

# Japan Corporate & Finance Insights

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## Transparency of Beneficial Shareholders in Japan's Legal Framework

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## I. Introduction

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This article explores beneficial shareholder transparency in Japan under relevant laws, ongoing discussions on possible reforms, and their potential impact on corporate practices.

## II. Definition and Concept of “Beneficial Shareholder” in Japan

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As a concept opposing the “*nominal shareholder*”, which means a shareholder listed on a company’s shareholder register under the Companies Act<sup>1</sup>, a “*beneficial shareholder*” generally refers to “a shareholder who has the authority to give instructions on voting rights or the authority to invest in the relevant shares”<sup>2</sup> in the context of regulations under the Financial Instruments and Exchange Act (“**FIEA**”). This concept is primarily discussed to promote dialogue among companies, shareholders, and investors regarding the amendment of financial regulations (as mentioned below). The beneficial shareholder could be a legal entity or a natural person; however, such term has not yet been explicitly defined by any laws in Japan.

A “*beneficial shareholder*” differs from a “*beneficial owner*”, which is a term rooted in international standards set forth by the Financial Action Task Force (“**FATF**”) for combatting money laundering and terrorist financing, and is designed to identify “natural person(s) who ultimately own or control a legal entity and/or the natural person(s) on whose behalf a transaction is being conducted”<sup>3</sup>. To identify the beneficial owner, it is necessary to trace the capital relationships back to a natural person as the ultimate controller. This differs from beneficial shareholders, as such term also includes legal entities that qualify as potential controlling entities.

## III. Regulatory Framework for Beneficial Shareholder Identification

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Under the Japanese legal system there is basically no general legal system in place for identification of beneficial shareholders available for a share-issuing company or other shareholders of a share-issuing company,<sup>4</sup> except for certain regulations under the large shareholding reporting system for listed

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<sup>1</sup> Companies Act Articles 121 and 125, Paragraph 1

<sup>2</sup> Report of the Working Group on Tender Offer Rules and Large Shareholding Reporting Rules of the Financial System Council, Financial Services Agency, December 25, 2023, p.17.

<sup>3</sup> p. 123, INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION, FATF Recommendations, Updated November 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>

<sup>4</sup> Report of the Working Group on Tender Offer Rules and Large Shareholding Reporting Rules of the Financial System Council, Financial Services Agency, December 25, 2023, p. 17.

companies under the FIEA.

#### **a. Large Shareholding Reporting System under the FIEA**

Shareholders whose ownership ratio of a listed company's shares exceeds 5% are required to submit a large shareholding report to the Finance Bureau, and if the ownership ratio increases or decreases by 1% or more for a company that has already submitted such a report, an amended report must be submitted to the Finance Bureau<sup>5</sup>.

The shareholders subject to this reporting obligation include any person who owns shares, either in their own name or another's name<sup>6</sup> or anyone who, based on a money trust contract or similar agreement, has the authority to exercise voting rights as a shareholder of the issuer for the purpose of controlling the issuer's business activities<sup>7</sup>.

Consequently, beneficial shareholders are often the parties who are obligated to submit reports; however, since this matter is determined based on individual circumstances, such as the terms of applicable trust agreements, the purpose of the system differs from the transparency of beneficial owners, thereby making it a limited measure in terms of securing the visibility of beneficial shareholders.

#### **b. Shareholder Registry System under the Companies Act**

Under the Companies Act, companies are required to maintain a shareholder register<sup>8</sup>, which shows only nominal shareholders, not beneficial shareholders. In Japan, under the Companies Act, the shareholder register is subject to requests for inspection and copying by shareholders under certain conditions. However, it is not part of the commercial registry and is not made publicly available by governmental authorities.

#### **c. Private Research for Beneficial Ownership Identification**

In practice, since there is basically no system in place to identify beneficial shareholders, listed companies in Japan often engage private research firms to identify beneficial shareholders, and incur substantial costs in doing so. However, it is still not necessarily possible to identify all beneficial shareholders through such research.

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<sup>5</sup> FIEA, Article 27-23, Paragraph 1, and Article 27-25, Paragraph 1

<sup>6</sup> FIEA, Article 27-23, Paragraph 3

<sup>7</sup> FIEA, Article 27-23, Paragraph 3, Item 1

<sup>8</sup> Companies Act, Articles 121 and 125, Paragraph 1

## IV. Existing Transparency Measures for Beneficial Owners

In the context of anti-money laundering and counter-terrorism financing (AML/CTF), Japan has the following systems related to “*beneficial owners*”:

### a. Transactional Verification by Financial Institutions

Under the Act on Prevention of Transfer of Criminal Proceeds (“PTCP”)<sup>9</sup>, financial institutions in Japan are obligated to verify beneficial owners as part of their transaction processes, as well as being required to report suspicious transactions to the Commissioner of the Financial Services Agency and related administrative authority designated in PTCP<sup>10</sup> and retain records, and are immune from having to conduct business with those who do not provide the requested information.

“*Beneficial owners*” is defined as natural persons who: (i) directly or indirectly hold more than 25% of the total number of voting rights of a legal person; (ii) have a controlling influence over the business activities of a legal person through investments, loans, transactions or other relationships; (iii) are entitled to receive more than 25% of the total dividends of profit or distribution of property amount of a legal person; or (iv) represent the said legal person and execute the business of the said legal person<sup>11</sup>  
<sup>12</sup>.

