person
<b>Thailand</b>	Securities offering document  Annual registration statement  Reporting of acquisition or disposal of securities  Report on directors / executives' holding of securities	Duty of the company and its financial advisors to timely and accurately provide the information;  The SEC generally relies on disclosure, but does have the power and authority to further investigate if necessary

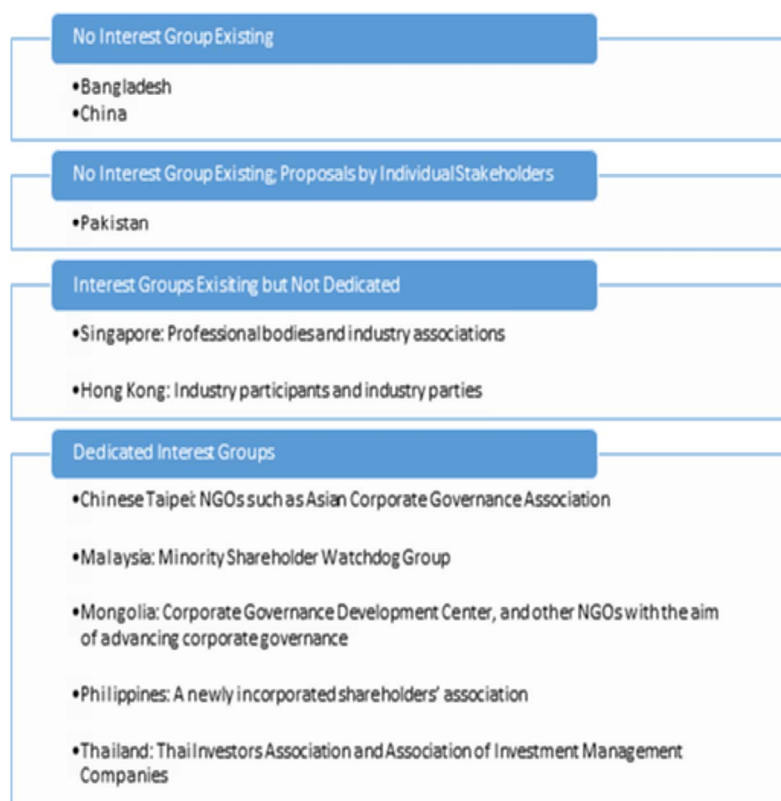
Source: Questionnaire on Beneficial Ownership in Listed Companies (see Annex)

## 2.2 Enforcement of laws and regulations on disclosure of beneficial ownership

Enforcement and oversight can come in different forms. A distinction can be made between two modes of enforcement: public and private. Private enforcement involves actions taken by private actors to ensure compliance and can be further differentiated as judicial and non-judicial. Activist shareholders and “minority investor” groups are examples of such private actors. They can play an important role in contributing to the effectiveness of the enforcement regime of beneficial ownership disclosure. Pursuing an activist strategy will, arguably, encourage listed companies and their beneficial owners to comply with the existing legal and regulatory disclosure requirements. Most responding jurisdictions acknowledge that “minority” shareholder activism can significantly improve legal and regulatory compliance with disclosure rules and regulations in the area of

beneficial ownership and control. Figure 1 gives an overview of private actors that “assist” the regulators in enforcing the existing regulatory regime.

Figure 1. **Interest groups pushing for beneficial ownership disclosure**



Source: Questionnaire on Beneficial Ownership in Listed Companies (see Annex)

Public enforcement contrasts with private enforcement insofar as it encompasses enforcement actions and sanctions for breach of disclosure rules and regulations initiated by regulatory and supervisory authorities. This report addresses both private and public enforcement by analysing the authority of enforcement bodies, the adequacy of enforcement sanctions and the disclosure of these sanctions. Finally, an assessment is made of the practice to share information between domestic and foreign enforcement authorities.

### ***2.2.1 Enforcement proceedings to obtain information***

In the questionnaire, the jurisdictions were asked about the relevant proceedings that can be employed by both the investors and the regulatory and law enforcement authorities for obtaining relevant information about beneficial ownership and control structures. These proceedings, which are summarised in Table 5, can roughly be divided into three separate categories depending on the parties who can initiate them.

