

Regulation of Nominee Accounts in Emerging Markets

Final Report



OICU-IOSCO

**EMERGING MARKETS COMMITTEE
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Executive Summary

As the growth of capital markets has resulted in a sharp rise in trading volumes, the “direct holding system”, where investors take physical possession of securities and the delivery of physical certificates completes a securities transaction, makes issuer’s communication with a large number of shareholders very costly and time-consuming and also prevented investors to undertake securities trading in a timely and efficient manner. In an effort to address this issue, market intermediaries began to hold their client’s securities in their name (nominee accounts) and maintained records in their books to track securities ownership. Under this *indirect holding system*, also referred to as street name registration, an investor neither receives physical certificates nor appears as the securities owner on the issuer’s register. The immobilization and dematerialization of securities prompted by the creation of stock exchanges and central securities depositories also contributed to the adoption of the indirect holding system in many jurisdictions.

The indirect holding system, now the prevailing form of securities holding in many world jurisdictions, has significantly enhanced the efficiency of securities transactions and laid the foundation for substantial growth of capital markets over the past decades. However, the indirect holding system also has several issues that could have adverse implications for investors’ interests including the shareholder rights. In recognition of this, some jurisdictions have been shifting to a new ownership system (modified holding system) under which the investor’s ownership is registered directly on the issuer’s register without a need to hold physical certificates personally. Technological advancements, especially in the IT industry, have contributed to the development of this system, as they enable issuers or market intermediaries to keep track of constant changes in securities ownership with considerably less cost and resources.

Among the three types of securities holding systems described above, the indirect holding system is most widely used, even in emerging markets with relatively less sophisticated capital markets and, in some jurisdictions, the adoption of this system is still in progress. This will remain so, for some time to come, as the shift to the modified holding system often requires considerable resources, market sophistication, and a certain level of technological development.

In this regard, following the pre-approval by Emerging Markets Committee (EMC) Plenary meeting in Istanbul on 14 October 2010, a mandate on *Regulation on Nominee Accounts in Emerging Markets* was approved in written procedure as the Emerging Markets Committee Working Group on the Regulation of Market Intermediaries (EMCWG3) new mandate on 22 November 2010 to explore common issues associated with the use of nominee accounts under the indirect holding system and develop useful guidance for regulators.

The objectives of the mandate are: (1) to assist the members of the Emerging Markets Committee in obtaining a better understanding of different practices and regulations concerning the nominee account system operating in the member jurisdictions; and (2) to identify useful regulatory elements that could be adopted by members, if any, that may improve their frameworks in this area.; and (3) to develop recommendations for better regulation on nominee accounts in order to more effectively protect investor interests and thus to keep their confidence in their financial markets.

Chapter 1 Purpose, Scope and Methodology of the Report

1.1 Purpose of the Report

This report intends to identify effective regulatory mechanisms and tools for the nominee account system, develop recommendations to better regulate nominee accounts and help regulators address relevant investor protection issues pursuant to the IOSCO *Objectives and Principles of Securities Regulation*,¹ Principle 31² that requires market intermediaries to establish an internal function that delivers compliance with standards for internal organization and operational conduct.

While the operation of nominee accounts function in a different manner across jurisdictions, it can be broadly defined as a type of account in which the investor holds his/her securities in the name of a different entity, i.e., the market intermediary or the Central Securities Depository (CSD) who acts as the nominee account operator and whose name appears on the register of the issuer. When investors buy or sell securities through the intermediary, in many markets, the securities traded are not directly registered in the names of the investors but instead recorded in the single name of the intermediary who brokers the transactions using a nominee account. This practice has become an indispensable element to the functioning of modern securities markets, as the use of nominee accounts facilitates the efficiency of securities trading by reducing administration time and costs. However, greater efficiency is accompanied by risk. First of all, in the case of stocks in a nominee account, as they are held in the name of the intermediary rather than the actual beneficial owners and the name of the beneficial owners does not appear on the share register, the intermediary's failure to pass on payouts and communications to the beneficial owners would deprive them of their shareholder rights. In addition, the misuse of the nominee account by the intermediary that is allowed to take direct custody of investors' securities in some jurisdictions may be a source of concern from an investor protection point of view.

The use of nominee accounts by market intermediaries may also give rise to regulatory and supervisory issues related to securities ownership, such as the identification of beneficial owners of securities, as well as those pertaining to the operation of an omnibus account. Particularly, in case of a nominee account operator's default or bankruptcy, it is often quite difficult to identify ultimate beneficiaries if proper records and documentation to identify the ownership are not adequately maintained. Despite the efficiency achieved by the use of the nominee accounts, they may also increase the investor's risk of not being able to recover their assets if the intermediary faces financial difficulties, particularly in a pooled nominee or omnibus account.

¹ The *Objectives and Principles of Securities Regulation* consist of 38 Principles of securities regulation (including the eight new principles added in June 2010) which are based upon three overarching Objectives of securities regulation: protecting investors; ensuring that markets are fair, efficient and transparent; and reducing systemic risk, *Objectives and Principles of Securities Regulation*, IOSCO Report, June 2010 available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD323.pdf>.

² Principle 31 of the *Objectives and Principles of Securities Regulation* for market intermediaries states the following: "Market Intermediaries should be required to establish an internal function that delivers compliance with standards for internal organization and operational risk, with the aim of protecting the interests of clients and their assets and ensuring proper management of risk, through which management of the intermediary accepts primary responsibility for these matters."

In an effort to address these concerns and formulate recommendations that member regulators in the EMC may take guidance from, this report intends to look into the nominee account systems and other securities holding systems in EMC jurisdictions and identify common regulatory issues related to the nominee account and the measures or approaches taken to address them. Based on those findings, the report aims to outline recommendations that regulators in the EMC member jurisdictions may take guidance from.

This report is mainly divided into three parts. First, the structure and framework for securities holding system, as well as investor protection issues and the overview of the nominee account structure, are examined. Second, a number of regulatory issues pertaining to the use of nominee account, as well as regulatory measures and market practices to address them are looked into. Third, with a focus on the protection of investor's interests, recommendations for better regulation of the nominee account system are explored and identified.

1.2 Assessment Methodology

A survey questionnaire was circulated to the EMC member jurisdictions to obtain an understanding of their regulatory framework and business practices for the nominee account. The jurisdictions responses to the survey were analyzed to explore and formulate recommendations for the regulation of the nominee account. The survey questionnaire covered the following four areas:

1. Structure and framework for securities holding system;
2. Operational framework for nominee accounts;
3. Shareholder identification and information flow to shareholder; and
4. Regulatory structure for intermediaries in relation to nominee accounts.

1.3 Surveyed Jurisdictions

The IOSCO EMC would like to acknowledge EMC members from the following jurisdictions for providing valuable information for the mandate:

S.No	Jurisdiction	Regulatory Authority
1.	Argentina	Comisión Nacional de Valores
2.	Bangladesh	Securities and Exchange Commission, Bangladesh
3.	Chinese Taipei	Financial Supervisory Commission
4.	Czech Republic	Czech National Bank
5.	Dubai International Financial Centre (DIFC)	DIFC Financial Services Authority (DFSA)
6.	Ecuador	Superintendencia Companias Ecuador
7.	India	Securities and Exchange Board of India (SEBI)

8.	Korea	Financial Supervisory Service, Korea
9.	Macedonia	Securities and Exchange Commission of the Republic of Macedonia
10.	Malaysia	Securities Commission Malaysia (SC)
11.	Morocco	Conseil Déontologique des Valeurs Mobilières
12.	Nigeria	Securities and Exchange Commission (SEC)
13.	Oman	Capital Market Authority Sultanate of Oman
14.	Pakistan	Securities and Exchange Commission of Pakistan (SECP)
15.	Poland	Polish Financial Supervision Authority
16.	Romania	Romanian National Securities Commission (RNSC)
17.	South Africa	Financial Services Board, South Africa
18.	Syria	Syrian Commission on Financial Markets and Securities
19.	Thailand	Securities and Exchange Commission (SEC)
20.	Turkey	Capital Markets Board (CMB)

1.4 Background

A nominee account can be broadly defined as a type of account set up by a nominee, which is a market intermediary in most cases, for purposes such as administering securities or other assets on behalf of their beneficial owners, though the way how nominee accounts actually work differs to some extent across jurisdictions.³

The experience of the recent financial crisis revealed the importance of having rules in place to address issues associated with nominee accounts such as, short selling, and securities lending, non-provision of shareholders rights, improper asset allocation, communication problems and money laundering, since the misuse of the nominee account by the intermediary or its failure to pass on shareholder rights and communications to the beneficial owner would raise investor protection concerns. They may also increase the investor's risk to recover their assets, if the intermediary faces financial difficulties, particularly when the nominee operator uses a pooled account.

³ In the U.S., "street name" securities are the terminology used to describe securities held in nominee accounts. Although the terminology differs across jurisdictions, the basic principles are identical.see *Principles on Client Identification and Beneficial Ownership for the Securities Industry*, IOSCO Report, May 2004 available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD167.pdf>

One of the main concerns in relation to the use of nominee accounts is tracking the beneficial owners of securities which becomes an even bigger problem as the layers of intermediaries keep on increasing, such as in the multiple tiered structure. As a direct link between the beneficial shareholder and issuer is absent in a nominee account system, investors are sometimes kept in the dark about the payouts of companies they hold a stake in, since companies tend to coordinate directly with the intermediary/nominee account holder who intentionally or unintentionally may not inform such matters to the ultimate beneficiaries.

The issue related to client identification and beneficial ownership has been identified as well in the IOSCO Report on *Principles on Client Identification and Beneficial Ownership for the Securities Industry*⁴. However, the issues of nominee accounts, short selling, and securities lending have not been covered in those principles. Therefore, it is necessary to extend the topic to these issues. Another relevant IOSCO report is the Consultation Report on *Compliance Function at Market Intermediaries*⁵ which sets out a number of supplementary principles and measures for implementation to assist market intermediaries in enhancing the effectiveness of their compliance function. However, this report again does not address the issues of nominee accounts, short selling, and securities lending which hold importance to investor protection.

Thus, introducing requirements for market intermediaries to develop internal control mechanisms and procedures related to the nominee account is needed to ensure adequate supervision and increase investors' confidence in the market. In this regard, this EMC mandate of *Regulation on Nominee Accounts in Emerging Markets* mainly addresses the protection of investors, one of the three key objectives of securities regulation as set out by the IOSCO.

⁴ See *Principles on Client Identification and Beneficial Ownership for the Securities Industry*, IOSCO, May 2004 fn 3.

⁵ See *Compliance Function at Market Intermediaries* - Final Report of the Technical Committee of IOSCO, March 2006 available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD214.pdf>.

Chapter 2 Structure and Framework for Securities Holding System

In early days of the securities market development, physical possession of securities was the only accepted evidence of ownership. However, with the development of the securities market, the securities ownership regime evolved considerably, and now diverse forms of securities ownership can be observed across jurisdictions depending upon the peculiar circumstances in each jurisdiction. The growth of securities market also necessitated the use of nominee accounts to bring efficiency and cost saving in securities trading transactions in many jurisdictions. Further, the emergence of CSD, a key driver behind the immobilization and dematerialization of securities, also played a significant role in developing the structure of securities holding system. This chapter discusses the securities ownership regimes and practices and analysis their implications on investor protection.

2.1 Securities Holding System⁶

Securities holding regimes that exist across jurisdictions can broadly be categorized into three types:

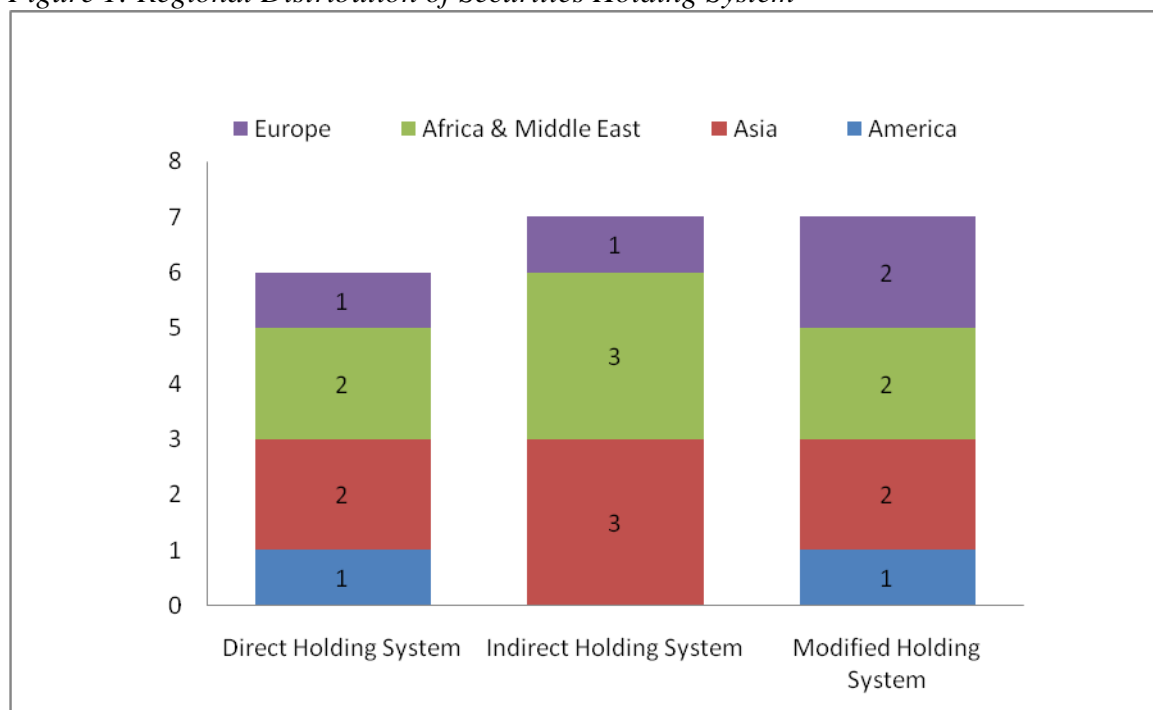
- i) direct holding system;
- ii) indirect holding system, and
- iii) modified holding system.

In a jurisdiction, any one of the three regimes or a varying combinations of two or more of these regimes can be observed and the nominee account may or may not exist depending on the prevailing securities holding regime.

The results of EMC jurisdiction survey reveal that all three types of securities holding systems are widely used with no particular concentration on which geographical location they are located in, as shown in Figure 1 below.

