

Annex

To facilitate the provision of information on legislation, policies, practices and institutions related to promoting beneficial ownership information transparency, including existing registry(ies) and mechanism(s) to make requests for such information, the Secretariat has prepared the following questionnaire as a guide that States parties may wish to use. This questionnaire follows the same format as the questionnaire that was circulated in May 2022 in Note Verbale CU 2022/156(A)/DTA/CEB/CSS. If your Government responded to the previous questionnaire please only provide new and/or updated information.

The secretariat also wishes to draw the attention of the Government to the conference room paper entitled "Good practices and challenges with respect to beneficial ownership and how it can foster and enhance the effective recovery and return of proceeds of crime" (available at [CAC/COSP/WG.2/2022/CRP.1](#)) and to the contributions received in the response to the aforementioned Note Verbale (available on the webpage of the 16th session of the Working Group on Asset Recovery).

Collecting the information for this questionnaire may require cooperation by several different agencies/authorities. States parties may wish to send the questionnaire to the following agencies/authorities, depending on their national system for obtaining and recording information on legal persons and legal arrangements in their country, e.g.:

- Company registry and any other relevant registry(ies)
- Agency(ies)/authority(ies)/body(ies) responsible for obtaining and maintaining beneficial ownership information
- National competent authorities responsible for international cooperation in criminal matters, including freezing and confiscation of criminal proceeds

Questionnaire on Beneficial Ownership Information

1. Definition of beneficial ownership & mechanisms for obtaining beneficial ownership information

1.1 Please provide the definition of "beneficial ownership" in your country for: (a) legal persons; and (b) legal arrangements, including the relevant legislation (if applicable). Please describe criteria and thresholds that are applied to determine beneficial ownership, including any criteria for exercising control without legal ownership (e.g. voting rights, right to appoint or remove board of directors).

A beneficial owner of a legal person refers to 1) a person who owns at least 25 percent of the total number of the issued and outstanding shares or other investment stakes, 2) the largest shareholder, a shareholder who has appointed a majority of the representatives or executive officers, or a person who substantially controls the legal person, 3) the representative of the legal person (Subparagraph 1(2) of Article 5-2(1) of the Act on Reporting and Using Specified Financial Transaction Information, and Subparagraph 1 to 3 of Article 10-5(2) of the Enforcement Decree of the Act on Reporting and Using Specified Financial Transaction Information)

2. Access to basic information on legal persons

2.1 Please describe the process for obtaining basic information on legal persons created or registered in your country, including the role of the company registry.

Basic information on legal persons registered in Korea can be provided by applying for inspection or issuance of a certificate of registration of legal persons with visiting the competent registry or the Internet Registry Office of Supreme Court (IROS).

You can also obtain information about the legal person through annexed documents of the registration, which is possible through court orders, commissions, or warrants, or for legally-interested persons)

2.2 Please list the categories of basic information on legal persons that is obtained and recorded by the company registry (or other relevant registries), e.g. name of entity, date of incorporation, tax ID number, etc.

Name of the legal person, registration numbers, trade names, shares authorized to be issued as well as the issued and outstanding shares, the amount of capital, certification of incorporation, date of incorporation, objectives and type of business, list of executive officers, domicile of representative director, etc.

You can also view the articles of incorporation, minutes of the board of directors, executive inauguration consent letter, etc. in the annexed documents

2.3 Is the company registry available publicly & online in your country? YES / NO

Yes. Anyone may file an application for inspection or issuance of a certificate of registration of legal persons, with a fee, in IROS website (www.iros.go.kr) and clicking the button "inspection/issuance of registration of legal persons."

If YES, please provide links to the company registry and any other relevant registries of legal persons, or provide details about how the public can access them.

www.iros.go.kr

3. Access to beneficial ownership information of legal persons

3.1 Through which mechanism(s) can competent authorities (such as law enforcement, police, financial intelligence unit and tax agencies) access beneficial

ownership information on companies and other legal persons created or registered in your country. Please select all that apply.

- Through a registry/registries with beneficial ownership information

- Through a different mechanism

- Competent authorities do not currently have access to beneficial ownership information

If REGISTRY, please provide further details on such registry(ies) including:

- Authority(ies)/agency(ies) responsible for obtaining and maintaining beneficial ownership information and for maintaining the register(ies). Please list if more than one;

- Categories of beneficial ownership information (data fields) obtained, recorded and maintained on the registry(ies), e.g. name, nationality, date of birth, address, etc.;

- Types of legal entities covered within the scope of the beneficial ownership registry(ies), including any exempt entities;

- Details of the registry's(ies') access policy:

- o Is the information on the registry(ies) available to the public? YES / NO

- If YES, please include a link(s) to the registry(ies).