The first category of proceedings is designed for investors who have made investment decisions based on incomplete and flawed information regarding beneficial ownership, control structures and arrangements. They may bring action to remedy a violation of the

disclosure rules if the non-compliance could be considered “shareholder oppression”. In **Malaysia**, for instance, Section 181 of the Companies Act states that a shareholder of a company may take an action on the grounds that the affairs of the company are being conducted or the powers of the director are being exercised either in an oppressive manner or in disregard of the shareholders’ interest,

The listed companies play a central role in the second category of proceedings. A listed company is typically empowered to make necessary inquiries to determine the shareholding pattern of its own securities. In **Hong Kong, China**, any person that has or had an interest or a short position in a company’s shares (including equity derivatives based on the shares) also has this right. It would be a criminal offence for a person, without reasonable excuse, to fail to comply with a notice given by a listed company investigating the ownership of its shares under the SFO or to make a false or misleading statement in response to such a notice. Other examples of countries allowing similar inquiries are **Malaysia** and **Singapore**.

The third category of proceedings is available to the regulatory authorities and/or stock exchanges. For example, the Securities Commission in **Malaysia** may by notice in writing force any person to disclose any such information as it may require for the enforcement of securities laws. This may include, *inter alia*, the stock exchange, a holder of a Capital Markets Services License who carries on the business of dealing in securities and derivatives, or any person who has acquired or disposed of securities or derivatives, regardless of whether he or she has done so as a trustee for or on behalf of another person. Moreover, although omnibus accounts are treated as Exempt Authorized Nominee (EAN) accounts, an EAN is still required by law to furnish information or documents relating to the deposited securities in the securities account which may include information on beneficial ownership, as may be required by the SC, the central depository or the stock exchange. Similarly, although the central depository has the duty to maintain secrecy, exceptions can be made to this rule to enable the Central Bank (BNM), the SC, the stock exchange or the clearinghouse to discharge its functions, and to enable any person authorised to investigate into any offence under the law.

In **Chinese Taipei**, it is expressly stipulated that the power of the FSC reaches also to foreign investors. The FSC may, through official orders, ask them to submit, among other things, the following relevant information in relation to beneficial ownership: (a) information on the utilisation of inward-remitted investment funds, securities trading details, and inventory information (the FSC may examine the securities inventories and accounts); (b) detailed information on derivative products issued or traded offshore for which the stock of domestic public companies serves as the underlying securities; or detailed information on domestic public company stock held on behalf of a principal engaging in derivatives trading; and (c) information on persons giving trading orders for investment in domestic securities.

In **Thailand**, the Securities Exchange Commission can, in addition to their own general investigative powers, propose further proceedings or investigations by other related authorities, such as the Department of Special Investigation, the Economic Crime Division of the Royal Thai Police, or the Anti-Money Laundering Office against alleged offenders.

Table 6. Enforcement of beneficial ownership disclosure rules and regulations

Jurisdiction	Information Publicly Available?	How Law Enforcement Authorities Obtain Access to Information	Proceedings for Investors and Other Interested Parties to Obtain Information
<b>Bangladesh</b>	Information over beneficial ownership of less than 10% is only accessible by regulators; Information on control structures is publicly available through the annual report.	For beneficial ownership: possible to obtain this information from central depository and investigation. For ownership and control structures: BSEC has access to this information.	Shareholders can follow the relevant provision of the Companies Act; AND Go through judicial means.
<b>China</b>	Yes	For beneficial ownership: CSRC has the right to investigate the company or individuals who fail to disclose accurately, and request the relevant information. For ownership and control structures: No, they can't obtain such information.	Non-existent.
<b>Chinese Taipei</b>	Yes	The FSC is able to order listed companies, foreign investors as well as securities and future business to submit related information if it is deemed necessary, according to the Securities and Exchange Act, "Regulation Governing Investment in Securities by Overseas Chinese and Foreign Nationals" and "Direction Governing Anti-Money and Countering Terrorism Financing of Securities and Futures Sector".	For public information, all investors are able to use MOPS to gather information; If the information is not publicly available, an investor can conduct litigation in matters relating to their propriety right and ask the court to investigate the evidence.
<b>Hong Kong, China</b>	Yes	The SFC has comprehensive powers to require the production of any record, document or information which it deems relevant to an investigation under the SFO, including the information concerning the beneficial ownership or control of a non-natural person, the SFC may exercise its powers under section 179 or section 183 of the SFO to compel the production of this information from both regulated and unregulated persons. Any person who fails to provide the required information or documents or to attend an interview commits an offense and is liable upon conviction to a maximum fine of \$200,000 and to imprisonment for 1 year.	For public information, all investors are able to use the following website to gather information: <a href="http://www.hkexnews.hk/di/di.htm">www.hkexnews.hk/di/di.htm</a> ; Listed companies are empowered to make inquiries to any person that has or had an interest or a short position in its shares in order to establish who owns their shares (including equity derivatives based on the shares).
<b>Malaysia</b>	Yes	Law enforcement authorities, such as the CCM, the SC, the stock exchange and central depository in Malaysia have wide powers to obtain information on beneficial ownership and control structures for the purpose of investigating allegations of crimes. Such powers are available in their respective Acts and Rules, These include:	Individual shareholders may bring an action to remedy an infringement of their personal rights. Such rights may be conferred by the CA, the company's articles or a separate contract; Publicly listed companies are