⁶ The categorization of securities ownership regimes into three—the direct holding system, the indirect holding system, and the modified holding system—is based on the previous studies conducted for the Hague Securities Convention see *The Hague Securities Convention*, Hague Conference on Private International Law, July 2006 available at <http://www.hcch.net/upload/outline36e.pdf> and the UNIDROIT Convention on Substantive Rules for Intermediated Securities regarding securities held with the intermediary and the nature of the legal relationship between the intermediary and the shareholder. See *UNIDROIT Convention on Substantive Rules for Intermediated Securities*, UNIDROIT, 9 October 2009 available at <http://www.unidroit.org/english/conventions/2009intermediatedsecurities/convention.pdf>.

Figure 1: Regional Distribution of Securities Holding System



2.1.1 Direct Holding System

The direct holding system is the most long-standing traditional securities holding system in which the investor maintains a direct relation with the issuer and may directly exercise all the rights attached to his/her securities. The securities owner is recorded on the register of the issuer, holds physical possession of securities certificates, and the physical delivery of certificates to a broker or counterparty is required to complete a sale and purchase transaction. As the certificates, the indisputable evidence that the bearer is the legitimate owner, are directly held by the investor, he/she can be protected from custody risk - the risk of losing securities held in custody by the intermediary due to its insolvency, negligence, or fraudulent action. In case where there are changes to the shareholder's contact information and others, the shareholder should inform those changes to the issuer not to miss any important announcement or information from the issuer. If the certificates are lost, the shareholder should have new certificates issued to replace lost ones at his or her cost. In case where the securities are electronically recorded as a result of dematerialization, the records of the issuer or its transfer agent or the CSD serve as evidence of ownership, where the investor's name appears as the owner.

In some jurisdictions, company law provides for the direct holding system as the primary holding regime that fits well into the fundamental concept of ownership of a corporation. In Ecuador, the securities are not yet dematerialized, therefore the traditional way of direct securities registration with issuer and physical possession of securities still prevails. In most other transition jurisdictions, simultaneous usage of both direct and indirect holding system prevails, where only a small percentage of total shares are held in the direct holding system.

The direct holding system facilitates issuer to communicate with its shareholders and shareholder to pledge his securities as collateral for a loan. However, the direct holding system has several demerits as it entails significant transaction costs both in terms of labour and time which include the investor's cost to replace the certificates if lost, and the time to

handle long-distance transactions and the non-availability of securities in transit for transactional or other purposes might cause liquidity risk.

2.1.2 Indirect Holding System

The indirect holding system has been widely adopted by jurisdictions to address inefficiencies inherent in the direct holding system. Under the indirect holding system, investors do not possess physical securities certificates, and intermediaries, including a CSD, hold accounts on behalf of their customers (nominee accounts). The securities held in these accounts are registered in the name of intermediaries on the books of either the issuer or with the CSD, hence disconnecting the relationship between the issuer and the actual owner, called the *beneficial owner*. Securities transactions are executed through accounts held by the market intermediaries at the CSD by book entry method without requiring physical delivery.

Depending upon the market structure of each jurisdiction, there may be one or more tiers of intermediaries between the issuer and the beneficial owners. In case of a multiple-tiered holding system, the intermediary at the top is often a CSD in many jurisdictions, and the lower tiers consist of financial services firms such as brokers. The nominee account structure will be further discussed in part 2.4.

The indirect holding system is the most commonly used and adopted system among the surveyed jurisdictions in Emerging Markets. In Korea and Pakistan, the books of issuer reflect securities entered in the name of the CSD. In Pakistan, the investors can also open Investor Accounts which are directly under their control. However, these Investor Accounts cannot be categorized as modified holding system, since the shareholder is not directly registered in the books of issuer where the shares are entered in the name of CSD (acting as an intermediary). In Thailand, the CSD maintains accounts for its participants, which include intermediaries, custodians and issuers and is allowed to accept the transfer of deposited securities into its own name as the owner of such securities.

The indirect holding system, prevailing in many jurisdictions has significantly enhanced the efficiency of securities transactions in terms of administrative time and costs. However, the disconnection of the relationship between the issuer and the beneficial owners and other intrinsic characteristics of the nominee account could have adverse implications for investors' rights. Those issues will be discussed in detail in the next chapter of the report.

2.1.3 Modified Holding System

With increasing securities trading volumes and technological advancements that enable processing of a large amount of data on a real-time basis, some jurisdictions developed modified securities holding systems aiming to enhance efficiency of securities transactions and develop direct relationship between the issuer and shareholders through the immobilization and dematerialization of securities. Even though there are some discrepancies in the way how modified holding systems work in different jurisdictions, the common characteristic observed across all jurisdictions with the modified holding system is the direct registration of the investor on the book of the issuer or its transfer agent without holding physical certificates and has a direct relationship with the issuer, eliminating the role of intermediaries. The technological development has enabled investors to change their dematerialized securities positions electronically by holding their securities in the direct registration book-entry form or in their personal accounts at the CSD.

Modified holding system has many advantages such as increased portability of securities and greater flexibility in securities trades. It also eliminates the risk of losing physical certificates as well as incurring replacement fees. With respect to the relationship between the issuer and the shareholder, it enables timely notification and prompt communication on corporate actions and other important matters of the issuer, and helps reduce mailing communication costs. Securities trading may however, be limited by certain systemically pre-regulated conditions regarding time, price, etc. and require heavy technological investment.

In Syria an electronic system is in place which requires registration of all the investors and their ownerships of securities in a Register Account on the system. An investor can open a Client Account via the intermediary to buy and/or sell securities and can ask for a Notification of Ownership or for Notification of his/her account movements and transfers. In Malaysia, the CSD has a direct relationship with the securities account holder. Every securities account opened with the CSD shall be in the name of the beneficial owners of the securities or in the name of an authorized nominee, where the authorized nominee can hold deposited securities for only one beneficial owner in respect of each securities account.

In Romania, besides individual securities accounts, global securities accounts can also be opened with the CSD, where the participants keep individual securities sub-accounts for the clients to ensure the separation of the securities held in own name from those held in the name of the investors.

2.2 Components in Securities Holding System

In most jurisdictions, the indirect holding system and the modified holding system consist of four key components: the issuer, the CSD, the market intermediary, and the investor. In contrast, the direct holding system takes a simpler structure consisting of the issuer and the investor. Since the CSD play a key role in the modern securities holding system, its roles and relationship with beneficial owners and the types of securities accounts available for investors in different securities holding system will be discussed in this section.

2.2.1 Central Securities Depository: Its Role and Relationship with Beneficial Owners

The CSD is the institution which dematerialize physical securities, transfers ownership through book entries to electronic accounting systems⁷ and takes over the custody of securities in physical certificate form or in the electronically dematerialized form, increasing efficiency and reducing risks associated with securities transactions. Efficiency gains are achieved through elimination of manual errors in handling physical certificates, lower costs for transactions, and faster processing through automation. All responding jurisdictions have established CSD while in Romania and India two depositories exist to ensure the clearing and settlement of the transactions performed on the stock exchanges. In most of the responding jurisdictions only market intermediaries can open accounts with the CSD, while in jurisdictions such as Bangladesh, DIFC, Macedonia, Malaysia, Oman, Pakistan and Romania both market intermediaries and individual investors are entitled to open accounts with the CSD.

⁷ See *Recommendations for Securities Settlement Systems*, Joint Report from the Technical Committee of IOSCO and the Committee on Payment and Settlement Systems, November 2001 available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD123.pdf>.

The main role of the CSD, to provide the custody of securities and post-trading services, has improved since adoption of dematerialized and immobilized systems. A dematerialized system works with the collection of securities accounts, instructions to the market intermediaries that may open and/or maintain those accounts for investors, and confirmations of related parties without any physical document to represent securities transactions. The immobilized system means immobilization of stock certificates in the CSD where securities transactions can be cleared and settled among accounts of market participants without delivering any physical certificate by market participants.

In the indirect holding system, the investors can access CSD through the market intermediary who is participant of the CSD while in the modified holding system, the investor may directly access his/her account. In most of the surveyed jurisdictions, the beneficial owners did not have a direct relationship with the CSD and securities were deposited via market intermediaries as participants to the CSDs system while in Bangladesh, Malaysia and Oman the investor has a direct relationship with the CSD.

The CSD, as an independent infrastructure of the securities market, provide support to the investors in exercise of their rights on securities deposited or registered in the CSD, such as transferring ownership, maintaining or transferring the register of securities and provision of requisite information among participants and investors. In Syria, the CSD also deals with the ownership transfers due to inheritance, legacy, enforcement of final court judgments, securities grants in favour of duly registered entities, family transfers and shareholders in case of suspending listing or trading.

2.2.2 Types of Securities Accounts

Securities accounts enhance efficiency in processing of massive securities transactions in indirect or modified holding systems, while paper certificates are still accepted as the principal form of securities ownership in jurisdictions having direct holding system.

In the modified holding system, the securities accounts available to investors may differ depending on the circumstances of each jurisdiction however, there are several common characteristics found across jurisdictions. First, the investors may open personal account at CSD where any changes in ownership due to securities transactions are updated immediately on the issuer's book. As such, these securities accounts in modified holding system enable a stock issuer to reach its shareholders without the involvement of market intermediaries and can effectively reduce the risk of improper operations by market intermediaries and the misuse of the investor's securities. The types of securities accounts operating under the indirect holding system will be discussed in Section 2.4.

2.3 Investor Protection

When securities are held in the nominee account, the beneficial owners' name does not appear in the register of the issuer, thus causing difficulty to ensure that the beneficial owners are adequately protected. The investor (beneficial owner) protection issue therefore needs to be discussed for the relationship that the investor has with the issuer, the primary nominee account operator and the upper-tier nominee account operator.

2.3.1 Investors' Rights and Their Protection

An investor, being a shareholder of the issuer enjoy various rights that include the right to

receive the economic or financial benefits, and the right to take actions to deter mismanagement or participate in the decision-making process for important corporate matters. The former includes, among others, the right to share in the distribution of corporate earnings, the privilege to buy new shares, and the right to have share in the residual assets that remain in the event of liquidation. The latter includes the right to vote on corporate matters, the right to call a shareholders' meeting, the right to access the company's documents, the right to stop board of directors from engaging in illegitimate activities, and the right to request the company to liquidate itself.

In some jurisdictions, investor's rights on securities in the securities account are recognized in the form of the equitable right, investors would therefore, own proprietary interests and the legal ownership of securities is transferred to the trustee which is the nominee account operator. Investors' rights are not subject to the claims of the creditor of the intermediary since the investor has the beneficiary right on his/her securities in the account.

In some jurisdictions, the investor's may enjoy co-property right on securities in the pool of securities, investor's interests on securities can be protected against the creditor of the market intermediary without the additional legislation because the intermediated securities in the account of the market intermediary are subject to the property right of investors.

In addition, there are jurisdictions with legislation conferring the pro rata property interests on investors. The regulatory provision of the pro rata property interest of investors over securities unallocated and indirectly pooled in the securities account can grant investors the similar right to the property right over their securities, as it may be generally introduced in jurisdictions with the legal regime of equitable right over securities in order to enhance investor's interests.

Investor's rights against issuers such as those mentioned above are protected in a majority of the jurisdictions according to the laws applicable in the jurisdictions. In Turkey however, investors do not have direct access to the records, hence the account operators act on behalf of the investors against issuers. In South Africa the nominee account holder exercise the shareholder's rights against the issuer. In Macedonia, in the event that the issuer does not allow the shareholder to carry out an inspection of records and documents, the shareholder may submit a proposal to the court in order to obtain access to the records and documents.

The investor's rights against the market intermediary under the indirect holding system differ among jurisdictions according to the legal infrastructure in place. With respect to the investor's rights against the nominee account operator, in general, they are governed by the terms and conditions of the contract between the investor and the nominee account operator. Such contract usually covers a number of items related to the operation of the nominee account ranging from the execution of the investor's instructions for securities transactions to the distribution of information regarding corporate management or shareholder rights. Those specific investor protection issues will be addressed in more detail in the next chapter.

In most cases, the participant to the CSD has to inform the investor on the transactions made on his/her account and it has to get the consent of the investor when performing transactions with the securities beneficially owned by the clients. In Malaysia, the nominee appears in the book of the issuer as the depositor therefore all the rights and benefits would be passed down by the issuer via CSD to the nominee. In South Africa, the participant must ensure that the investor is timely advised of and in a position to exercise its rights as shareholder or legal owner of the securities of the issuer, as if the investor were the registered shareholder or legal

owner of the securities. In India SEBI (Depositories and Participants) Regulations, 1996 specifies the obligations of the depository participants. In case of contravention of any of the SEBI Regulations and requirements, actions can be initiated against the concerned intermediaries.

In the Czech Republic, Korea, Pakistan, and Chinese Taipei the CSD provides the list of shareholders for dispatching dividends and other payment rights or for summoning the General Shareholder Meeting (GSM). The advertisement of the GSM is the responsibility of the issuer while the payment of dividends is secured by the primary nominee account operator. In almost all jurisdictions the CSD has no direct relationship with the investors in terms of exercising their voting rights and participation in the GSMs. In Korea, beneficial owners may opt to exercise their voting rights either with or without the involvement of the CSD or market intermediaries. In Thailand the relationship between CSD and the investor will only exist once the book is closed, and the investors who are registered as shareholders will have a direct claims against their right through CSD.

In half of the jurisdictions surveyed the CSD acts as the upper-tier nominee account operator and in all such jurisdictions investors can enforce rights against the CSD. Nevertheless, the circumstances may vary. Under normal circumstances, the investors in Malaysia, Morocco and Pakistan are able to enforce their rights. However, in Malaysia this would depend on whether there is a direct contractual relationship between the investor and the upper-tier nominee account operator failing which the investor would have to rely on the primary nominee account holder to enforce those rights on its behalf. In the event of breach of duty by the intermediary, investors in Bangladesh, Pakistan and Thailand would be in the position to do the same. In the event of a breach of duty by upper tier intermediary, investors in Pakistan and South Africa would be able to exercise their rights. When it comes to insolvency of the intermediary, in Bangladesh and Pakistan investors are able to enforce their rights.

In South Africa, there are legal provisions for certain warranties and indemnities with regard to the instruction to transfer dematerialized securities. No transfer may take place in the relevant accounts unless a proper authenticated instruction to transfer has been received by the operator. Morocco however indicated certain constraints to enforce the investor's rights such as applicability of foreign law if the investor and nominee account operator are foreigners and the investor having no direct relationship with the upper-tier nominee account operator.

