

Proposals to Develop Role of Notaries to Prevent Misuse of Companies in Japan

Presented by the Independent Experts to the Ministry of Justice of Japan

The independent experts' group made proposals to Director General of civil affairs bureau of the Ministry of Justice of Japan to develop role of notaries in company formation to prevent misuse of stock companies.

1. Companies could be used to disguise involvement in fraudulent activities, money laundering or terrorist financing. An effective system to identify beneficial owners of companies lays the foundation for transparency of companies, which deters and prevents misuse of companies.

2. **Notaries in Japan are, as in most other civil law jurisdictions, neutral and impartial legal professionals charged with official public responsibilities.** They exercise a public and preventive law function and they are supported by fees paid by private parties. Some of the important legal transactions must be performed by notaries and incorporation of stock companies is a typical example. **Every article of association of a newly established stock company must be authenticated by a notary to be effectuated.** More than 80% of the applications for notarial authentication of articles of association are filed electronically today (the e-filing system was introduced in 2002). Most of the newly established legal entities are stock companies in Japan.

3. Having regard to the fact that use of a notarial system for company formation is assessed by FATF members as some of the most effective systems for implementation of Beneficial Ownership obligation of FATF recommendations, **the experts' group made following proposals.**

1) When making an application to a notary for authentication of an article of association of a newly established stock company, every applicant **shall declare the beneficial owner of the company to the notary.**

2) The applicant shall also declare to the notary that the beneficial owner of the company is **not a member of criminal organizations.** When there is reasonable doubt, the notary shall verify credibility of the declaration by referring to the police authority.

3) If the applicant refuses to make such declaration, the notary **shall reject the application** for authentication of the article of association.

4) When **risk indicators** are met, the identity of the beneficial owner shall be verified.

5) The notary **should construct database of beneficial ownership information of stock companies by further developing the existing e-filing system,** which could be used for investigation by competent authorities.