Jurisdiction	Information Publicly Available?	How Law Enforcement Authorities Obtain Access to Information	Proceedings for Investors and Other Interested Parties to Obtain Information
	<p>SC may require any person to disclose to it any such information which can also include disclosure of beneficial owners. A person who contravenes this requirement is guilty of an offense;</p> <p>An authorised nominee is required to furnish the depository with the name and other particulars of the instructing client and/or the beneficial owner of the securities deposited in the securities account opened in the name of the authorised nominee;</p> <p>The Exchange may request stock broking companies to disclose whether any dealing in securities in respect of the client's trading account is carried out on another person's behalf</p> <p>The CCM can require any company or individual to furnish all necessary information of his shareholding in a company;</p> <p>The Registrar of a company may at any time require the company in writing to furnish the copy of the register; AND</p> <p>Apply for a court order to restrain a person from performing certain acts or requiring him to perform certain acts.</p>	<p>empowered to require any of its members to disclose whether they hold any voting share in the company as a beneficial owner or as trustee for someone else.</p>	
Mongolia	<p>Beneficial ownership information only available to regulators;</p> <p>Information on control structures is publicly available</p>	<p>For beneficial ownership: Not applicable, because the information is available to regulators already;</p> <p>For ownership and control structures: Not applicable, because the information is publicly available.</p>	<p>There is a general administrative proceeding where a security issuer can seek to obtain information on beneficial ownership.</p> <p>A potential investor can approach the FRC with the report on non-compliance of the disclosure requirement on ownership structure and seek remedial action.</p>
Pakistan	<p>Disclosure filed by beneficial owners is only available to a company's registrar and Head Office of the Commission;</p> <p>Information about the pattern of shareholding disclosed by the company annually is publicly available.</p>	<p>Not applicable, because the information is available.</p>	<p>Any person may obtain from the Company Registration Office of the Commission a certified copy of Form 31/32 (filed by beneficial owners of a listed company) and Form 34 (containing the pattern of shareholding of a listed company).</p>

Jurisdiction	Information Publicly Available?	How Law Enforcement Authorities Obtain Access to Information	Proceedings for Investors and Other Interested Parties to Obtain Information
<b>Philippines</b>	Yes	SEC can require disclosure without going to the courts; AND Law enforcement agencies can get from SEC a certificate containing the information on beneficial ownership and control structures through a letter request or subpoena.	An investor may seek to obtain the information:  By securing certified true copies of beneficial ownership reports or any report filed with the SEC containing the relevant information, OR  From the companies' Articles of Incorporation, General Information Sheets, Annual Reports, Definitive Information Statements, Annual Corporate Governance Reports via the SEC iView, the companies' websites, or PSE's EDGE.
<b>Singapore</b>	Yes	Not applicable, as the information is already publicly available.	A listed company may require any shareholder to furnish it information on beneficial owners of the shares  A shareholder can inspect a listed company's register of substantial shareholders in order to obtain information on the beneficial owners whose holdings of voting shares gives control of the company.
<b>Thailand</b>	Yes	In case of suspicious case relevant to contravention of the SEA:  The SEC shall have the power to order any person, who may be of use, to testify, or deliver copies of, or present accounts, documents, evidence or any objects related to or necessary for the execution of its duties of the competent officer;  The SEC could also propose further proceeding or investigation by other related authorities.	For beneficial ownership: No proceeding available.  For ownership and control structures: Investors may request to The Thailand Securities Depository Co., Ltd., a subsidiary of The Stock Exchange of Thailand, acting as a registrar for common and preferred stocks, to provide information on ownership and control structure of listed companies.

Source: Questionnaire on Beneficial Ownership in Listed Companies (see Annex)

### 2.2.2 Penalties for non-compliance of disclosure obligations

It is interesting to see that even though most jurisdictions discussed in this report devote significant resources to enforcement, there are some fundamental differences in the number and the severity of the enforcement measures/sanctions. Usually, the penalties for non-or-flawed compliance, with the obligation of disclosing information on beneficial ownership and control structures, can be classified into three general categories: disciplinary, administrative, and criminal. Examples of jurisdictions that apply one or more of these forms of penalties are presented in Figure 2. It should be noted that, consistent with their extensive enforcement powers, national capital market regulators are also equipped with a series of punitive measures, which extend beyond merely imposing monetary fines. Similarly, other important institutions such as stock exchanges and central depositories are charged with the power to deploy certain administrative and disciplinary sanctions. It is worth pointing out that the failure to comply with statutory

disclosure obligations may even constitute a criminal offense in **Hong Kong, China; Malaysia; Singapore; and Thailand**, which can lead to large fines and or to imprisonment.