In DIFC, the investor's rights are enforceable on the entity providing the service and with which the investor has a contractual relationship. The stock exchange in DIFC acts as the upper-tier intermediary and has legal title to all securities listed with it.

2.4 Structure and Operational Framework for Nominee Account

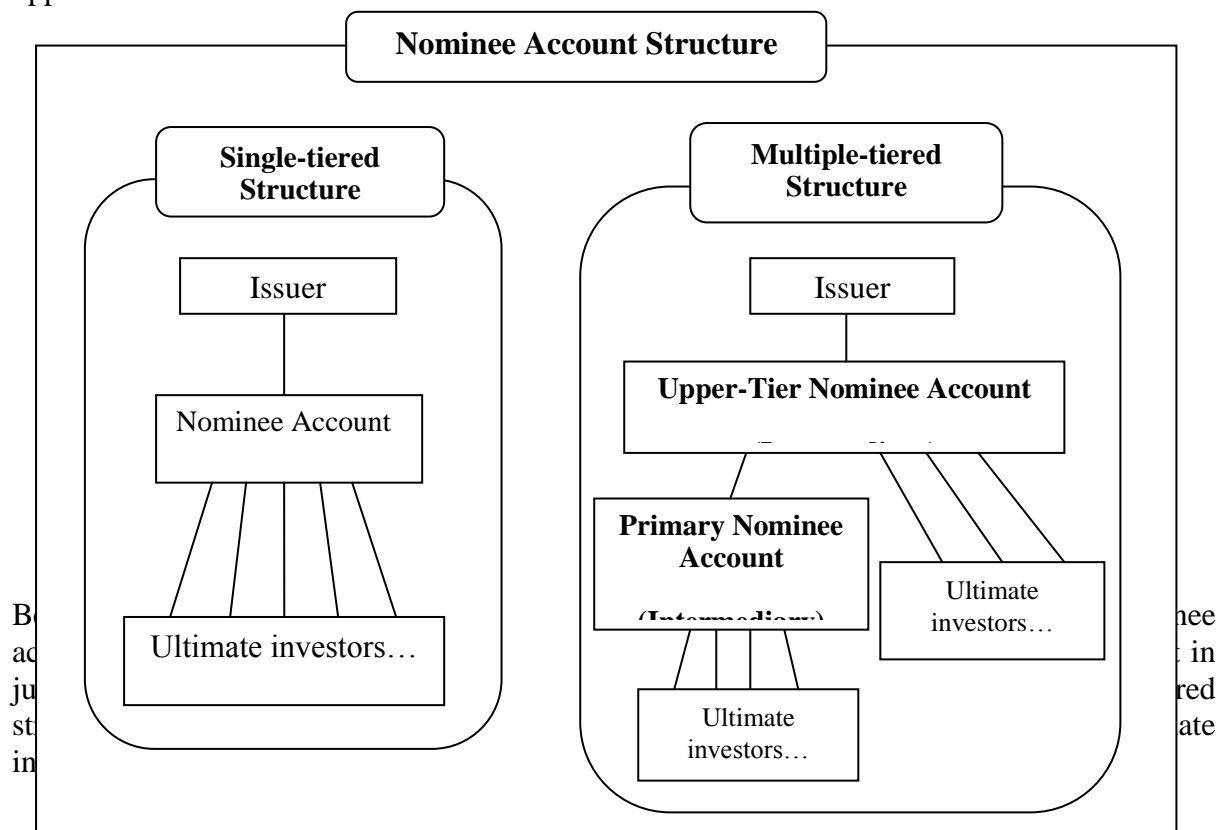
As securities are not registered in the name of beneficial owners under the indirect holding system, this system essentially necessitates the use of nominee account. This is also the case for some jurisdictions with the modified holding system, as the transition to the modified holding system often involves the parallel existence of the indirect holding system and the modified holding system, or as their modified holding system may allow for the use of pooled nominee account.

Depending on whether a jurisdiction's nominee account structure allows for the existence of another nominee account between the nominee account operator and the ultimate investor, the nominee account structure is either singled-tiered or multiple-tiered. In addition, the nominee account may be administered for the benefit of a single investor or a group of investors.

2.4.1 Single-Tiered Structure vs. Multiple-Tiered Structure

The single-tiered structure is the type of nominee account structure where there exists only a single layer of intermediaries (nominee account operators) receiving orders and handling administrative affairs on behalf of individual account holders. Thus, a nominee account represents the securities holdings of individual accounts but cannot be expanded to create another layer of a nominee account and ultimate investors.

On the other hand, the multiple-tiered structure is the type of nominee account structure where multiple layers of intermediaries (nominee account operators) exist between the issuer and ultimate investors. Under this structure, a nominee account may represent the securities holdings of not only individual accounts as in the single-tiered structure but also another nominee account that again represents the securities holdings of its own ultimate investors. Accordingly, the multiple-tiered structure consists of a primary nominee account and one or more of upper-tier nominee accounts. The upper-tier nominee account refers to a nominee account that holds the securities of ultimate investors and/or includes other nominee accounts operating at a lower tier and holding the securities of investors collectively. In contrast, the primary nominee account refers to a nominee account operating at the very bottom tier of the multiple-tiered structure, such that it holds the securities of ultimate investors while maintaining direct contact with such ultimate investors. The securities held by the primary nominee account operator are thereafter credited as a collective securities position in an upper-tier nominee account.



The results of the survey reflect that majority of the jurisdictions have in place multiple tiered structure of the nominee accounts system. In Argentina, Bangladesh, Korea and Oman a single-tiered structure for the nominee accounts exists with a single layer of intermediaries handling the accounts of individual investors. In the Czech Republic, DIFC, Pakistan, South Africa and Thailand the system is multiple tiered where multiple layers of intermediaries (nominee account operators) exist between the issuer and ultimate investors. Morocco reported that nominee accounts are not regulated in the country but the nominee account operator is acting as a proxy on behalf of the beneficial owners.

The identification of ultimate owners is critical to implement regulatory rules such as anti-money laundering and large equity ownership reporting and deserves consideration particularly with the perspective of investor's protection. This issue will be examined in more detail in Chapters 3. Furthermore, the likelihood of misconduct by the nominee account operator is more under the multiple-tiered structure than under the single-tiered structure.

2.4.2 Single Client Account vs. Group Account

The nominee account can be administered for the benefit of either only a single investor or a group of investors. In the case of a single client account, the beneficial owner maintains a direct relationship with the nominee account operator. If the nominee account serves a group of investors (group account), their securities holdings are handled as if they were one collective position, rather than as the combination of separate individual positions, along with other securities of beneficial owners in the upper-tier nominee account. The nominee account operator, however, keeps separate records for each customer in his/her back office. The group nominee account at a lower tier is called the pooled nominee account or omnibus account which is defined as a type of nominee account in which a primary nominee account operator handles the collective position of securities of more than one investor in a single account. Since the investors in the pooled nominee/omnibus account do not have the direct relation with the upper-tier nominee account operator and are treated collectively, this may pose certain complicated issues that are generally, not observed in the markets with the single-tiered structure. In the diagram above, the primary nominee account under the multiple-tiered structure denotes a pooled nominee/omnibus account. A large number of jurisdictions allow the use of pooled or omnibus nominee accounts. However, in Pakistan, a pooled nominee account was a part of the regulatory framework until 2005, after which it was abolished due to misuse by a number of participants in the depository system.

Jurisdictions allow the pooled nominee/omnibus account only for domestic or foreign investors or for both groups of investors indiscriminately. It is generally quite challenging for regulators to identify or trace down the actual beneficial owners, when the pooled nominee/omnibus account is accessible to foreign investors. Furthermore, with respect to the operation of pooled nominee/omnibus account, regulators may face other more complicated issues such as the allocation of securities (as well as gains or losses from securities transactions) and the execution of instructions from the beneficial owners.

In the case of the Emerging Markets surveyed, Chinese Taipei, DIFC, Malaysia, and Thailand responded that investors in all categories - domestic, institutional, and foreign - can access the pooled nominee/omnibus account, while Macedonia and Morocco only allow foreign investors to use the pooled nominee/omnibus account.

Chapter 3 Regulatory Measures and Market Practices to Address Nominee Account-Related Problems

3.1 Shareholder Communication

Securities are usually immobilized for centralized clearing and settlement under the indirect holding system and the nominee account operator appears in the name of the owners in the register of the issuer or the CSD. As a result, the issuer is in the dark about the actual owners of its securities and may sometimes find it difficult to communicate with the actual owners. This chapter will discuss shareholder identification issues, with a focus on the relations between a stock issuer and shareholders: the identification of the beneficial owners, the distribution of shareholder benefits and information, minority shareholder rights, and the protection of privacy interests of beneficial owners.

3.1.1 Identification of the Beneficial Owners

For most of the time, the issuer does not need to identify who the beneficial owners of its shares are but must identify them in case of a shareholders' meeting, its bankruptcy, or any other major corporate events such as the distribution of shareholder benefits and information. However, the existence of the nominee account operator between the issuer and shareholders may cause the breakdown of the communication chain between them. This is particularly so under the multiple-tiered structure where it is often quite challenging to trace down the ultimate beneficial owners at the very bottom tier.

One of the most efficient solutions to this issue is found in jurisdictions where an advanced CSD model is operating. In an effort to deal with increasing trading volumes, with the help of sophisticated IT systems, CSDs often seek to achieve a very high level of automation in processing information and exchanging information with market intermediaries. The investor's ownership information can be traced down or updated with greater ease, as the CSD can facilitate the information flow between the issuer and market intermediaries. Where such level of automation is not possible, some jurisdictions require the nominee account operator to identify and disclose the beneficial ownership information to the securities regulator or CSD on a regular or on a need basis. The CSD may gather the detailed information on beneficial owners at a certain point of time, for instance, when the list of or information on actual shareholders is needed for certain corporate events such as a GSM.

Among the jurisdictions surveyed, Argentina, Chinese Taipei, and the Czech Republic responded that the CSD has access to the information on beneficial owners whenever needed or at all times. Bangladesh and Thailand require nominee account operators to disclose the owners of securities held in the nominee account on a regular basis. In Korea and Pakistan, the CSD is able to gather and generate the detailed information on shareholders, including beneficial owners, whenever the list of shareholders is required for major corporate events or actions.

Under the multiple-tiered structure, it is more complicated to identify ultimate beneficial owners who are veiled to the upper-tier nominee account operator. This is particularly when the pooled nominee/omnibus account is available for foreign investors. As such, the availability of the pooled nominee/omnibus account should be considered with caution, only after an effective identification mechanism is in place. In South Africa, while the CSD rules require disclosure of beneficial owners however, the main obstacle in obtaining the details of

the beneficial ownership is the limitation if the holding is more than two layers such as in the multiple-tiered structure, as the legislation does not provide authority for enquiry beyond that.

In terms of the identification of the beneficial owners, the issue has also been discussed in the *Principles on Client Identification and Beneficial Ownership for the Securities Industry*⁸. The report presented principles and recommended actions for the identification of the client including the beneficial owners, especially at the time of establishing a business relationship, as well as for the proper maintenance of the constant compliance of principles. According to the Principles, the market intermediary is required to establish the Client Due Diligence (CDD) process to identify and verify the beneficial owners whenever it is apparent that securities are traded through the account beneficially owned by the entity other than the account operator.

For ease in identification of clients all responding jurisdictions have record retention requirements in place for the CSD, Nominee Account Operator and Issuer. The records that are retained include documents and registers relating to the operations, particulars of investor and other important documentation. The period of retention of documentation after the end of business relationship ranges from 5-15 years depending on the jurisdiction and in some cases documentation is retained on a permanent basis.

3.1.2 Distribution of Shareholder Benefits and Information

As a shareholder, the beneficial owner is entitled to rights such as dividends, voting, and perks (e.g. discount vouchers). While proxy materials may not be distributed directly from the issuer to the beneficial owners given the costs of communication, the important information on the issuer such as corporate financial reports and the details of major corporate actions, as well as other shareholder benefits, perks, and notices should be conveyed to the beneficial owners. However, the nominee account operator may fail to act to pass on shareholder benefits and information either through negligence or wilfully. Therefore, under the indirect holding system, there is a need to have in place legal requirements or mechanisms that ensure beneficial owners benefit from all shareholder rights that he/she is entitled to. In particular, shareholder perks are most likely to fail to reach the beneficial owners as the nominee account operator may hesitate to pass on those perks in fear of costs associated with forwarding them.

With respect to dividends and voting rights, the most efficient solution is to have clear legal requirements for the nominee account operator to ensure that their clients are not deprived of those shareholder benefits under corporate law or securities law. In contrast, it is not common to see legal or regulatory requirements applicable to perks.

Among the surveyed jurisdictions that have adopted the indirect holding system, 12 jurisdictions - Argentina, Chinese Taipei, India, Korea, Macedonia, Malaysia, Morocco, Oman, Pakistan, South Africa and Thailand responded that there were certain procedures in place for beneficial owners to exercise their rights. Further, in most jurisdictions surveyed, there is a requirement on issuers for public disclosure or announcements of corporate exercises such as dividend, rights issue, offer for sale, bonus issue, share split etc to the shareholders

⁸ See *Principles on Client Identification and Beneficial Ownership for the Securities Industry*, IOSCO, May 2004 fn 3..

In addition, 13 jurisdictions - Argentina, Bangladesh, the Czech Republic, DIFC, India, Korea, Macedonia, Malaysia, Morocco, Oman, Pakistan, South Africa, and Thailand - indicated that the securities regulator is empowered to ensure that beneficial shareholders receive dividend payouts and exercise other shareholder rights, either in the course of dealing with relevant investor complaints or via the examination or surveillance of market intermediaries and CSDs.

3.1.3 Minority Shareholder Rights

Not only the issuer and securities regulators but also shareholders may require access to the information on the identity of beneficial owners such as when exercising minority shareholder rights. Minority shareholders may collectively act to maximize shareholder value, if a major or controlling shareholder acts against shareholder interests. For instance, they may collectively request the issuer to convene an extraordinary shareholders' meeting or grant access to corporate books and records. To act collectively, they need access to the identity of other minority shareholders who are often hidden behind the nominee accounts. In some jurisdictions, the shareholder is entitled to the right to access the register of the issuer, while, in certain other jurisdictions, the issuer is required to file the list of its shareholders with the securities regulator or disclose it to the public on a regular basis in order for the list to be made available for minority shareholders.