- If NO, please list the authorities/agencies that have access to this information, or that can request access.

- o Does accessing beneficial ownership information in the registry(ies) entail any costs?

- o Does the registry(ies) provide features to search information by different types of information, e.g. legal entity name, name of director, name of beneficial owner, by first or last name, by business address, by registered agent? Is it possible to search for a combination of information (Boolean searches)?

- Frequency of updates of information and triggers for updates;

- Any mechanisms to verify beneficial ownership information submitted to the registry(ies) by legal persons or their representatives (if they exist).

3.2 Please describe any other sources (mechanisms) through which competent authorities/agencies can access beneficial ownership information in your country. In each case, please describe how beneficial ownership information on companies and other legal entities is made available to authorities and/or the public (if applicable).

(1) Directors shall retain the register of shareholders at the principal office or the business office of the transfer agent, and any shareholder and creditor of a company may request, at any time during its business hours, the inspection or copy of the register of shareholders (Article 396 of the Commercial Act). Authorities may not be provided the register of shareholders by requesting the inspection or copy of it, but as mentioned below in number (5), they may access beneficial ownership information with a detailed statement of changes submitted by the company.

In the case of an individual act, a holding company shall submit to the Fair Trade Commission the current status of shareholdings of the company and its shareholders as well as the register of shareholders of its subsidiaries, second-tier subsidiaries, and third-tier subsidiaries (Article 18(7) of the Monopoly Regulation and Fair Trade Act, and Article 29 of Enforcement Decree of the Monopoly Regulation and Fair Trade Act).

(2) For a listed company or an unlisted company with electronically registered stocks, the company shall prepare the register of shareholders based on register of holders from an electronic registry, such as Korea Securities Depository, and its stocks are transferred by the way of transferring between accounts of electronically registered stocks (Article 30 and 37 of the Act on Electronic Registration of Stocks and Bonds). Therefore, beneficial ownership information primarily belongs to an electronic registry and account management institution.

(3) Since a listed company's major shareholders – who own more than 10 percent of the total number of the issued and outstanding shares on his or her own account, or exert de facto influence on important matters related to the company management – are subject to disclosure under the Financial

Investment Services and Capital Markets Act and largest shareholders under disclosure regulations of KOSPI, KOSDAQ and other stock markets, the competent authorities or institutions may access the beneficial ownership information.

(4) Financial company, etc. are required to verify beneficial ownership of a corporate customer to regulate money laundering, etc. through financial transactions, etc. under the Act on Reporting and Using Specified Financial Transaction Information, when the customer opens a new account or makes a one-time financial transaction in a specific amount. And the Commissioner of the Korea Financial Intelligence Unit may inspect whether the financial company, etc. carry out their customer due diligence above. The Commissioner, therefore, may access beneficial ownership information through the aforementioned inspection, which the financial company, etc. verified.

(5) Under the Corporate Tax Act, a stock company shall submit a detailed statement of shareholders, etc. when reporting the registration of incorporation to the tax office after the registration date of its establishment, and submit a detailed statement of changes if its stocks, etc. change during a business year (Article 119 of the Corporate Tax Act). Therefore, the tax authority may access beneficial ownership information with the detailed statement.

(6) The competent authorities may access beneficial ownership information by inspecting a certificate of registration of legal persons and verifying the representative of the legal person (a subordinate criterion of interpreting beneficial ownership by reference to 1.1).

Examples may include through private-public partnerships (e.g. involving financial institutions, notaries and/or corporate service providers), though stock exchange or security exchange commission, or disclosure obligations for participation in public procurement processes, etc.

3.3 Are foreign legal persons, foreign (express) trusts or foreign legal arrangements

allowed to operate in/own assets/ and/or register in your country?

YES

If YES,

- how is basic information on these arrangements recorded (if at all)?
- how is beneficial ownership information on these arrangements recorded (if at all)? Please provide details of the relevant legislation and practices.

(In the case that foreign corporations are not listed on the domestic market)

① A foreign corporation with another corporation established in Korea
Under the Foreign Investment Promoting Act, a foreign corporation, which is unlisted but established a corporation in Korea, is required to report its incorporation but is subject to the same requirements as domestic corporations.