### b. Beneficial Owner Verification by Notaries During Corporate Formation

During the incorporation process of a company, notaries in Japan are required to verify beneficial owners by collecting information on names, addresses, and date of birth, and confirmation that they do not belong to or comprise organized crime groups, international terrorists, or parties related to weapons of mass destruction programs<sup>13</sup>.

The definition of “*beneficial owners*” is referring to the definition set forth in the PTCP<sup>14</sup>.

### c. Beneficial Ownership List System

Japan’s Ministry of Justice maintains a registry of beneficial ownership information for entities. This includes details on names, addresses, nationality, and the number of voting rights controlled. Certified copies of the registry are available for verification purposes.

The registry office maintains beneficial owner information and provides copies with certification statements<sup>15</sup>. This information includes matters related to beneficial owners (such as the beneficial

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<sup>9</sup> PTCP, Article 4, Paragraphs 1 and 2, and Enforcement Regulations of PTCP, Articles 11 and 14, Paragraph 3

<sup>10</sup> PTCP, Article 22, Paragraphs 1 of PTCP.

<sup>11</sup> PTCP, Article 4, Paragraph 1, Item 4, and Enforcement Regulations of PTCP, Article 11, Paragraph 2.

<sup>12</sup> This is a summary and does not provide a detailed description of the definition of “*beneficial owners*.”

<sup>13</sup> Notary Act Enforcement Regulations, Article 13-4, and Ministry of Justice Notification No. 829, November 13, 2018.

<sup>14</sup> Notary Act Enforcement Regulations, Article 13-4, Paragraph 1, Item 1, quoting the PTCP.

<sup>15</sup> Ministry of Justice Notification No. 187 of 2021 (<https://www.moj.go.jp/content/001359518.pdf>), Article 2,

owner's name, address, nationality, the number of voting rights held directly or indirectly, a control relationship diagram in the case of indirect ownership, documents attached to confirm beneficial owner status, and identification documents for the beneficial owner)<sup>16</sup>. However, this system issues copies of the beneficial ownership list based on voluntary applications. Therefore, it is considered to have limitations from the perspective of AML/CTF regulations.

As above, the definition of "*beneficial owners*" is again made by referring to the definition set forth in the PTCP<sup>17</sup>.

## V. Proposed and Ongoing Regulatory Discussions

To improve transparency and accountability, the Working Group on Tender Offer Regulations and Large Shareholding Reporting Systems organized by the Financial Services Agency ("**FSA**") has reported that the rules concerning transparency of beneficial shareholders should be reviewed, referencing systems in Europe and the United States<sup>18</sup>. The report also states that, as a principle of institutional investors, it should be explicitly clarified that when issuers inquire with institutional investors about their shareholding status, they are obligated to respond. Furthermore, the report states that it should be considered that making such responses is conducted as a legal obligation under the regulatory framework.

It is currently being discussed by the Expert Council on the Stewardship Code in the FSA that the introduction of the principle of institutional investors' conduct would be initially encouraged under the Stewardship Code<sup>19</sup>. Discussions regarding legal obligations are expected to take place at a later stage, and as of now, a system for broadly disclosing beneficial shareholders has not been specifically discussed.

According to an article in the Nikkei in April 2024<sup>20</sup>, the FSA is "considering amending the Companies Act in the future to impose an obligation on registered shareholders to disclose beneficial shareholders. However, an FSA official has stated that 'it will take at least three to four years' for such an amendment to be implemented". At present, no formal discussions on amending the Companies Act have been publicly disclosed.

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introductory paragraph, Article 7.

<sup>16</sup> Ministry of Justice Notification No. 187 of 2021, Article 2 and other items, <https://www.moj.go.jp/content/001388630.pdf>

<sup>17</sup> Ministry of Justice Notification No. 187 of 2021, Article 2, Item 2, quoting the PTCP.

<sup>18</sup> Report of the Working Group on Tender Offer Regulations and Large Shareholding Reporting Systems, Financial System Council, December 25, 2023, ([https://www.fsa.go.jp/singi/singi\\_kinyu/tosin/20231225/01.pdf](https://www.fsa.go.jp/singi/singi_kinyu/tosin/20231225/01.pdf)), p. 17

<sup>19</sup> Expert Council on the Stewardship Code, FY2024, Second Meeting, November 18, 2024 (<https://www.fsa.go.jp/singi/stewardship/siryou/20241118.html>).

<sup>20</sup> Nikkei, "Making 'True Shareholders' Easier for Companies to Identify: Financial Services Agency Policy to Promote Dialogue" April 16, 2024 (<https://www.nikkei.com/article/DGXZQOUB204GU0Q4A320C2000000/>).

## VI. Implications for Corporate Practice

If the currently debated revision of the Stewardship Code is eventually enacted, it could bring notable implications for corporate governance for listed companies in Japan, such as the following:

### a. Enhanced Shareholder Dialogue with Companies

The ability to identify beneficial shareholders could facilitate more informed engagement with shareholders and improve listed companies' responses to investors. This may also enable a share-issuing company to identify potential acquirors and may result in constructive dialogue with the same. Additionally, it provides advantages such as making it easier for the listed company to approach beneficial shareholders to secure approval for the agendas proposed by the listed company at the general shareholders' meeting.

### b. Increased Precision in Share Price Analysis

Improved access to shareholder data could enable a quantitative understanding of the characteristics of shareholder composition. It also provides insights into the holding status of the listed company's shares by institutional investors, along with their characteristics such as investment styles. Listed companies could understand factors influencing share price volatility, particularly those related to foreign ownership.

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If you have any questions regarding the matters covered in this memorandum, please reach out to your usual TMI contact or the attorneys listed above.

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