Approximately 80 percent of the surveyed jurisdictions indicated that the rights of minority shareholders were protected and entitled to have access to the information regarding the ownership of securities held in the nominee account under law. In particular, in Macedonia, under the Company Law, each shareholder is entitled to inspect all data recorded in the register of shareholders of the company in which he/she had interests. In Korea minority shareholders may act collectively, for instance, to request the issuer to convene an extraordinary shareholders' meeting, dismiss a board director, inspect company documentation, or file a class action suit, on condition that their combined interests in the company exceed a certain threshold. If this condition is satisfied, those minority shareholders can have access to the information regarding the beneficial owners as of the relevant record date. In Pakistan every issuer is required under the law to file a list of shareholders with the securities regulator on an annual basis which is available for inspection by any person including the minority shareholders. On the other hand, the Czech Republic and Morocco responded that they did not have any law enabling minority shareholders to have such access to information.

3.1.4 Protection of Privacy Interests of Beneficial Owners

Privacy interest is one of the main reasons for the beneficial owners to hold their investment in the nominee account. The beneficial owners may have the choice of whether or not to disclose their personal information, though only two jurisdictions, DIFC and Nigeria are found in the survey to allow investors to opt for anonymity. In these jurisdictions where the beneficial owners may opt to be anonymous, he/she is still able to exercise shareholder rights through the nominee account operator. However, the privacy interest of the beneficial owners may conflict with legal, tax, and other regulatory requirements (e.g., anti-money laundering and securities law enforcement). In the Czech Republic the CSD and the person maintaining a separate register of investment instruments are obliged to provide data regarding the owners of investment instruments maintained in their registers.

It would be desirable if the nominee account operator, in the jurisdictions that allow investors to opt for anonymity, is required to check on a regular basis whether the beneficial owners would like to change their election regarding the disclosure of his identity. The nominee account operator should also have proper internal controls to protect the information on the beneficial owners including their names, addresses, and securities positions.

3.2 Maintenance of Securities

The holding of securities has evolved from physical certificates to book entry where investor's securities' holding is reflected either in the records of the CSD or a nominee account operator. This may lead to several regulatory concerns including the inability to identify beneficial ownership as well as risks of misappropriation due to lack of disclosure and transparency. Proper maintenance of securities is therefore critical to ensure that the interest of the ultimate beneficial owners is duly protected. This can be achieved by the following:

3.2.1. Authorization of Nominee Account Operators

Two-thirds of the survey responding jurisdictions having indirect holding system, indicated that there is no direct relationship between the investor and the CSD in their jurisdiction as nominee account operator is appointed to manage securities on behalf of investors.

Survey findings reflect that where the indirect holding system is practiced, less than half of the survey respondents require nominee account operators to be authorized by securities regulators. Authorization is only in place in jurisdictions such as the Czech Republic, Korea, Pakistan, Oman and South Africa.

It is important that nominee account operators are authorized by regulators to protect the interest of clients and help preserve market integrity. Standards for authorization as laid out in the IOSCO Principles which include assessing capital requirements as well as demonstration of appropriate knowledge, business conduct and internal organization should apply.

3.2.2 Legal Requirements for Intermediaries' Custody of Investors Accounts

Under the indirect holding system, more than half of the survey respondents indicated that nominee account operators adopted a custodian role of the investor's accounts. In Thailand a securities company can hold client asset in its nominee account as collateral if the client has taken securities financing from the company. In Korea the Commercial Code's provisions pertaining to the lien of the commercial agent apply *mutatis mutandis* to the market intermediary. In other words, the Commercial Code gives the market intermediary the right to impose a lien on its client's securities, until the client's debt obligations are satisfied.

The nominee account operators will liaise with the CSD or the issuer on behalf of the investors with regards to any issues and affairs relating to their investments. While such arrangements may increase efficiency and reduce costs, this may pose risks of misconduct or unfair treatment. For example, an intermediary may lend out its clients' securities held in the nominee account to cover short positions without the consent of the clients particularly where naked short selling is prohibited. The nominee account operators may also use such securities to create false market appearance and other forms of market abuse such as selling

the securities they hold in trust for the investors to create false impression of the supply of a particular stock.

Due to this it is critical that there are adequate arrangements and controls in place to safeguard the investor's accounts and protect the investor from potential securities violations and misconduct by the intermediary. Survey response shows that all jurisdictions have some form of requirements in place for establishment of internal control systems to prevent misconduct of nominee account operators. The most common safeguard is requiring nominee account operators to treat all beneficial shareholders equally to minimize misappropriation across multiple tiers of intermediaries. Other safeguards include the prohibition of short selling or lending of client securities by the nominee account operator.

3.2.3 Segregation of Securities

Consistent with IOSCO's Principles, as well as the principles of trust law, it is essential to prevent any misuse on part of the nominee account operator and to ensure that the assets of the nominee account operators are segregated from their clients. In instances where the securities owned by the nominee account operators are allowed to be placed together with the securities of the clients, there should be proper identification and documentation to distinguish the ownerships.

All eleven jurisdictions surveyed impose requirements on segregation of the intermediary's own account from the clients' account. In most situations, the segregation requirement is imposed in the form of account structure via a different code or account as practiced in Argentina, Bangladesh, Pakistan, Malaysia, South Africa and Thailand.

In Malaysia, when a nominee account is opened with the CSD by a nominee account operator, the nominee account operator is required to make a declaration whether it is the beneficial owners of such account or acting as a nominee for its client. Where the intermediary is the owner, its name is indicated in the central depository system and where it is acting as a nominee for its client, the name of the client will also be recorded in the central depository system.

3.2.4 Data Storage Requirement for Nominee Accounts

For jurisdictions that practice indirect holding system, it is critical that nominee account operators maintain proper records containing detailed holdings of each client or shareholder, as that information will form part of the shareholding structure of a public listed company.

It is a legal requirement for nominee account operators to maintain basic information on the securities holders including shareholding details and transaction records. This is practiced in Argentina, Bangladesh, the Czech Republic, India, Korea, Macedonia, Morocco, Pakistan and South Africa.

In the Czech Republic, more comprehensive data such as co-ownership, transferability, beneficial owners exercising rights of the investment instrument are required to be maintained. Morocco further requires the nominee account operators to maintain documents in relation to transactions that have been made on behalf of the investors. In the DIFC, the terms and conditions for custodians and clearing members to maintain the required records are a contractual obligation between the CSD and the nominee account operator.

3.3 Operation of Nominee Accounts

A nominee account is an account operated by an intermediary or in some cases the CSD created for the purpose of holding shares on behalf of the beneficial shareholder. Nominee accounts are used in 75% of the surveyed jurisdictions however the nominee account operator differs from jurisdiction to jurisdiction. In most jurisdictions the nominee account is operated by the market intermediary or stock broker while in jurisdictions such as India, Korea Pakistan and Chinese Taipei, the CSD acts as the nominee account operator, as the name of the CSD is registered in the books of the issuer. In Chinese Taipei an investor is required to open an account of domestic securities trading with his/her own identification number in Chinese Taipei. The CSD in Chinese Taipei represents the nominee account operator and the beneficial shareholders list is maintained by the CSD. In Thailand the nominee account is operated through a multiple-tiered structure, where the CSD is the upper-tier nominee account holder and the intermediary is the primary nominee account holder. The accounts held at the CSD are separated into *local securities* and *foreign securities*, which are further sub-divided into *participant for client account* and *participant for own proprietary account*.

3.3.1. Execution of the Beneficial Owner's Instruction

Through nominee accounts under a custodial agreement, the securities or other assets are held and administered by a nominee (registered owner) on behalf of actual owner (beneficial owner). In this relationship, unfortunately, it is not so rare that the nominee account operator misconducts in execution of the beneficial owners' instruction, i.e. engaging in trading malpractices which were not in the best interest to the clients.

Trading malpractices while executing the client's instructions are the practices, where a market intermediary/nominee account operator takes advantage of a client's instructions to place similar orders ahead of the client's orders for themselves also known as "front-running" to get gains that may be detrimental to the client. Such orders are disadvantageous for the clients in terms of priority of time and consequently execution price. Thus, the issue of conflicts of interest may arise, requiring enforcement of stringent conflict of interest rules for the market intermediaries to prevent or reduce the malpractices in execution of the beneficial owner's instructions.

The misconducts cannot be noticed until a failure occurs that establish that proper checks in systems and procedures, were not in place to detect improper and illegal activities. The internal control systems are therefore, crucial in detecting any misconduct in execution of beneficial owners' instruction. Any failure of the internal control systems can result in critical events which will harm the whole system's safety at the end.

According to the survey results, all responding jurisdictions have legal requirements in place for internal control measures to prevent misconduct of nominee account operators. In all responding jurisdictions the laws or other regulations establish the requirement of having internal control procedures. The procedures or internal control mechanisms however vary from jurisdiction to jurisdiction. In some jurisdictions there are certain rules for prudent provision of investment services that include control and security measures applicable to the processing and recording of data and internal control system. Additionally, the regulators and/or SROs' have enforcement powers on nominee account operators.

In some jurisdictions such as Bangladesh and DIFC there are other measures such as, appointing compliance officers/internal controllers or rules for holding collateral including clients assets.

3.3.2. Unauthorized Disposition of Securities

The indirect holding system of securities poses a significant intermediary risk in the form of insolvency, shortfalls or misconduct against client assets. The unauthorized disposition of securities can be described as nominee account operator's (or market intermediary's) lending or misuse of securities held in nominee accounts, without the knowledge and permission of their beneficial owners to make questionable gains. The misconduct is especially connected with short selling and securities lending. A CSD may act as a safeguard against misconduct of market intermediary therefore, for a safer securities system it should be a requirement to hold all or most of securities with a CSD in book-entry form.

However, the existence of a CSD, acting as a custodian of securities not necessarily eliminates the risk of intermediary misconduct against client assets in the indirect securities holding system, where the ultimate beneficial owners do not hold property rights of specific, non-fungible assets; but rather has co-ownership claim over a pool of securities held by the intermediary. In such case, even if the custodian of the assets is a CSD, assets of individual clients of a certain intermediary are not identifiable at the CSD level. In order to prevent misuse of client assets by the intermediary, segregation requirements might be put in place to ensure clients assets are not commingled with intermediary's own assets.

Such measures do not fully eliminate the risk of misconduct by the market intermediaries, as even if client assets are segregated from intermediary's assets, so long as the client assets are held in a pooled account and individual clients are not visible at the CSD level, misconduct may occur in the form of disproportionate treatment between clients. Therefore, in addition to central custody and segregation, effective internal controls should be in place to ensure that a client's assets are not commingled with those of other clients as well.

According to the survey results, in 8 jurisdictions out of 20 responding jurisdictions, the market intermediaries are allowed to take custody of investor's accounts in any circumstances. In 2 jurisdictions custody is allowed in certain conditions. In all jurisdictions that allow the custody of investors' accounts, the law safeguards any misconduct by the nominee account operators. Moreover, in all of the relevant jurisdictions there are specific penalties, fines, etc., defined under the law for fraud or misconduct of the nominee account operator.

3.3.3. Allocation of Securities

Allocation of securities is an issue for regulators when the investors are treated disproportionately. The disproportionate treatment of beneficiary owners is most likely to take place in allocating securities to multiple nominee accounts or beneficiary owners of a single pooled account. Regulatory requirements or internal controls are needed to ensure that all beneficial owners are treated fairly, equally, and impartially. The market intermediary should also avoid any possible conflicts of interest between its interests and the client's interests.

According to the survey results, more than 60% of the responding jurisdictions have a multiple-tiered structure of nominee accounts where multiple layers of intermediaries exist

between the issuer and ultimate investor. In view of this type of holding structure, the issue arise if the nominee account operators across all tiers treat the beneficial owners fairly. This is especially critical if there are no legal provisions to prohibit a lower-tier intermediary unfairly allocates to the investors in its nominee account the securities that had been allocated to that account by the upper-tier intermediary. Most of the jurisdictions stated that there was fair treatment in allocation of securities.

Korean Capital Markets Act stipulates that all market intermediaries, including the nominee account operators, should provide financial services fairly under the principle of good faith. In Oman, Article (142) of the Executive Regulation of The Capital Market Authority points that “The company shall comply with internationally accepted rules of professional and ethical code of conduct in the field of securities and shall maintain its own code of conduct in accordance with the minimum requirements set out by Capital Market Authority.”

3.3.4. Disclosure Requirements for Nominee Account Operators

In addressing the nominee account-related problems in Emerging Markets, one of the most effective regulatory instruments is the “disclosure requirements” for nominee account operators. However, it is difficult to find a balance between “protecting the privacy of investors” and “providing sufficient flow of information to issuers or regulators”.

On the one hand, nominee accounts lower the transaction costs and enhance efficiencies and also give the advantages of nominee accounts *privacy* perhaps the most attractive for some of the investors. On the other hand, the use of nominee account may create difficulties for regulators’ performing certain supervisory activities, particularly in relation to access to information regarding beneficial ownership. This information is critical especially for investigations of market manipulation, insider trading and money laundering. At this point, it is useful to mention that there are different practices among jurisdictions in addressing this issue. Some regulators require full disclosure of individual clients at all times, while others require the information on beneficial ownership to be disclosed only to them and at their request upon an ongoing investigation.

This sub-section explores regulatory measures and market practices in addressing disclosure requirements for nominee account operators in Emerging Markets, primarily building upon the responses to related survey questions.

All responding jurisdictions identified the existence of disclosure requirements in relation to the operation of nominee accounts. The disclosure requirements differ across jurisdictions but in almost all jurisdictions all important information can be provided at the request of the securities regulator.

In Korea, there are disclosure requirements in *Company Law*, *takeover regulation* and *anti-money laundering law*. The market intermediary should also notify the CSD of the details of beneficial owners such as their national identification numbers (the employer identification number in the case of corporate investors) and addresses, while the CSD should notify the issuer, the details of beneficial owners such as their names and addresses and the type and number of shares owned.

In Argentina, there is no disclosure requirements on the nominee account operator regarding securities credited to nominee accounts but the operator is required to save the information relating its operations and *know your client* requirements, but this is not public information

and can be used in an investigation or inspection procedure. In Bangladesh, apart from periodical reports, which include status of the portfolio of the beneficial owners of omnibus accounts, there is no disclosure requirements of beneficial owners, but the regulator can ask details of beneficial owners as and when required.