When the corporation established in Korea is a listed company and subject to external audit, it shall submit a business report in accordance with the Financial Investment Services and Capital Markets Act. The business report provides "matters related to shareholders," including representative director of corporate shareholders (foreign corporation in this context), largest shareholders and other changes, and the information, described in number 1) and 3) of the definition of Beneficial Ownership in 1.1, is included in the report.

② A foreign corporation with a business office established in Korea
Once a foreign corporation has completed its business registration after reporting the establishment of its business office and registering in Korea, it may engage in business by operating the business office and hold assets for its business. (Article 614 and 616 of the Commercial Act, Subparagraph 19(e) of Article 3(1) of the Foreign Exchange Transaction Act, and Article 9(2)(6) of the Enforcement Decree of the Foreign Exchange Transaction Act).
When it comes to the registration of business office, a foreign corporation

shall make the same registration as that of a branch office of a company incorporated in the Republic of Korea of the same kind or of the most similar kind (Article 614(2) of the Commercial Act), in the case that a foreign corporation is a stock company, the registration shall be the same matters as that of a branch office of a stock company incorporated in the Republic of Korea, and matters requiring the aforementioned registration include the name, resident registration number and domicile of the representative director (Article 35 and Article 317(2)(9) of the Commercial Act). Therefore, the domestic business office register of the foreign corporation provides the information on the representative director of the principal office overseas (Registration precedent no. 6-639), which means the information, described in number 3) of the definition of Beneficial Ownership in 1.1, is recorded in the business office register.

In the meantime, the foreign corporation with a business office established in Korea is not required to submit a detailed statement of changes in stocks, etc. under the Corporate Tax Act, and the information, described in number 1) of the definition of Beneficial Ownership in 1.1, is not recorded in the register.

(In the case that foreign corporations are listed on the domestic market)

If a foreign corporation is listed on the domestic market, the corporation, in common with domestic companies, shall disclose the status of specific securities of executive officers or major shareholders, any change of largest shareholders, etc. (Article 173 of the Financial Investment Services and Capital Markets Act, and Article 25 of KOSPI Market Disclosure Regulation), and the beneficial ownership information of the foreign corporation is provided.

In relation to beneficial ownership information, customer due diligence of financial companies, etc. under the Act on Reporting and Using Specified Financial Transaction Information is also applied to foreign corporations.

With this method, the beneficial ownership information of foreign corporations may be recorded or verified.

4. Access to basic information and beneficial ownership information of (express) trusts and other similar legal arrangements

4.1 Does your country recognize (express) trusts or other similar legal arrangements?

YES

- If YES, please provide a broad overview of your country's system and mechanisms for obtaining beneficial ownership information on (express) trusts and other similar legal arrangements created or registered in your country.

Yes. Beneficial ownership information may be obtained in different ways depending on the type of trust property: 1) verifying a register, 2) requesting inspection and copy of trust-related documents of trustee

- If NO, please skip to question 5

4.2 How is basic information on (express) trusts and other legal arrangements obtained and recorded in your country?

(1) For the trust property that can be registered, including immovables and ships, anyone may collect basic information on personal data of truster and trustee, a trust agreement, etc. by inspecting and copying the register books and the trust register.

(2) For the trust property that cannot be registered, truster, beneficiary or interested person may request trustee to inspect or copy of the books and other documents pertaining to the accounting of the trust affairs (Article 40 of the Trust Act).

4.3 How is beneficial ownership information on (express) trusts and other legal arrangements obtained and recorded in your country?

Through a registry/registries with beneficial ownership information

Through a different mechanism

Competent authorities do not currently have access to beneficial ownership information

If REGISTRY, please provide details on the registry(ies), authority(ies)/agency(ies) in charge of maintaining the registry(ies), type of information collected, and details on the access policy.

If beneficial ownership is interpreted as trustor or beneficiary, with respect to the property that can be registered, as previously mentioned in 4.2, anyone may obtain the information on legal relationship of trust property, personal data of trustor and beneficiary, details of trust contract, etc. by inspecting and copying the trust register and register books of court registry offices.

If ALTERNATIVE MECHANISM, please provide details on the mechanism, type of information collected, and details on the access policy.

For the trust property that is entrusted to a trust business entity, the trust business entity is required to verify beneficial ownership of a customer who is a natural person or a legal person to regulate money laundering, etc. through financial transactions, etc. under the Act on Reporting and Using Specified Financial Transaction Information, when the customer opens a new account or makes a one-time financial transaction in a specific amount. And the Commissioner of the Korea Financial Intelligence Unit may inspect whether the trust business entity carries out the customer due diligence above. The Commissioner, therefore, may access beneficial ownership information through the aforementioned inspection, which the financial company, etc. verified.