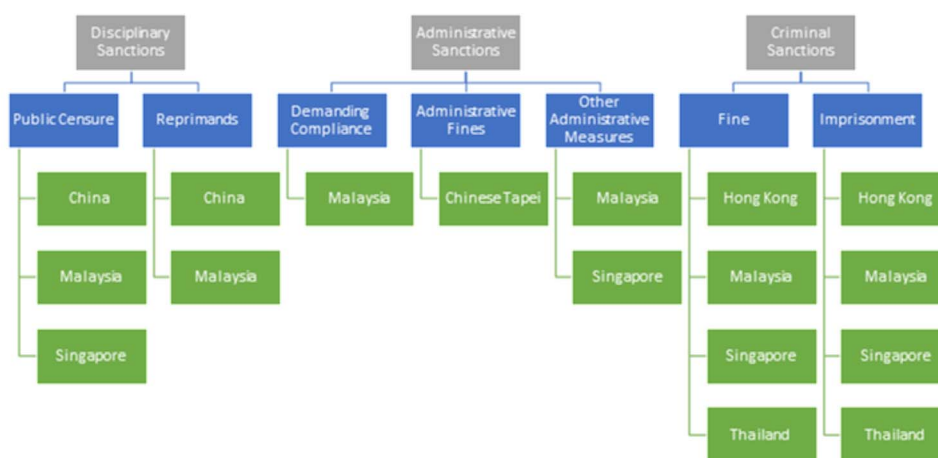
Consider in this regard **Malaysia**, where enforcement mechanisms are typically made up of fines or imprisonment or both. The Companies Act provides that where a company fails to comply with the direction of Bursa or the SC pertaining to the disclosure of beneficial ownership, or knowingly or recklessly gives false information, the company and every officer of the company shall be liable for an offense against the CA which is punishable with a penalty of RM 1 million. Furthermore, Section 25A(3) SICDA makes clear that where an authorised nominee fails to furnish the central depository with the name and other particulars of the beneficial owner of the securities deposited in the securities account, the authorised nominee shall be guilty of an offense and shall on conviction, be liable to a fine not exceeding RM 3 million or to imprisonment for a term not exceeding 10 years or to both. Similar examples can be found in **Hong Kong, China; Singapore; and Thailand**.

In **Hong Kong, China**, it is a criminal offense if a person: (i) without reasonable excuse, fails to make a disclosure in accordance with the provisions of Part XV of the SFO that applies to that disclosure; or (ii) when making a disclosure, makes a statement that he knows is false or misleading in a material particular. If a person commits an offense, he is liable: (i) on conviction on indictment to a fine of HK\$100,000 and to imprisonment for 2 years; or (ii) on summary conviction to a fine of HK\$10,000 and to imprisonment for 6 months, for each offence of which he is convicted.

Any person who intentionally or recklessly contravenes the disclosure requirements, or furnishes any information which he knows is false and misleading shall be liable on conviction to a fine not exceeding \$250,000 or (in the case of an individual) to imprisonment of up to 2 years or both in **Singapore**. If the offense continues after conviction, the person may be liable to a further fine not exceeding \$25,000 per day. Moreover, any person who furnishes any information which is false or misleading (in a material particular in any other circumstance) shall be liable on conviction to a fine not exceeding \$25,000. If the offence continues after conviction, the person may be liable to a further fine not exceeding \$2,500 per day.

These detailed provisions are not available in every country within the survey. In **Mongolia and Pakistan**, for example, general sanctions will apply to non-compliance with the disclosure rules and requirements of ownership. Monetary penalties are found in **Bangladesh** and the **Philippines**. In the latter country, non-compliance and/or non-payment of penalties may result in the suspension or revocation of the primary and/or secondary license/s if the breaching reporting person is a company.

Figure 2. Penalties for non-compliance with disclosure obligations



Source: Questionnaire on Beneficial Ownership in Listed Companies (see Annex)

### 2.2.3 Disclosure of enforcement actions/practices

In most responding jurisdictions, the regulatory authorities have developed a practice of disclosing the sanctions and measures in press releases and on their respective websites. Clearly, publicity about a breach is often a sanction in itself. It also has some other benefits, including a potential normative-enhancing effect. The disclosures provide an international source of information (particularly if the information is available in English and online).

Although it is argued in the policy and academic literature that the decision to make the details about a sanction publicly available should be a discretionary one, to be used by a national regulator if and when appropriate, transparency and disclosure are important elements in ensuring financial market integrity and restoring investor confidence. There is no discussion about the transparency and disclosure of criminal court records and criminal sanctions. This information should be made public to ensure consistency and fairness in judicial decision-making (as far as this is part of normal due process guarantees under a country's criminal laws).