In South Africa, both the Companies Act and Securities Services Act make provision for disclosure of beneficial shareholding. The CSD collates the prescribed information from beneficial owners, from the exchange and from the various CSD participants and forward to the issuers on a weekly basis, also the regulators can demand information on holdings at any time from the CSD.

In India, the only disclosure requirement on the nominee account operator regarding securities credited to nominee accounts is related to money laundering. Apart from periodical reports, which include status of the portfolio of the beneficial owners of omnibus accounts, there are no other disclosure requirements of beneficial owners, but the regulator can ask for details of beneficial owner as and when required.

Based on the survey results derived from 20 jurisdictions, 12 jurisdictions have stated that there are disclosure requirements on the nominee account operator regarding securities credited to nominee accounts relating to “Taxation, company law, related party transactions, takeover regulation, money laundering, control of regulated entities or any other matter”. As indicated in the below table, disclosure requirements across Emerging Markets are mostly related to “money laundering” according to the survey results.

Table 1: Disclosure Requirements for Nominee Account Operator

	Taxation	Company Law	RPT	Takeover	Money Laundering	Control of Regulated Entities	Others
Argentina	-	-	-	-	-	-	√
Bangladesh	√	-	√	-	√	√	-
DIFC	-	-	-	-	√	-	-
India	-	-	-	-	√	-	-
Korea	-	√	-	√	√	-	-
Macedonia	√	√	-	-	√	-	-
Malaysia	-	-	-	-	-	-	√
Morocco	-	-	-	-	√	-	-
Oman	-	-	√	-	√	-	-
Pakistan	-	√	-	-	√	-	√
South Africa	√	√	√	√	√	√	-
Thailand	-	-	-	-	√	-	-

3.3.5. Anti -Money Laundering / Client Identification

Client identification plays a key role for the regulation of securities industry in maintaining the integrity and efficiency of financial markets, as well as protecting investors. The use of nominee accounts complicates the process of client identification by separating the beneficial owners of securities from the account holders (client). Thus, so long as the ultimate beneficial holders of securities are not identified, the ultimate objective of client identification is not served. Therefore, regulators of nominee accounts worldwide should give client identification process even more attention as the identity of the beneficial owners is not readily accessible by regulators, issuers or general public.

In the Principles on Client Identification and Beneficial Ownership for the Securities Industry⁹ it is stated that “Although some of the main objectives of these principles are to prevent securities fraud and market abuse, the application of the CDD process in the securities industry also contributes to the pursuit of other policy goals related to the prevention of the illegal use of the securities industry such as money laundering and the financing of terrorism that are generally within the competence of other authorities.” So, client identification requirement is a multi-purpose process from the point of the regulators.

Today, in most of the jurisdictions, anti-money laundering laws require intermediaries to verify identities of the clients. As indicated in Table 1 of Section 3.3.4., although there exist disclosure requirements in most of the jurisdictions relating to money laundering, significant money laundering problems have been encountered with usage of nominee accounts (Table 2).

Table 2: Problems Encountered with Usage of Nominee Accounts

Type of problems faced with nominee accounts	Argentina	Macedonia	Nigeria	Pakistan	Turkey	South Africa	Morocco	Dubai	Thailand	India
(a) shareholders rights	5	4	3	5	3	1	2	5		
(b) improper asset allocation	1	5	2	2	1	3	1	5		
(c) communication problems	5	4	4	4	4	2	3	5		
(d) money laundering	5	5	5	3		5	1	5		
(e) others			1	N/A		4	5		1	3

*5 = Most Significant, 1 = Least significant

Also, there are a number of requirements about keeping records for market intermediaries in terms of client identification. According to the survey results, all jurisdictions have record retention requirements which range from 5-15 years and in some cases even permanent. Nominee account operators are required to maintain records for identification of beneficial owner; either through the CSD or through the periodic reporting.

Intermediaries are required to disclose details of beneficial owners of securities to the regulator periodically or on request. However, regulations in almost 60% of the jurisdictions do not oblige intermediaries to provide information to issuers on either the nominee or the beneficial owners. In 20% of the jurisdictions the issuer has direct access to information regarding the beneficial owners while in 80% of the jurisdictions the access is indirect, through the CSD.

In case of multiple-tiers structure having pooled nominee accounts operational in more than 50% respondents, identification of beneficial owners is difficult, in terms of foreign investors. In Bangladesh, the name of the omnibus account operator is listed with CSD but not the name of the beneficial owners. As a result the actual beneficial owners cannot be determined

⁹ See IOSCO, *Principles on Client Identification and Beneficial Ownership for the Securities Industry*, May 2004, fn 3.

without the help of omnibus account operator and the beneficial owners are not getting their rightful legal ownership. However in Chinese Taipei, after close of market each day, the declarant of omnibus account positions must use the exchange online reporting system to separately report the positions of each individual account under the omnibus account.

In Morocco, as the global custodian deals on behalf of a beneficial owners living in a foreign country and taking into consideration the nature of trades turnover, it is quite difficult to verify whether the global custodian's client is the ultimate end beneficiary. However, according to the circular on anti-money laundering, the global custodian should have all the documents to allow the identification of their clients as well as the beneficiary owner behind these clients, where applicable.

In Malaysia, in certain selective situations, banking secrecy provisions has been used as a basis for inability to provide the beneficial owners' information. In such situations, the Securities Commission, Exchange or CSD will work closely with the relevant regulator to ensure availability of such information.

In South Africa, in order to solve the identification problem in multi-tiered structure, the database of beneficial owners is held directly by the CSD. Although new legislation is proposed (new Financial Markets Bill) that will attempt to regulate all holdings in the holding chain, the best solution would be a different holding model where beneficial holders are directly reflected at the upper-tier in their own name.

3.4 Protection of Beneficial Owners in Case of Insolvency

Under the nominee account system the legal owner of an asset (nominee/trustee) is different from the beneficial owner, who actually enjoys property rights on the asset. The legal owner of the asset is responsible for keeping and using the asset on behalf of the beneficial owners. This relationship continues as long as the beneficial owner consents to this arrangement.

In the indirect holding system, intermediaries are generally entrusted with the legal ownership of multiple clients' securities, which are held collectively in the name of the nominee intermediary. In case the intermediary goes insolvent, beneficial owners might not be readily identified without consulting the books and records of the intermediary. Furthermore, intermediary's own securities might not be segregated from client assets, in which case, claims of creditors might clash with claims of clients.

Thus, indirect holding system puts beneficial owners at a financial risk of losing or being separated from their assets. Even though the beneficial owners should legally be able to claim and retrieve his/her assets at will, the identification and verification of beneficial relationship between the client and the nominee might be difficult and time consuming, especially where multiple tiers of nominees exist or the chain of ownership spans more than one jurisdiction. Insolvency in case of an upper-tier intermediary can make matters more problematic as it could pose systemic risk to the system by impairing the ability of lower-tier intermediaries to pay their obligations.

Therefore, in order to mitigate the financial risk borne by beneficial owners in case of nominee's insolvency, several measures can be adopted. The next two sub-sections explore the rights of beneficial owners and protective measures that are utilized in respondent jurisdictions.

3.4.1 Beneficial Owner's Rights

The essential difference between direct and indirect holding systems is that in the former, ownership rights are directly asserted by the investor against the issuer whereas in the latter, the investor is the beneficial owner who enjoys co-proprietary rights in the pool of assets held by the nominee intermediary. In this respect, assets of investors are differentiated from intermediary's own assets and protected against the claims of general creditors of the nominee intermediary in case of insolvency. In addition to co-proprietary rights of the investor, the intermediary has contractual duties against the investor to the delivery of assets upon request.

The rights of a beneficial owner in the event of insolvency of an intermediary should be governed by relevant laws and regulations of home jurisdiction. Legally, irrespective of the financial or legal situation of the nominee account operator (i.e. insolvency, liens etc) beneficial owners should at any time be able to claim and retrieve their assets without prejudice to their property rights as long as their claims are legally valid. In this respect, the legal status of beneficial owners is common in respondent jurisdictions. Other protective measures that facilitate identification and transfer of securities to the ultimate beneficial owners are founded on the legal principles that the beneficial owner has firstly co-proprietary rights in the pool of assets held by the nominee account operator, and secondly has contractual rights against the nominee account operator. Therefore, in case protective measures are not available to guarantee the timely and complete return of beneficial owners' securities in the event of nominee's insolvency, the affected beneficial owner may choose to pursue a legal remedy through courts or liquidators.

In Syria, beneficial owners are protected by virtue of the Regulations for Dealing between Brokers and Clients, particularly the Article 23, which stipulates: Finances deposited in client accounts "cash dealers accounts" referred to in Article (9) hereinabove, and clients' securities that are controlled by brokers, may not undergo liens, attachments, liquidation, or bankruptcy of the brokers.

In Bangladesh, in case of insolvency of the nominee account operator, the investor can withdraw his/her fund as per regulation 30(1)(c) of Securities and Exchange Commission Regulations, 1996.

3.4.2 Protection of Beneficial Owners

In addition to the inherent legal rights of beneficial owners, many jurisdictions adopt additional protective measures such as segregation of securities or setting up a guarantee fund in order to ensure that in case a nominee intermediary goes insolvent, securities or their worth in cash will be timely and completely delivered to their respective beneficial owners. The segregation of client assets from intermediary's own assets exist in 8 out of the 20 responding jurisdictions.

In DIFC, the investor's rights are protected by the rules that mandate the segregation of client assets from the firm's own assets. The purpose of recording, registering or holding investments in a client account is to ensure that monies and assets belonging to clients are separately identifiable from those belonging to the Authorized Firm such that, following a distribution event, any subsequent distribution of monies or assets may be made in proportion to each client's valid claim over those assets or monies.

In some jurisdictions, the CSD may intervene in the event of insolvency. In India, in the event of bankruptcy, insolvency, liquidation or winding up of the depository participant, the CSD ensures that the investor's rights are protected by managing the investors' accounts till the said accounts are transferred to some other account or are closed.

In Pakistan, in case of insolvency where CSD participants other than the CSD are nominee account operators, the CSD shall on the request of the beneficial owners transfer their securities from accounts maintained with the insolvent CSD participant to the accounts of the beneficial owners maintained with any other CSD participant. Also in Romania, in case of insolvency of a participant, in order to protect the customers' assets, the CSD automatically transfers the securities, deposited into the participant's accounts, into individual accounts.

In the Korean system, the nominee account operator is required to establish and maintain a record for its own shareholdings and other separate records for the shareholdings of its clients (the Investor Account Books). Likewise, the CSD is required to establish and maintain records separately for the shareholdings of market intermediaries and of their clients. As such, even in the event of insolvency of the nominee account operator, the investor's assets are duly protected. If any deficiencies arise under certain practical circumstances, the market intermediary and the CSD are required by law to be jointly liable for such deficiencies.

In 4 out of the 20 responding jurisdictions, a guarantee fund exists to reimburse the losses of investors in case investor's assets cannot be fully identified and retrieved when an intermediary goes insolvent. In Morocco, a guarantee fund is established aiming to protect investors against insolvency of nominee account operators acting as custodians. The brokerage firms contribute to this fund biannually. Also in Macedonia, the CSD is obliged to form a guarantee fund. The guarantee fund is composed of the mandatory payments of the members of the CSD that use the services of settlement. The assets of the guarantee fund are primarily used to settle CSD member's obligations. Similar structures exist in the Czech Republic and Argentina.

3.5 Other Issues Encountered in EMC Jurisdictions

Among respondent jurisdictions, only Thailand and South Africa specified issues encountered in their jurisdictions that were not covered by the survey questions.

In Thailand, the SEC found that many suspects or alleged offenders used nominee accounts which appeared in the names of other persons to enter into series of transactions which resulted in unusual prices and volumes of share trading. The investigation revealed that those nominee accounts have the same beneficial owners. Regarding insider trading cases, the SEC found that many suspects or alleged offenders unfairly exploited other general investor's benefits by using nominee accounts which appeared in the names of other persons to enter into share transactions in a securities exchange on the basis of inside and material information.

In South Africa, the pledge or attachment is flagged or blocked at the account level of the individual pledgor for practical reasons which are not the level of the pledgor's nominee, whereas the current legislation makes provision for the flag/block of the pledge or attachment to be put at the level of legal ownership on the account (in other words the nominee (omnibus) account). This is because the nominee level is in law, the registered ownership level where transfer of ownership takes place and can be blocked if correctly reflected by the electronic entries.

Chapter 4 Recommendations for Better Regulation of the Nominee Account System to Protect Investor's Interests

One of the key attributes towards effective securities regulation and one of the three main objectives of securities regulation as identified by IOSCO¹⁰ is protecting investors. The more advance and complex a financial market develops, the more difficult becomes the task of a regulator to protect the interests of investors. The role of market intermediaries as middle men is essential in today's developing financial markets to enhance the pace of activity and keep abreast with the market movements. However, it is the job of a regulator to ensure that market intermediaries do not take any measures which are detrimental to investors. Therefore, in accordance with Principle 31 of IOSCO's *Objectives and Principles of Securities Regulation*, market intermediaries should be required to establish an internal function that delivers compliance with standards for internal organization and operational conduct.

The following are recommendations for effective regulation of nominee accounts that would help guide securities regulators in developing their own legal and regulatory framework in accordance with practices already in place in the jurisdiction:

➤ Client Identification

Client identification and verification facilitates the prevention, detection and prosecution of the illegal use of the securities sector. Issues relating to client identification pose the most significant problem to the operation of nominee accounts and therefore needs to be addressed strongly by regulators across Emerging Markets.

Mostly across jurisdictions significant measures are in place to make sure that clients are adequately identified through adoption of Know Your Customer (KYC) or CDD measures, however problems in client identification become more significant as the number of tiers in the nominee account increases or where omnibus accounts are permissible. Regulators therefore, need to certify that appropriate measures have been taken by intermediaries to identify each client within the omnibus account and that specific CDD policies are created for omnibus accounts that all intermediaries need to adhere to. Where omnibus accounts are allowed for foreign investors the CDD policy should include gathering all relevant information pertaining to the financial institution along with proper analysis of the institution and an understanding of the regulatory structure adopted in the jurisdiction.

Where multiple layers of intermediaries are involved in the operation of the nominee account it is essential that there is complete transparency over the entire chain in the process. Regulations should be in place which ascertains that the beneficial owner is at all times identified with the upper-tier intermediary being the CSD. The database of beneficial ownership should be available with the CSD to ensure that there are no fragmentations or breakages within the chain.