5. Sanctions

5.1 Please describe the types of sanctions, sanctionable conduct, and targets of sanctions for non-compliance with beneficial ownership disclosure regulations (whether on the registry(ies) or through an alternative mechanism).

(1) Criminal Penalties

- When major shareholders fail to report or file a false report on the status and changes of specific securities owned on their account to the financial authorities, they shall be subject to a criminal penalty (Article 446(31) of the Financial Investment Services and Capital Markets Act).

(2) Administrative Fines

- In the case of being negligent in making registration of a legal person's basic information and changes, it shall be subject to an administrative fine (Article 635(1)(1) of the Commercial Act, and Article 97(1) of the Civil Act)

- In the case of failure to keep the register of shareholders and the list of members, it shall be subject to an administrative fine (Article 635(1)(24) of the Commercial Act, and Article 97(2) of the Civil Act)

- In the case of being negligent in carrying out the customer due diligence of beneficial ownership under Article 5-2 of the Act on Reporting and Using Specified Financial Transaction Information, it shall be subject to an administrative fine (Article 20(1)(2) of the aforementioned Act)

- In the case that the Korea Securities Depository fails to prepare and keep a list of beneficial shareholders or prepares a false list thereof, it shall be subject to an administrative fine (Article 449(3)(15) of the Financial Investment Services and Capital Markets Act)

(3) Penalty Taxes

- In the cases of submitting a detailed statement which omits the details of the shareholders, etc. or failure to submit the detailed statement, and submitting a detailed statement which omits the status of changes in stocks, etc. or failure to submit the statement, it shall be subject to a penalty tax (Subparagraph 1 and 2 of Article 75-2(1) of the Corporate Tax Act, and Subparagraph 1 and 2 of Article 75-2(2) of the same Act)

(4) Others

- When a legal person fails to fulfill the disclosure obligations of beneficial ownership, financial authorities may designate the corporation as an unfaithful disclosure corporation and impose sanctions including imposition of demerit points, imposition a fine for non-compliance with disclosure obligations within the amount of KRW 1 billion, publication of the fact that the corporation is designated as an unfaithful disclosure corporation, and request for replacement of disclosure officer, etc. (Article 29 to 31 and Article 33 to 39 of KOSPI Market Disclosure Regulation).

5.2 Please describe the powers available to the designated authority(ies)/agency(ies) to enforce sanctions for non-compliance with the beneficial ownership disclosure requirements, including any statistics on enforcement of such sanctions.

Any statistics on enforcement of the sanctions are not available.

When a legal person fails to fully pay an administrative fine or a penalty tax, the designated agencies have the authority to collect it by force under the National Tax Collection Act.

6. International Cooperation, asset recovery and challenges

6.1. Does your country make beneficial ownership information available to foreign competent authorities (directly or upon request)? Please provide details of the relevant legislative and regulatory framework in your country that allows for the international exchange of such information.

When a foreign competent authority sends an MLA request asking for beneficial ownership information regarding a corporation involved in a crime, the International Criminal Affairs Division at the Ministry of Justice obtains the corporation's ownership information on its corporate registry or beneficial ownership information from investigation authorities and provides it, pursuant to the Act on International Judicial Mutual Assistance in Criminal Matters and

the MLA treaty concluded with the requesting party.

The Commissioner of the Korea Financial Intelligence Unit may cooperate with a foreign financial supervision and inspection agency if the agency requests that supervision or inspection be conducted regarding a violation of foreign laws and regulations — which reflect international agreements to combat money laundering and terrorist financing and FATF Recommendations — and may provide supervision and inspection materials regarding financial company's corporate customer due diligence of beneficial ownership (Subparagraph (1)(b) of Article 5-2(1), and Article 15-2(1) of the Act on Reporting and Using Specified Financial Transaction Information).

6.2. Please describe how foreign competent authorities may request or access beneficial ownership information on legal persons and legal arrangements formed in your country. Which agency(ies)/authority(ies) is/are responsible for receiving and responding to foreign requests? Please provide contact information and instructions.