### 2.2.4 Collaboration among law enforcement authorities

Given that trading of listed securities in today's world is overall computerised, the issue of physical location of investors has become rather trivial against the advance of technology. It is thus not uncommon for offshore investors to hold securities in companies listed on onshore stock exchanges. However, this has given rise to the necessity of enabling cross-border collaboration between/among national law enforcement institutions, so that they can still effectively go after illegalities or irregularities even if the concerned parties do not reside in their home country.

In all of the ten responding jurisdictions, there is no distinction made between domestic and foreign beneficial owners in terms of regulatory treatment, and all of them are subject to the same requirements for disclosing beneficial ownership information as long as the disclosure regime applies to them. The capital market regulators of the responding jurisdictions do differ when it comes to the issue of enforcement, i.e., how to ensure that foreign beneficial owners comply with the disclosure obligations in practice.

There are several possible solutions. For instance, regulators could rely on local agents/custodians to report the related information (**Chinese Taipei**), or simply shift the responsibility of ensuring compliance onto listed companies themselves (**Pakistan**). A more commonly adopted approach is to enter into the IOSCO Multilateral Memorandum of Understanding on cooperation and exchange of information (MMoU), which is essentially an information sharing arrangement allowing its signatory countries to access beneficial ownership information when the beneficial owner is located offshore. Established in 2002, the mission of the MMoU is to provide securities regulators with the tools for combating the cross-border fraud and misconduct that can weaken global markets and undermines investor confidence. It is a powerful tool for securities regulators to share with each other essential investigative material, such as beneficial ownership information and securities and derivatives transaction records, including bank and brokerage records. Currently, there are 103 signatories to the IOSCO MMoU, which include, to the extent of the responding jurisdictions, **Bangladesh; Chinese Taipei; Hong Kong, China; Malaysia; Singapore;** and **Thailand**. Although the **Philippines** is not a signatory to the IOSCO MMoU, it will still share information and provide necessary assistance in relation to disclosure of beneficial ownership information, if requested by a foreign enforcement authority from a country whose laws grant reciprocal assistance.

Collaboration should not only be established at an international level. If information about beneficial ownership becomes increasingly important in combating illicit activities, it is clear that the enforcement system stands or falls with the possibility for national supervisory authorities, securities regulators and the like, to cooperate, prevent duplication and share information. It appears from several responses that rules and regulations in this area are increasingly geared towards the improvement of intra-governmental collaborations to not only share information, but also to collectively detect and deter corporate governance misconduct and self-dealing. The Memorandum of Understanding (MoU) between the Securities and Futures Commission and the Exchange in **Hong Kong, China** of 29 January 2003 is worth mentioning. The Memorandum encourages the establishment of collaborative arrangements, including the sharing of information and dealing with overlaps, such as complaints received by more organisations concerning listed companies.

The enforcement authorities in **Malaysia**, the **Philippines** and **Singapore** have also entered into a number of MoUs. Other arrangements have also been set up (such as internal working committees, dialogues, and regular inter-agency meetings) to discuss operational issues and sharing of information. In order to encourage the intra-governmental collaboration in **Singapore**, the Commercial Affairs Department and Monetary Authority of **Singapore** have a working protocol arrangement to ensure that breaches of law are dealt with according to their severity. Legal impediments to the transfer of evidence were removed with the introduction of provisions in the Securities and Futures Act that allow evidence to be transferred from the Commercial Affairs Department to Monetary Authority of **Singapore** and vice versa, as required.

In **Bangladesh**, a coordination committee has been established to encourage collaboration and information sharing among enforcement authorities. This is comparable to the National Law Enforcement Coordinating Committee (NALECC) in the **Philippines**. As a member, the Securities and Exchange Commission works in close coordination and cooperation with other 58 members of NALECC, such as the National Police Commission, the Philippine Coast Guard and the Anti-Money Laundering Council, on the day-to-day law enforcement activities of the members.

The role of tax authorities must not be ignored when it comes to compliance and enforcement. Tax authorities are often the first to detect illegal activities committed by listed companies, including fraud and bribery. In almost all responding jurisdictions, there is no statutory obligation for listed companies to provide tax authorities with information about beneficial ownership. The only country that somehow differs from this rule is the **Philippines**, where all withholding agents, including listed companies, need to submit to the Bureau of Internal Revenue an alpha list of payees of income payments including cash dividends according to the Revenue Regulation.<sup>4</sup> This does NOT preclude the tax administration from proactively and directly (without the need of a search warrant) requesting a listed company to provide the information about beneficial ownership if the information is necessary for taxation investigation. This is the case in **Chinese Taipei**, **Malaysia**, **Singapore**, and **Thailand**. Note that in each of these four jurisdictions as well as the **Philippines**, the tax administration is generally able to share the obtained information with tax authorities and other law enforcement authorities, not only within its own borders, but also with authorities located in foreign jurisdictions. The respective tax laws and regulations typically limit the sharing of information to fiscal related issues, such as tax evasion and issues regarding the application of double taxation treaties.