Furthermore, regulators should have information sharing mechanisms in place that can tackle the problems posed through client identification in cross border trading. One way of doing this is through encouraging all IOSCO members in becoming signatories to the IOSCO

¹⁰ See *Objectives and Principles of Securities Regulation*, IOSCO, June 2010 fn .1.

Multilateral Memorandum of Understanding (MMoU), which is the benchmark for cross border cooperation and information sharing.

In addition to the above, record retention requirements of at least 5 years need to be in place at both the nominee account operator and the CSD in jurisdictions for maintaining their client database.

➤ **Disclosure Requirements**

Adequate disclosure requirements on the part of issuers and nominee account operators are necessary to avoid any misconduct in relation to the beneficial owner of securities. Mechanisms need to be put in place in Emerging Market jurisdictions where more direct channels of communication can be put in place between issuers and beneficial shareholders. Issuers should be able to obtain a list of beneficial shareholders unless in some cases the investor objects to such disclosure such as in the Non Objecting Beneficial Owners-Objecting Beneficial Owners (NOBO-OBO) Rules adopted by the US SEC.

Further disclosure requirements need to be put in place on the nominee account operator regarding securities credited to nominee accounts. The nominee account operator should be liable to disclose information regarding the beneficial owner to the regulator or the issuer on request of the regulator or issuer, thus not forcing full disclosure at all time and taking away the privacy aspect pertaining to nominee accounts. Furthermore, disclosure should specifically be made for matters relating to anti-money laundering, taxation, Company Law, takeovers and related party transactions.

➤ **Shareholder Communication**

Problems faced in shareholder communication are likely to diminish over time as electronic communication grows in scope and functionality. However, in order to reduce the communication problems encountered with nominee accounts, shareholder benefits could be granted to the beneficial owners of the security either directly or indirectly by developing the shareholder communication system using the cost-saving electronic transmission technology. Even in the place where this kind of shareholder communication system can be provided through the chain of the issuer, the nominee account operator, and the beneficial owners, the list of beneficial owners should be updated regularly as long as the beneficial owners are not registered on the book of the issuer directly.

➤ **Maintenance of Securities**

Regulators should ensure that a proper system is in place in their jurisdiction that segregates the nominee account operators own securities with the securities of investors. This segregation should be clearly defined in the account structure that exists with the CSD. The intermediary's securities should be placed within a separate account to the securities of the investors whom it is acting as a nominee for. In instances where the securities owned by the nominee account operators are allowed to be placed together with the securities of the clients, there should be proper identification and documentation to distinguish the ownerships. Furthermore, ample and effective backup systems need to be in place to ensure safety of the data both at CSD and intermediary level.

➤ **Investor's Rights**

For the purpose of achieving confidence in the financial system it is necessary for regulations to be in place which protect the rights of investors against all kinds of misconduct. Clear regulations should be in place which protects the investor from misconduct by the intermediary such as misallocation of securities or front running. The regulatory framework should cover a regular electronic reporting mechanism so the investor / beneficial owners are aware of their holdings and any change thereof. The regulator should have adequate powers to take appropriate action in the form of fines, penalties or cancellation of registration in case such a problem emerges. In addition, the investor's assets or securities need to be adequately protected in case of liquidation of the nominee account operator. For this purpose guaranteed funds can be set up in order to ensure that in case a nominee intermediary goes insolvent, securities or their worth in cash will be timely and completely delivered to their respective beneficial owners

➤ **Internal Controls**

The nominee account operator should have proper internal controls to protect the information on the beneficial owners including the name, address, and securities positions. Adequate data storage requirements should be adopted by nominee account operators so that no hindrances are created in identifying the beneficial owners of securities. Internal control mechanisms for the nominee account operator should be in place that clearly distinguishes each client's assets from other client's assets so that there is no misappropriation of any of the client's assets.

Chapter 5 Conclusion

The dematerialization of shares and high quality electronic communication networks made the holding of shares in physical form a hindrance for investors as they looked for ease in the process of holding securities and enhanced speed in trading their securities. This gave rise to the indirect holding system which was widely adopted as the benchmark system across the globe for holding securities. However, as under an indirect holding system the beneficial owners are not recorded as the actual owner of the security in the books of the issuer situations can arise where the nominee account operator can misuse the system and therefore cause damage to the investor. Therefore, regulations in place for operation of nominee accounts need to be strengthened across Emerging Markets and internal control systems need to be created which diminish the chances of misuse by the nominee account operator.

A significant issue that arises with the use of nominee accounts is identifying the beneficial owners of the security. This issue becomes even more complicated when the nominee account is operated over more than a single layer. The role of the CSD has become vital in tracking down the end client and effective mechanisms need to be put in place across EMC jurisdictions to ensure that the beneficial owners of the security are identified at all levels.

Furthermore, it is not just strict regulations that will provide a solution to the problems posed by nominee accounts, but more awareness and interest from investors needs to go side by side as intermediaries or nominee account operators have no incentive to eliminate their central profit making role as registered shareholders. As we have seen in this report most jurisdictions surveyed already have proper internal control mechanisms in place to avoid misappropriation by the nominee account operator. Therefore investors themselves need to be more aware about the companies that they have invested in as misappropriation usually stems from a lack of awareness and interest on the part of the investor.

In this report the EMC has identified the operation and conduct of nominee accounts across member jurisdictions and has attempted to draw out a set of recommendations which could be followed by jurisdictions that are encountering problems with the risks posed by nominee accounts. The EMC would however like to stipulate that in attempting to implement these set of recommendations there is no standard or prescriptive set of rules that can apply across the board and would differ from jurisdiction to jurisdiction.

This Report does not purport to recommend tools and methods as necessary or appropriate for all jurisdictions. Whether a given method is beneficial for a specific jurisdiction can only be determined by the respective regulator keeping in view its approach to supervision and taking into account the market practices, business structure of intermediary's and legal requirements of that jurisdiction. Individual regulators would have to tailor their systems to fit the circumstances of their own markets.

Going forward, advancements in technology and increased activity in capital markets across the globe brought about a change in securities holding system from indirect holding system to now leading towards modified holding system, as investor protection has taken centre stage since the breakout of the financial crisis in 2008. Under this system securities are held in the beneficial owners name on the books of the issuer without the need for a physical certificate to serve as evidence of ownership. Such systems, already in place in many jurisdictions do not however signal the end of the indirect holding system, as many holders of securities would prefer the privacy factor that is accompanied with an indirect system or jurisdictions might not have the technological advancements in place to adopt such a system. Therefore,

adequate investor protection mechanisms need to be put in place across Emerging Markets jurisdictions to tackle the investor protection problems posed by the system rather than altering the system. If managed properly the indirect holding remains an extremely efficient and modern system for holding securities.

Mechanisms should be put in place between different jurisdictions to develop interface among regulators to share experiences and information relating to better regulation of nominee accounts in Emerging Markets. Such interaction will also enhance bilateral cooperation and initiative between member jurisdictions.

Feedback of EMC member Jurisdictions

The EMCWG3 released the draft Report, *Regulation on Nominee Accounts in Emerging Markets* for comments/feedback of the Emerging Market Committee members on 29 August 2011.

EMC Advisory Board Recommendation

After the feedback process, the EMCWG3 reviewed and incorporated the comments received from the international community and presented a final draft report before the EMC Advisory Board seeking approval of the Draft Report on *Regulation on Nominee Accounts in Emerging Markets* by the Emerging Markets Committee at its next meeting during the EMC Annual Conference in October 2011.

References:

1. Securities Industry and Financial Markets Association (2010); “Report on the Shareholder Communications Process with Street Name Holders and the NOBO-OBO Mechanism”, Frank G. Zarb JR.
http://www.sifma.org/uploadedfiles/newsroom/2010/sifma%20white%20paper_nobo-obo_june%2010%202010.pdf
2. Duke Law Journal (2001); “Intermediary Risk in a Global Economy”, Steven L. Schwarz.
3. Institute for Law and Finance (2007) “The Rise and Effects of the Indirect Holding System”, David C. Donald.

Appendix A Draft Survey Questionnaire on Regulation of Nominee Accounts in Emerging Markets

Background:

In many jurisdictions, the nominee account is an acceptable custody arrangement for investors' portfolio which controls a significant number of nominee registrations. The nominee accounts facilitate the efficiency of stock trading through reduced administrative costs and time, but the misuse of the nominee account by the intermediary can create risks and raise concerns on account of investors' protection.

The risks involved with the use of nominee accounts include; maintaining the visibility of beneficial owner on the share register, ensuring protection and exercise of the shareholder's voting rights and protection of their rights against the intermediary's failure to pass on payouts and communications. Concerns have therefore been raised that an effective regulatory framework should address these risks associated with the use of nominee accounts.

Taking this concern into account, the new mandate of EMCWG3 approved by the EMC on 22 November 2010 aims to provide recommendations for appropriate regulation of the nominee accounts in EMC member jurisdictions that mitigate the risks associated with the use of nominee accounts. To develop the recommendations on regulation of nominee accounts, feedback of the EMC member jurisdictions is requested on the following survey questionnaire.

Definitions:

Since the survey will be covering multiple jurisdictions, it is crucial to have a common understanding of the main terms used in the questionnaire. The agreed definitions of the key terms are as follows:

Nominee account means a type of account in which the investor holds his or her securities in the name of a different entity, i.e., the market intermediary as the nominee account operator, ¹¹ which appears on the register of the issuer. For the purpose of this survey, the structure of the nominee account is categorized into two types: the single-tiered structure and the multiple-tiered structure.

Single-tiered structure means a type of nominee account structure where there exists only a single layer of intermediaries (nominee account operators) receiving orders and handling administrative affairs on behalf of individual account holders. Thus, a nominee account under this structure represents individuals' accounts.

Multiple-tiered structure means a type of nominee account structure where multiple layers of intermediaries (nominee account operators) exist between the issuer and ultimate investors. Under this structure, a nominee account may represent not only individual accounts as in the single-tiered structure but also other nominee accounts that again represent their own investors respectively. For the purpose of this survey, the multiple-tiered structure consists of

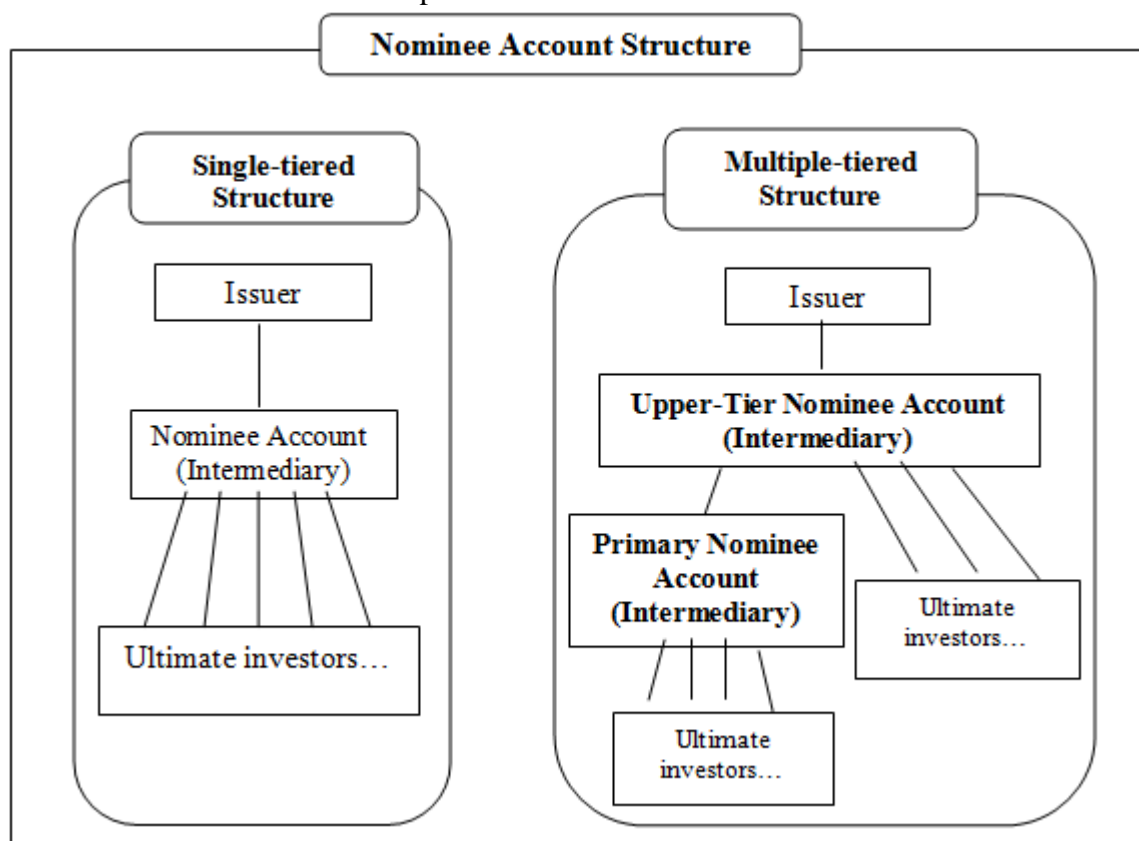
¹¹ For the purpose of this survey, the nominee account operator indicates the market intermediary which operates the nominee account on behalf of its investors who are the beneficial owners of securities credited in the nominee account. In this survey, the "nominee account operator" may be interchangeably used with the "intermediary" depending on questions asked.

two or more layers of nominee accounts which are either a primary nominee account or an upper-tier nominee account as defined below.

Primary nominee account means a type of nominee account operating at the very bottom tier of the multiple-tiered structure such that it holds the securities of ultimate investors while maintaining a direct contact with them and then is being credited as a collective securities position in an upper-tier nominee account.

Upper-tier nominee account means a type of nominee account under the multiple-tiered structure that holds the securities of ultimate investors and/or includes other nominee accounts each operating at a lower tier and holding collectively the securities of investors.

Pooled nominee account or omnibus account means a type of nominee account in which a primary nominee account operator handles the collective position of securities of more than one investor in a single account. Since the investors in one omnibus account do not have the direct relation with the upper-tier nominee account operator and are treated collectively, it might cause complicated issues that are not observed in the market with the single-tiered structure. In the diagram below, the primary nominee account under the multiple-tiered structure can be indicated as the pooled nominee account or omnibus account.



Direct Holding System means the traditional system of securities ownership in which the owner is recorded on the register of the issuer and/or holds physical possession of securities certificates so that he or she has the direct relationship with the issuer.