When a foreign competent authority sends an MLA request asking for beneficial ownership information regarding a corporation involved in a crime, the International Criminal Affairs Division at the Ministry of Justice obtains the corporation's ownership information on its corporate registry or beneficial ownership information from investigation authorities and provides it, pursuant to the Act on International Judicial Mutual Assistance in Criminal Matters and the MLA treaty concluded with the requesting party. The foreign competent authorities may contact the MLA official in the International Criminal Affairs Division at the Ministry of Justice. (+82, 2-2110-3555)

In order for the Commissioner to provide a foreign financial supervision and inspection agency with "supervision and inspection materials regarding financial company's corporate customer due diligence of beneficial ownership," the following requirements shall be fulfilled: 1) the agency shall request supervision or inspection, "stating the purpose, scope, etc." 2) the agency shall

not use the materials for any purpose other than the purpose for which they are furnished 3) the agency shall keep the materials and the fact that such materials are furnished confidential (Paragraph 1 and 2 of Article 15-2 of the Act on Reporting and Using Specified Financial Transaction Information). The Korea Financial Intelligence Unit under the Financial Services Commission is responsible for receiving and responding to foreign requests.

6.3. In your opinion, what are the main challenges faced by foreign competent authorities to access beneficial ownership information held in your country?

N/A

6.4. In your opinion, what are the main challenges faced by competent authorities of your country to access/receive beneficial ownership information held in a foreign country?

N/A

6.5. Do you have any case studies or examples where the transparency of beneficial ownership has enabled or enhanced the effective recovery and return of proceeds of crime in (or for) your country?

There is a case where KRW 9.7 billion-worth corporate properties of an offender was restrained for his unpaid confiscation order of KRW 18 billion:

The Criminal Asset Recovery Department found through investigation that an offender who had not paid a confiscation order (confiscation amount: KRW 18 billion; confiscated amount: 0.7%) had concealed his criminal proceeds by means of legal entity to avoid confiscation. He kept the criminal proceeds in the name of a number of companies he owned and then laundered and invested them into new companies to conceal them. The Criminal Asset Recovery Department in Seoul Central Prosecutors' Office charged each

involved company with the penalty provisions of the Act on Regulation and Punishment of Criminal Proceeds Concealment and restrained the companies' properties worth about KRW 9.7 billion, including buildings, land, and bank deposits, for confiscation.

There are no any case studies or examples on the relation between the transparency of beneficial ownership and the recovery and return of proceeds of crime.

7. Good Practices for Beneficial Ownership Transparency

7.1. Has your country implemented any specific good practices relating to Beneficial Ownership Transparency that you wish to highlight? Examples could include good practices in verification, data format, searchability, use of technology, enforcement of sanctions, automatic red flagging, use or risk-based approach.

N/A

8. Follow-up to the special session of the General Assembly against corruption

8.1. Please describe any other measures, if any, that your country may have taken to implement paragraph 161 of the political declaration adopted by the General Assembly at its special session against corruption held in June 2021.

Footnote : 제16항. We commit to making efforts in international cooperation and taking appropriate measures to enhance beneficial ownership transparency by ensuring that adequate, accurate, reliable and timely beneficial ownership information is available and accessible to competent authorities and by promoting beneficial ownership disclosures and transparency, such as through appropriate registries, where consistent with the fundamental principles of domestic legal

systems and using as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering. To this end, we will develop and implement the measures necessary to collect and share such information on the beneficial ownership of companies, legal structures and other complex legal mechanisms, and we will enhance the ability of competent authorities in this regard.

In order to record shareholders and beneficial owners in the corporate register, related laws such as the Commercial Act and the Commercial Registration Act must be amended. Through shareholder-related information held by other institutions (shareholder list¹, statement of changes in stocks² etc.), it is possible to identify shareholders and beneficial owners. It is, therefore, necessary to carefully review the recording of information on shareholders and beneficial owners in the corporate register.

¹ A domestic corporation (excluding a non-profit domestic corporation) shall prepare and keep a stockholder register or employee register stating the matters prescribed by Presidential Decree, such as names, addresses, and resident registration numbers (referring to the names, locations of the headquarters of corporations, and the business registration numbers if such stockholders or employee are corporations) of the stockholders or employees (referring to employees of a limited liability company; hereafter the same shall apply in this Article) (Corporate Tax Act Article 118)

² A corporation (excluding a partnership corporation, etc. prescribed by Presidential Decree) whose stocks, etc. changes during a business year shall submit a detailed statement of changes in stocks, etc. to the head of the tax office having jurisdiction over the place of tax payment by the filing deadline specified in Article 60, as prescribed by Presidential Decree. (Corporate Tax Act Article 119)