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4 The SEC has also issued a Memorandum Circular to assist PLCs and other market participants to comply with the Revenue Regulation. However, the Supreme Court issued a Temporary Restraining Order against said Regulation and Circular in the meantime that a petition questioning the same is pending.

### 3. What is next: Disclosure in Practice

In dealing with beneficial ownership and control issues, the responding countries have implemented an array of legal and regulatory instruments aimed at information disclosure. In most jurisdictions, these instruments are included in their securities laws and regulations (including listing rules). Moreover, there is a significant degree of convergence. At the core of most disclosure laws is a definition of the beneficial owner. In general terms, a beneficial owner can be defined as the natural person who's entitled to the benefits accruing from the beneficial ownership of securities, and/or has power to exercise controlling influence over the voting rights attached to the shares. Different jurisdictions fill out this basic concept in different ways. On one end of the spectrum, we find jurisdictions where the definition of beneficial ownership is restricted to certain benefits, such the pecuniary benefits attached to the shares. A more detailed definition can be found in the other end of the spectrum where a beneficial owner is defined as the ultimate owner of the deposited securities and is entitled to all rights, benefits, powers and privileges and is subject to all liabilities, duties and obligations in respect of, or arising from, the deposited securities.

There are three groups of natural persons/legal entities for which the disclosure of beneficial ownership information is required. The first are directors and chief executives/senior officers required to make disclosure of their interests in the company, regardless of their actual shareholding percentage. Secondly, substantial shareholders, which are classified by a minimum shareholding percentage, also need to report their beneficial ownership. Such minimum shareholding is usually fixed at 5% or 10%. Finally, listed companies must include information about the names of their major shareholders (and usually also the beneficial owners) in their Annual Reports.

Most jurisdictions distinguish between “*de jure*” and “*de facto*” beneficial ownership. Because it is the rule rather than the exception to look at *de facto* beneficial ownership in addition to *de jure* beneficial ownership, a pertinent issue is the content of such *de facto* ownership. In general language, applying such a concept will result in shares held under the name of third parties also being counted under the control of the beneficial owner.

Even with a robust disclosure regime in place, however, the use of mechanisms such as pyramid structures and chains of local and offshore corporate vehicles may still allow the ultimate beneficial owner of a company's shares to conceal his true identity. The availability of multiple strategies for concealment creates a perception that the regulatory framework - and particularly the disclosure regime - is failing to adequately address the issue of beneficial ownership and control. This perception of “regulatory failure” has led to an increased awareness of the importance of enforcement actions and sanctions as discussed in the previous section.

An interesting next step would be to look at how the disclosure and enforcement rules and regulations work in practice, as similar rules may have different results in different jurisdictions. For example, where do you actually find the information on the beneficial

owner (company web site, annual report, etc.)? And for potential investors unfamiliar with the local situation, how easy is it to find the information and how complete is the information regarding beneficial ownership? The importance of this kind of research has become clear when examining how the twenty largest (according to their market capitalisation) and usually most successful companies (in terms of corporate governance compliance) in seven of the surveyed markets (China; Hong Kong, China; Malaysia; Pakistan; Philippines; Singapore; and Thailand) have actually complied with the disclosure requirements. A forthcoming World Bank study has looked in detail at how such firms presented their (often convoluted) ownership structures in their annual reports. Based on this sample, a diverse range of approaches has been discovered.

First, there are those companies that engage in a reluctant style of compliance in which formal requirements are met, but the ultimate owner is difficult and, in some cases, impossible to identify. The second group comprises the majority of companies who in a rather dry and literal manner, comply with the disclosure requirements and reveal the beneficial owners. What is remarkable for this group is that determining the identity of the ultimate beneficial owner is often still a cumbersome and time-consuming endeavour, particularly for investors who are not familiar with a country's legal system and/or a company's reporting practices.

It is the last group, a very small number of companies with concentrated ownership structures go beyond what the disclosure rules oblige them to reveal. Such companies present additional information, but more than that they present such information in an easily accessible and highly personalised way. Some companies also use charts and other figures to provide information about the beneficial ownership positions. Clearly, this approach - which could be characterised as a form of open communication - builds investor confidence and affords such companies with the best opportunity of attracting greater investment.