Indirect Holding System means a system where the intermediaries, including a Central Depository (CD), hold accounts on behalf of their customers (nominee account) and the securities held in these accounts are registered in the name of intermediaries on the books of

the issuers while the real owners are known as beneficial owners, hence, disconnecting the relationship between the issuer and the beneficial owner.

Modified Holding System means a system which mostly involves a direct relationship between the issuer and shareholders through the immobilization and dematerialization of securities. And, the shareholder is registered directly on the books of the issuer or its transfer agent, thus eliminating the role of intermediaries. This system works differently in different jurisdictions.

CONTACT DETAILS:

Name of jurisdiction:	
Name of contact person and contact details:	

Note: All responding jurisdictions should answer the general questions under section I since these questions are on the “Structure and Framework for Securities Holding System,” whereas the remaining questions under sections II-IV refer strictly to issues related to the “Nominee Accounts” and should be answered only by those jurisdictions using such type of accounts.

Section I. Structure and Framework for Securities Holding System

Questions:

1. Please indicate, how does your jurisdiction categorize holding of securities under the law?
 - a) Inscribed physical certificates,¹²
 - b) Bearer of physical certificates,¹³
 - c) Registration other than the book-entry of the issuer (i.e., registration on the Central Depository (CD)’s record)¹⁴ or
 - d) Book-entry/dematerialized.¹⁵
2. If a CD exists in the jurisdiction, please briefly describe the CD’s role and its relationship with the beneficial owner.

¹² The person whose name is registered or inscribed on the physical certificate is considered as the owner of the security and the transfer of ownership would be effectuated by the change of the registration or inscription on the physical certificate.

¹³ The person in possession of the physical certificate is considered as the owner of the security, which nullifies the registration on the physical certificate.

¹⁴ Provided that securities should be deposited in the CD and registered in its record, the registration of the CD would serve as the proof of the ownership of securities.

¹⁵ The ownership of securities is registered directly on the book of the issuer or its transfer agent without a need to hold the physical certificates, as securities are dematerialized. In most cases, securities are registered electronically on the book of issuer or in the personal account at the CD, and securities transactions can be completed without transferring certificates physically.

3. Who is entitled to open an account with the CD?
 - a) market intermediaries only; or
 - b) both market intermediaries and individual investors
4. To trace back ownership of securities, what data storage requirements are prescribed for the CD in your jurisdiction?
5. What are the rights of the investor, and how do they operate in practice, as against
 - a) the issuer,
 - b) the primary nominee account operator,
 - c) the upper-tier nominee account operator in relation to
 - i. voting/receiving of information on shareholders' meetings
 - ii. corporate actions that affects price or structure, e.g., payments of dividends
6. How are the investors' rights protected in case of insolvency of the nominee account operator?
7. When a nominee account operator is required to pass benefits on to the beneficial owner, does the law in your jurisdiction ensure that only the beneficial owner can exercise, or benefit from, the rights attached to the securities?
Yes/No
If Yes, please state legal provisions.
8. Describe briefly the legal requirements for holding the securities (with/without the involvement of intermediaries).

9. **Securities Holding System**

- 9.1 Categorize and briefly explain the type of holding system in place in your jurisdiction.
 - a) Indirect
 - b) Direct
 - c) Modified

Explanation:

- 9.2 If the answer to Q. 9.1 is (a);
 - i. How would you classify the nominee account system in your jurisdiction as per the following (tick the appropriate response)?
 - i.i Single-tiered structure
 - i.ii Multiple-tiered structure

- ii. Does the nominee account operator require any license/authorization from a public authority?

Yes/No

- iii. Does the nominee account operator have to give standard disclosure to the regulator about the investors whose holding he has?

Yes/No

If the answer to Q. 9.2 (iii) above is Yes, describe the disclosure requirement and when it is required to disclose?

- 9.3 If your jurisdiction uses more than one holding system, please give the percentage of investors using each type of system.

- 9.4 If your answer to Q. 9.1 above is (b);

- i. Did nominee accounts exist in the past in your jurisdiction?

Yes/No

If your answer to Q. 9.4 (i) above is Yes, indicate the reasons for their abolishment.

- ii. Do you have a system alternative to nominee accounts in place in your jurisdiction or about to be put in place in the future?

Yes/No

If your answer to Q. 9.4 (ii) above is Yes, state how the alternative system tackles the problems associated with the use of nominee accounts (as detailed in the following sections of this questionnaire).

Section II: Operational Framework for Nominee Accounts

1. Please give description of the operation of nominee accounts in your jurisdiction (provide details on pooled accounts or single client accounts, limited purpose or general purpose, single-tiered or multiple-tiered structure of intermediaries, etc.). In case of pooled accounts, also indicate if the investors have rights attached to their respective securities in the pool.

2. Describe the regulatory approach and method used in your jurisdiction to identify and track the ultimate beneficial owners of securities held by nominee account operator.

3. Multiple-Tiered Structure Having Pooled Nominee Accounts/Omnibus Accounts

- 3.1 Is the multiple-tiered structure that involves the operation of pooled nominee accounts or omnibus accounts allowed in your jurisdiction?

Yes/No

- 3.2 If the answer to Q. 3.1 is Yes;

- (a) How is the ultimate beneficial owner at the bottom of the multiple-tiered structure, whose securities are held in a pooled nominee account by the primary nominee account operator, identified?

Please indicate any problems, if encountered, in identifying the beneficial owners of securities and any measures, if taken, to address the problem.

(b) Is the use of pooled nominee accounts or omnibus accounts allowed to the following investors?

- i. Domestic investors
- ii. Foreign investors
- iii. Both domestic and foreign investors

(c) If the answer to Q. 3.2 (b) is (ii) or (iii), is your jurisdiction able to tackle securities crimes such as stock price manipulation, since the foreign investors may hide their identity using a pooled/omnibus account?

Yes/No

Please explain your answer to Q. 3.2 (c).

(d) Can the investor enforce rights against an upper-tier nominee account operator?

- i. normally,
- ii. in the event of breach of duty by the intermediary,
- iii. in the event of breach of duty by the upper-tier intermediary,
- iv. in case of insolvency of the intermediary,
- v. any other situation (please explain)

4. **Disclosure Requirements on the Nominee Account Operator**

4.1 Are there any disclosure requirements on the nominee account operator regarding securities credited to nominee accounts relating to;

- a) taxation,
- b) company law,
- c) related party transactions,
- d) takeover regulation,
- e) money laundering,
- f) control of regulated entities or,
- g) any other matter

4.2 Is there any requirement to disclose details of beneficial owners of securities held with the intermediary? Please explain.

5. What records are legally required to be maintained by the nominee for the securities held in nominee accounts?

6. Which of the following significant problems are faced in your jurisdiction with regard to the use of nominee accounts? Please tick the relevant problem and classify the problems with regard to significance.

- a) shareholders rights,
- b) improper asset allocation,
- c) communication problems,
- d) money laundering,
- e) others (please specify)

Type of misconduct/problems faced with nominee accounts	Level of significance (1-5)
	1: Most serious 5: Least serious
(a) shareholders rights	
(b) improper asset allocation	
(c) communication problems	
(d) money laundering	
(e) others	

Section III: Shareholder Identification and Information Flow to Shareholder

- Please indicate the record retention requirements for shareholder identification and period of retention after the end of business relationship applicable to:

	Record retention requirements	Period of retention after end of business relationship
Central depository		
Nominee account operator		
Issuer in place		

- Does the beneficial owner of the nominee account have the choice to disclose or not to disclose his/her personal information to the issuer?

Yes/No

- If a beneficial owner does not want to have his/her identity disclosed, can the beneficial owner exercise his/her shareholder rights such as voting, dividends, or any other corporate actions through the nominee account operator which holds the beneficial owner's securities on his/her behalf?

Yes/No

- Even if the beneficial owner may opt for anonymity behind the nominee account, is there any situation where the information of this beneficial owner is disclosed for particular purposes such as regulatory and tax purposes?

Yes/No

If your answer to Q. 4 above is Yes, please explain.

- For the corporate rights of beneficial owners to be exercised, does the regulatory framework (tick the relevant response);

a) Indicate procedures (i.e., standard form, templates to be used), or

- b) Entitle the issuer to impose procedures/documents to be used?
6. Do issuers have direct or indirect access to information regarding the holding of;
- a) The nominee; and
 - b) The beneficial owner?
- Please explain.

7. **Information Flow**

- 7.1 Is the information flow between CDs, registrars, issuer agents, the issuers, and nominee account operators automated?
Yes/No
- 7.2 If your answer to Q. 7.1 above is Yes;
- a) What is the level of automation?
 - i. High
 - ii. Medium
 - iii. Low
 - b) Are the securities directly posted in the name of the investor after settlement?
Yes/No
 - c) Who has access to this information?
 - i. CD
 - ii. issuer
 - iii. registrar
 - iv. nominee account operator
 - v. any other
- 7.3 If your answer to Q. 7.1 above is No, when and how can the issuer or its agents recognize actual shareholders?
- 7.4 Do prevailing regulations oblige intermediaries to provide information to the issuer on: (i) the nominee?
Yes/No
- (ii) the beneficial owner?
Yes/No
- 7.5 What action, if any, can be taken against intermediaries or shareholders who do not provide the requested information?
- 7.6 Do issuers have to maintain a pre-annual general meeting (AGM) register for their AGM?
Yes/No
- 7.7 If the answer to Q. 7.6 above is No, then how do issuers know about their shareholders who have expressed the desire to vote?

8. Please list any other shareholders rights/benefits or information (apart from matters of the AGM) which the issuer is required to convey to its shareholders and how these rights are conveyed to the beneficial owners of securities.
9. If the law in your jurisdiction protects certain rights of minority shareholders, can the minority shareholder identify/have access to the information regarding the ownership of securities held in the nominee account?

Section IV: Regulatory Structure for Intermediaries in Relation to Nominee Accounts

1. What rules are applicable to the existence, establishment and operation of nominee intermediaries? Please explain.
2. Please describe how client accounts are separated from the intermediary's own account?
3. **Intermediaries Custody of Investors' Accounts**

3.1 Are the intermediaries allowed to take custody of investors' accounts in any circumstances?
Yes/No

3.2 If Yes, how does the law safeguard any misconduct by the nominee account operators (i.e., an intermediary's short selling or lending of client securities held in the nominee account)? Please describe briefly.

4. Does the law in your jurisdiction require the nominee account operators across all tiers to treat fairly all beneficial owners in their nominee accounts? (For example, is it possible that, in the absence of appropriate legal provisions, a lower-tier intermediary unfairly allocates to the investors in its nominee account the securities that have been allocated to that account by the upper-tier intermediary?)
Yes/No
If yes, please briefly describe.

5. Liens of Intermediaries

5.1 Are there rules regarding liens of intermediaries over the investor's nominee accounts?
Yes/No

5.2 If Yes, please describe the rules and also indicate if they are mandatory.

6. Is the nominee account operator required to install proper controls and technical systems for data storage and processing to deal with transactions in its nominee accounts?
Yes/No

7. Protection of Beneficial Owner in Case of Insolvency

7.1 Is the beneficial owner protected against the insolvency of a nominee account operator?

Yes/No
If Yes, please explain.

7.2 Does the beneficial owner have to rely on the intervention of a court or liquidator?

Yes/No

7.3 In what way is the answer different if the insolvency is of an upper-tier nominee account operator?

8. Is there any specific penalty, fine, etc., defined under the law to deal with cases of fraud or misconduct on the side of the nominee account operator?

9. What are the legal requirements for internal control systems to prevent misconduct of nominee account operators?

10. How does the regulator ensure that beneficial shareholders receive their shareholder rights and payouts? And what regulatory measures can be taken to counter the problems posed by nominee accounts?

----- **END OF QUESTIONNAIRE** -----

Thank you for your contribution to this survey questionnaire. Your valuable input will certainly help us successfully accomplish the mandate.

Please kindly submit the completed questionnaires to Ms. Khalida Habib (khalida.habib@secp.gov.pk) at Securities and Exchange Commission of Pakistan and Mr. Byunghyun Min (bhmin@fss.or.kr) at the Financial Supervisory Service, Korea by2011 and cc your responses to Mr. Youngki Kim (youngki@iosco.org) and Mr. Alp Eroglu (alp@iosco.org) at the IOSCO General Secretariat.

Please feel free to contact with the above mentioned persons via the below contact numbers if you have any inquiry or need any further assistance regarding this survey questionnaire:

Ms. Khalida Habib: (92-51-9218593)
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Mr. Alp Eroglu: (34-91-787-04-13)

Appendix B - Summary of Responses to the EMCWG3 Survey Questionnaire on Regulation on Nominee Accounts in Emerging Markets

Responding Jurisdictions:

Twenty jurisdictions have responded to the WG3 survey questionnaire including; Argentina, Bangladesh, Czech Republic, Chinese Taipei, DIFC, Ecuador, India, Korea, Macedonia, Malaysia, Morocco, Nigeria, Oman, Pakistan, Poland, Romania, Syria, South Africa, Thailand and Turkey.

Section I: Structure and Framework for Securities Holding System

1. Please indicate, how does your jurisdiction categorize holding of securities under the law?

➤ All Jurisdictions responded

- Securities are registered through inscribed physical certificates in 10 jurisdictions (**Ecuador, Korea, Nigeria, Pakistan, Chinese Taipei, Malaysia, South Africa, DIFC, Thailand and India**)
- Securities are registered through Bearer or Physical certificates in 3 Jurisdictions (**Bangladesh, DIFC and Thailand**)
- Securities are registered through Registration other than Book entry of the issuer in 4 jurisdictions (**Czech Republic, Malaysia, Oman and Thailand**)
- Securities are registered in Book entry / dematerialized form in 13 jurisdictions (**Argentina, Macedonia, Nigeria, Pakistan, Poland, Romania, Syria, Chinese Taipei, Turkey, Malaysia, South Africa, Morocco, Thailand and India**).

2. If a CD exists in the jurisdiction, please briefly describe the CD's role and its relationship with the beneficial owner.

➤ 19 Jurisdictions responded (**Argentina, Bangladesh, Czech Republic, Ecuador, Korea, Macedonia, Pakistan, Poland, Romania, Syria, Chinese Taipei, Turkey, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**)

- A Central Depository exists in all responding jurisdictions (**Argentina, Bangladesh, Czech Republic, Ecuador, Korea, Macedonia, Pakistan, Poland, Romania, Syria, Chinese Taipei, Turkey, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**)
- 1 jurisdiction did not respond (**Nigeria**)

Role of the CD and relationship with the beneficial owner:

Argentina: Each account number in the CD has two parts, the first corresponds to the identification of the intermediary of securities (depositing agent), and the second part (Sub-Account) consists of the identification of the individual investor. So each beneficial owner is all the time identified. The investor does not have direct relationship with the CD, but through the intermediary.