It is therefore suggested that in addition to regulators improving the design of regulatory and enforcement frameworks to enhance transparency of ownership and control structures of listed companies, empowering companies to adopt more effective disclosure policies could also make an important contribution. This type of approach seems particularly relevant in an age of social media, when there are multiple new opportunities for imaginative information dissemination.

From the perspective of policy makers and regulators, the insights of an empirical review of different compliance strategies can prove extremely useful. The activities of the "Innovative compliance" companies allow us to identify models - or principles - of best practice based upon what such companies are doing right now in terms of information disclosure. Significantly, these principles focus not only on the type of information that is being disclosed, but also the style and media of such disclosure. Policy makers and regulators need to focus on communicating to the business community that by adopting such principles a firm will be better placed to engage more effectively with the market. Such an approach offers the best way of minimising risk to investors and ensuring the best allocation of resources.

There is still much research to be done in this area. Certain jurisdictions explicitly require the disclosure of ownership and control arrangement in listed companies, including the information about control-enhancing mechanisms, to be made through a chart. In China, for example, the ownership control structures must be disclosed when the company offers securities to the public and in the subsequent annual report, and such disclosure shall be made clearly through chart(s). In Singapore, a company's prospectus



should show the organisational structure where the company is part of a group, and the company's position within the group. Such practice is considerably more illustrative and informative than pure text descriptions, and can certainly save a lot of time for the investors.

However, the requirements above are only a tentative first step. In an increasingly networked and digitalised age, regulators could arguably persuade listed companies to engage in greater disclosure and adopt a more integrated approach to the communication and presentation of beneficial ownership information. Companies could explain in detail how the ownership and control structure is going to propel their respective businesses towards value creation in the short, medium and long term. This innovative regulatory approach could create a culture in which investors are alerted to the risks associated with investing in companies that do not engage in such highly “personalised” openness.

## *Annex*

### **Questionnaire on Beneficial Ownership in Listed Companies**

#### **The questionnaire**

Thank you for participating in this survey on rules and regulations governing the disclosure of beneficial ownership and control structures in listed companies in your jurisdiction. A good corporate governance infrastructure should combine transparency, accountability and integrity and this requires knowledge of (1) beneficial ownership and (2) ownership and control structures in listed companies. It is clear that the protection of minority investors and other stakeholders will be challenging without access to reliable information about the ownership, including the identity of beneficial owners of significant holdings of shares, and control structures of listed companies. The survey's purpose is to gather information about and evaluate the legislative and regulatory framework and practices regarding the disclosure of beneficial ownership and ownership structures in your jurisdiction. Your invaluable input will be included in a substantive comparative report. The questionnaire is divided in two parts, (1) Beneficial Ownership and (2) Ownership and Control Structures, and consists of 24 questions.

Thank you again for taking the time to participate in this survey. We look forward to receiving your responses before 17 November 2014. Kindly send them to: [fianna.jurdant@oecd.org](mailto:fianna.jurdant@oecd.org)

#### **PART 1: Questions on beneficial ownership of listed companies**

**In order to fully comprehend the challenges relating to the adequate protection of investors, it is necessary to have a clear picture of the beneficial ownership structures of listed companies. Legislatures and regulators have introduced disclosure and transparency obligations to ensure that the identity of the persons who should be considered as beneficial owners of significant holdings of shares is adequately disclosed. However, there are some variations across jurisdictions. When should disclosures be made, to whom, by whom and how?**

- (1) What are the legal provisions (e.g. company law, securities law), regulatory requirements (e.g. listing rules) or practices (e.g. non-binding guides, corporate governance codes) governing the disclosure of beneficial ownership of significant holdings of shares in listed companies in your jurisdiction?*

- (2) *Which government agencies or other groups are responsible for drafting and enforcing the legislative or regulatory rules and provisions regarding the disclosure of beneficial ownership of significant holdings of shares in listed companies?*
- (3) *Are there any influential shareholder activist groups or other interest groups that push for reforms in the area of disclosure of beneficial ownership in your jurisdiction?*
- (4) *What level of beneficial ownership of listed companies is to be disclosed in your jurisdiction? Is a beneficial owner considered the first, second, or ultimate layer of beneficial ownership of shares in listed companies?*
- (5) *Could you describe:*
  - (a) *What kind of information must be made available?*
  - (b) *When this information must be made available (are there any disclosure thresholds/what constitutes a significant holding of shares)?*
  - (c) *Who is responsible for disclosing the information?*
  - (d) *What mechanism(s) is used for disclosure of beneficial ownership (e.g. central registry)?*
  - (e) *When are beneficial owners required to update the ownership information?*
  - (f) *What is the period within which notification of any change in beneficial ownership is required?*
  - (g) *Whether there is a disclosure obligation for beneficial owners of shares acting in concert with other beneficial owners?*
  - (h) *How is the accuracy of information on beneficial ownership verified?*
- (6) *Is the information on beneficial ownership of listed companies publicly available (e.g. website or registry where the information is published) or only accessible to regulators and other authorities (e.g. secure website)?*
- (7) *Are there any penalties for non-compliance with the disclosure rules and requirements (regarding the disclosure of beneficial ownership of significant holdings of shares in listed companies)?*
- (8) *Are there any judicial, administrative, or other proceedings under which investors, (or other interested parties) could seek to obtain information on beneficial ownership?*
- (9) *If information about beneficial ownership is not publicly available, how are law enforcement authorities in your jurisdiction able to obtain access to information about beneficial ownership in the course of investigating allegations of crimes, including fraud, bribery and money-laundering? (e.g. court orders)?*
- (10) *If the beneficial owner is a legal entity (another company), are there any rules or regulations (e.g. anti-money laundering/counter terrorist financing laws and regulations) that require the disclosure of information on natural persons/individuals who ultimately own or control a certain percentage of the entity's shares or voting rights? For instance, companies in the United Kingdom need to record information on individuals who ultimately own or control more than 25 percent of a company's shares or voting rights, or who otherwise exercise control over the company or its management.*

- (11) *If the beneficial owner of a listed company is a private trust, does your jurisdiction provide access to information about the beneficial owners of the trust?*
- (12) *Are ultimate beneficial owners required to disclose their ownership positions when (a) the beneficial owner is located in your jurisdiction and (b) when the beneficial owner is located offshore? Are there any information sharing arrangements with foreign regulators to ensure compliance by an offshore beneficial owner?*
- (13) *Does the legal system in your jurisdiction distinguish between ‘de jure’ and ‘de facto’ (through contractual or other arrangements) beneficial ownership structures?*
- (14) *Does your jurisdiction require listed companies to provide the tax administration with information about beneficial ownership? If the answer to this is affirmative, can the tax administration share the information with the law enforcement authorities in your jurisdiction? Can they share the information with law enforcement authorities in foreign jurisdictions?*
- (15) *Could you provide data (for the last five years) on cases regarding actions brought, remedies awarded and penalties imposed related to the non-compliance with rules, regulations and practices regarding beneficial ownership of significant holdings of shares in listed companies?*
- (16) *Could you provide the latest available data on beneficial ownership information for the twenty largest listed companies in your jurisdiction?*

## **PART 2: Questions on ownership and control structures**

**Is it mandatory for listed companies to provide shareholders and potential investors with information regarding control-enhancing arrangements (such as pyramid structures, cross-holdings, non-voting shares, derivative products of shares (depository receipts), and shareholder coalitions and agreements)? The following questions relate to disclosure rules and requirements governing ownership and control arrangements in listed companies in your jurisdiction.**

- (17) *Is there an obligation for listed companies to provide information on the companies’ ownership and control structure, including the use of control-enhancing mechanisms (control-enhancing mechanisms give controlling investors voting/control rights in access of the cash flow rights, such as the issuance of dual class shares and the use of pyramid structures, cross-shareholdings, non-voting shares, the issuance of derivative products of shares (depository receipts), and shareholder coalitions and agreements)?*
- (18) *Could you indicate to whom (for instance, which government or regulatory agency), by whom and how the information on ownership and control structures must be made available?*

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- (19) *Is the information on ownership and control structures publicly available (e.g. website, registry or annual reports where the information is published) or only accessible to regulators and other authorities (e.g. a secure website)?*
- (20) *Are there any penalties for non-compliance with the disclosure rules and requirements of ownership and control structures?*
- (21) *Are there any judicial, administrative, or other proceedings under which investors (or other interested parties) could seek to obtain information on ownership and control structures of listed companies?*
- (22) *If information on ownership and control structures is not publicly available, how are law enforcement authorities in your jurisdiction able to obtain this information in the course of investigating allegations of crimes, including fraud, bribery and money-laundering? (e.g. court orders)?*
- (23) *Are there any references to relevant cases available on actions brought, remedies awarded and penalties imposed related to the non-compliance with rules, regulations and practices related to ownership and control structures in listed companies.*
- (24) *Could you provide the latest available data on ownership and control structures (including the issuance of dual class shares and the use of pyramid structures, cross-shareholdings, non-voting shares, the issuance of derivative products of shares (depository receipts), and shareholder coalitions and agreements) in the twenty largest listed companies in your jurisdiction?*





# Disclosure of Beneficial Ownership and Control in Listed Companies in Asia

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