Bangladesh: The main role of the Central Depository is to assist listed companies in the handling of scriptless transfer of ownership of shares, debentures, mutual funds and also government bonds and treasury bills issued by the Central Bank. Their core services cover the efficient delivery, settlement and transfer of securities through computerized book entry system i.e. recording and maintaining securities accounts and registering transfer of securities; changing the ownership without any physical movement or endorsement of certificates and execution of transfer instruments. The central depository maintains the accounts of beneficial owner.

Czech Republic: CD's core activities include the operation of a settlement system for the settlement of exchange and OTC transactions (involving investment instruments), the lending of securities, administration and management of guarantee instruments, custody and administration of investment instruments. The Central Depository also maintains the central register of dematerialized securities issued in the Czech Republic and manages the assignment of the ISIN identification code to investment instruments. As regards the settlement of security trades, company has a dominant position on the capital market. Investment instruments kept in the Central Depository are maintained on the accounts of holders or customer accounts; such holders or owners continue to maintain the asset accounts of their clients.

Ecuador: In Ecuador dematerialization is not working yet, only on one or two issues, so we are still using the traditional way to register the stocks. However, the CD is the one who register the issuer books and does the liquidation and settlement of trades.

Korea: The Korea Securities Depository (KSD) operates the book-entry system for securities and provides clearing and settlement services. Its services cover some foreign-currency denominated securities and also provide certain services to support the derivatives market and transfer agent services. The beneficiary owners' securities are deposited with the KSD via market intermediaries. Even though most of the times, the name of KSD, not the beneficial owners, appears in the issuer's shareholder register, only the beneficiary owners are entitled to benefit from the rights attached to their shares. Most shareholder rights including the right to dividends are exercised in an indirect manner with the involvement of the market intermediaries and the KSD. The beneficial owners request the intermediaries and the KSD to take actions to exercise the shareholder rights on their behalf, and the intermediaries and the KSD later pass shareholder benefits on to the beneficial owners.

Macedonia: The main functions of the CSD are: registration of issuances and transfers of all securities issued in the Republic of Macedonia in electronic form (keeping a Register of securities); issuance of international securities identification number ("ISIN") for all issued securities; registration of the owners of securities; settlement of trade transactions according to the "delivery versus payment" principle; execution of non-trade transfers; facilitation of the borrowing and lending of securities; monitoring the solvency of its members for the purposes of risk management in cases of non-settlement of trade transaction; providing additional services to issuers of securities.

Pakistan: In Pakistan securities exist both in the form of physical inscribed securities and book-entry / dematerialized form. Physical securities, traded electronically on the automated trading systems of the stock exchanges, are maintained and transferred on the shareholder register of the issuer directly whereas all book-entry securities are transferred electronically through the Central Depository System (CDS) provided by the Central Depository Company (CDC). The CDS changes the ownership of securities without any physical movement or

endorsement of certificates and execution of transfer instruments. For book-entry securities the name of CDC's Central Depository Register (CDR) and not the beneficial owners appears in the issuer's shareholder register, however based on the details of CDR made available by the CDC only the beneficial owners are entitled to benefit from the rights attached to their shares.

Poland: Securities are registered at the request of the issuer. Securities are registered in the depository in accordance with the principle of double entry bookkeeping: entries in deposit accounts correspond to entries in issuing accounts and reflect the balance of securities owned by investors. Deposit accounts are maintained at the level of intermediaries: custodian banks and brokerage houses (indirect holding system). In this model (applied by the Polish depository for securities), deposit accounts are global, i.e. they register the general number of securities held by the clients of intermediaries. In their systems, in turn, intermediaries maintain detailed registers for their clients: final investors or other intermediaries. The register of financial instruments for final investors is maintained on securities accounts, where the right to financial instruments is registered.

Romania: There are 2 CDs in Romania, one of them ensuring the clearing and settlement of the transactions performed on the Bucharest Stock Exchange and the other one the clearing and settlement of transactions performed on the Sibiu Stock Exchange. The beneficial owners of securities can open individual securities accounts with the CD, and the CD participants can open individual accounts with the CD on behalf of the beneficial owners and/or global accounts where the securities held by the participants' clients are registered. The participants can also open "house" accounts with the CSD, where they register securities held on their own behalf. As opposed to individual accounts and "house" accounts, in the case of global accounts, the identity of the beneficial owners is not known to the CD. The participants have certain reporting obligations according to which they have to disclose the identity of their clients whose securities are registered in global accounts on certain occasions (such as GSM meetings, official investigations).

Syria: The CD deals with:

- Ownership transfers due to inheritance
- Transfers due to legacy
- Ownership transfers in enforcement of final court judgements
- Securities grants in favour of duly registered religious and social entities and charities
- Family transfers including first and second class relations and between spouses
- Transfers among shareholders in case of suspending listing or trading.

Chinese Taipei: Chinese Taipei Depository & Clearing Corporation (TDCC), pursuant to the Regulations Governing Centralized Securities Depository Enterprises, handles operations including the custody of securities and book-entry transfer for settlement of trades or pledge and delivery of securities. It is characterized by a two-tiered legal framework, i.e. the investor opens an account with a participant for the deposit of securities into custody, and the participant opens an account with the TDCC and delivers the investor's securities into the custody of the TDCC. The TDCC Book-Entry System (BES) has a two-tier structure legally. But in practice, TDCC handles the computer processing of customer data associated with all central depository and book-entry operations of the participants pursuant to the Regulations Governing Book-Entry Operations for Centrally Deposited Securities and the account agreement signed by participants with TDCC.

Turkey: CD keeps the records of dematerialized securities in a direct holding system. Central Registry Agency: CRA is the authorized Central Securities Depository (CSD) for dematerialized financial instruments in Turkey. CRA provides custody and post-trading services for a number of securities including equities, corporate debt securities, warrants, Exchange Traded Funds (ETFs), and mutual funds. The CDS (Central Dematerialized System), the main system run by CRA, provides services to participants (financial institutions and issuers), the Istanbul Stock Exchange, Takasbank (Settlement bank) and investors. CRA plays a central role in securities market both as a post trading institution and as the primary source of ownership information for the issuers.

Malaysia: Bursa Malaysia Depository's (BMD) role is to; facilitate efficient deposit of securities; facilitate registration of dealings in deposited securities; ensure safe custody of scrips and other documents representing deposited securities; guard against falsification of any records or accounts required to be kept or maintained under the SICDA; and establish a proper and efficient system for the verification, inspection, identification and recording of all securities deposited with the CD. BMD has a direct relationship with the securities account holder. Under SICDA, every securities account opened with BMD shall be in the name of the beneficial owner (BO) of the securities or in the name of an authorized nominee and the authorized nominee can only hold deposited securities for one BO in respect of each securities account. The name of the BO is stated in the "account qualifier" which is provided together with the name of the authorized nominee.

Oman: CD performs the clearing, settlement functions as well as acts as the central depository for all the financial instruments listed and traded on the Exchange. The CD aims at smooth transfer of ownership through various parties involved in securities dealing so as to cut short registration procedures and ensure accuracy and transparency with an objective to boost confidence in capital market players. CD has a direct relationship with beneficial owners.

South Africa: The CD performs custodial services, clearing and settlement in terms of the Securities Services Act, 2004 ("the Act"). The CD does not have a direct relationship with the beneficial owner, because the CD Participants open accounts for clients. There is no mandate or agreement between the CD and the beneficial owner. The CD regulates the CD Participants in terms of the Act.

Morocco: Maroclear is the Central Securities Depository in Morocco and has four main functions:

- ✓ The centralization of custody of securities in accounts held by financial intermediaries (Banks, Brokers-dealers and securities Issuers),
- ✓ The management of the settlement process ;
- ✓ The simplification of the implementation of corporate actions ;
- ✓ The monitoring of the safety and integrity of securities custody.

Morocco has no direct relationship with the final investor;

DIFC: All Admitted Securities on the NASDAQ DIFC Market and which are also primarily or exclusively listed on the NASDAQ DIFC shall be registered in the name of NASDAQ DIFC Guardian Limited. Certificates, where required, will be issued and delivered to NASDAQ DIFC Guardian Limited as bare nominee for the Central Securities Depository (CSD). Admitted Securities which are listed on NASDAQ DIFC and primarily listed on another exchange will either be registered in the name of NASDAQ DIFC Guardian Limited

or may be held in accordance with other arrangements which shall be notified to an Account Holder.

Thailand: Thailand Securities Depository (CD) is the sole Central depository in Thailand. It provides both the depository and registrar services. Under the depository services, it maintains the account for its participants, which include intermediary, custodian and general company (issuer). Furthermore, the Securities and Exchange Act also allow CD to accept the transfer of deposited securities into its own name for the owner of such securities.

India: In India 2 Depositories exist. Besides providing custodial facilities and dematerialization, depositories are offering various transactional services to its clients to effect buying, selling, transfer of shares etc. A depository participant is the registered agent of the depository concerned and it is through the DP that an investor gets the services of a depository. To avail this service, one has to open a demat account with the DP and shares for dematerialization have to be surrendered after it has been duly transferred to his name. Banks, stock brokers and financial institutions can act as depository participants after obtaining the required approval from SEBI and also complying with other statutory requirements.

3. Who is entitled to open an account with the CD?

- a. market intermediaries only; or**
- b. both market intermediaries and individual investors**

➤ All jurisdictions responded

- In 13 jurisdictions only market intermediaries are entitled to open an account with the CD (**Argentina, Czech Republic, Ecuador, Korea, Nigeria, Poland, Syria, Chinese Taipei, Turkey, South Africa, Morocco, Thailand and India**)
- In 7 jurisdictions both market intermediaries and individual investors are entitled to open accounts (**Bangladesh, Macedonia, Pakistan, Romania, Malaysia, Oman and DIFC**)

4. To trace back ownership of securities, what data storage requirements are prescribed for the CD in your jurisdiction?

- 19 Jurisdictions responded (**Argentina, Bangladesh, Czech Republic, Ecuador, Korea, Macedonia, Pakistan, Poland, Romania, Syria, Chinese Taipei, Turkey, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**)
- 1 jurisdiction did not respond (**Nigeria**)

Argentina: Name, Surname, Nationality, DNI (national identity number), Domicile and Inscription Record (in the case of legal persons).

Bangladesh: Records of securities dematerialized or rematerialized, Name and address of transferors and transferees and date of transfer, List or index of all Account Holders of Securities, Records of all instructions sent to and received from the Depository Participants, Issuers, Issuers' representatives and Account Holders, Records regarding pledge, Details of all participants, Details of securities that are declared eligible for dematerialization, Such other information or records as the Commission may determine to be preserved from time to time, The depository shall inform the Commission in advance in writing of the place where its information, records and documents will be preserved, Subject to the provisions of any other law, the depository shall preserve its information, records and documents for a minimum period of seven years.

Czech Republic: Prescribed data storage requirements are described in Act No. 256/2004 Col. and Decree No. 58/2006 Col.

Ecuador: The CD manages the issuer's books so they have all the information.

Korea: Currently, Korea's law does not prescribe any data storage requirements for the purpose of tracking securities ownership.

Macedonia: Name, registered office and unique identification number of the issuer; issuance date; type of security (e.g., shares, bonds, NBRM bills); type and class of shares (e.g., preferred or common); identity of the owners of securities (for domestic physical persons: name, address and unique ID number of the citizen; for foreign individuals: name, citizenship and passport number; for all legal entities: name, address and registered office of such entity and unique identification number of the issuer issued by the Central Register of the Republic of Macedonia); quantity of securities of the owner; nominal value of the securities and date of registration of the security in the CSD. In the case of bonds, certificates of deposit, NBRM Bills, treasury bills and commercial bills: the amount of the interest rate; method of interest calculation; payment dates; maturity date and date of registration of the security in the CSD. In the case of preferred shares, preferences as to dividends; voting right and/or liquidation proceeds and date of registration of the security in the CSD.

Pakistan: CDC retains the Central Depository System data for a minimum period of 10 years under its data retention policy devised in light of requirements of Section 230 of the Companies Ordinance, 1984.

Poland: Ownership of securities is established by securities accounts.

Romania: To trace back the ownership, for the individual accounts managed on behalf of the investors, as well as for "house" accounts, the Central Depository has to record information on the investors, the amount of the securities held by each investor and the securities that are lent/ borrowed or that are part of a guarantee arrangement.

For each securities account, the central depository and/or the CD participants shall record the following information: single identification number of the account, amount of securities held, guarantees or charges over the securities, restrictions on the securities account, information on any increase or decrease in the amount of securities registered in the account (track record).

In case securities are registered with individual accounts, the central depository is responsible for the identification of their owner; members' of the central depository, including participants, are responsible for the identification of the securities registered with global accounts opened by these members/participants.

Syria: Syria has historical data according to each investor account using their electronic system; they can use such historical data in a certain period of time to get all the transactions on a specified account.

Chinese Taipei: Regulations do not provide for data storage requirements. The TDCC should manage data storage load on its own. It is also commissioned by the participant to process customer account data. The TDCC reconciles accounts with the participant on a daily basis. By regulation, all data is required to be retained for 15 years.

Turkey: Ownership records are directly traceable in the records of CD.

Malaysia: Under SICDA, the CD and its authorized depository agents (ADA) shall preserve all records and communications in relation to a depositor's account that will sufficiently explain the transactions and operations of the CD and ADA in relation to deposited securities, for a period of seven (7) years, whether or not they cease to carry on their business before the end of their seventh year.

Oman: Holdings are maintained at the end-beneficiary level

South Africa: Period of 5 years for electronic data; will be extended to 7 years from 1 April 2011 when new legislation is implemented. The CD rules provide in Rule 5.3 for the retention of information/records in electronic format and these records must be subject to back-up and recovery procedures, and be capable of being reproduced in printed form.

Morocco: Morocco has recently implemented an automatic circuit of communication of nominative information between custodians and issuers. Morocco does not have a direct relationship with the final investor.

DIFC: The CD in the DIFC that has assumed legal title to all NASDAQ DIFC listed securities is a Company limited by shares and incorporated in the DIFC under the DIFC Companies Law. The Companies Law contains provisions with regard to the Form of Records (Article 23). As the CD is operated by the holder of an exchange and clearing house license further requirements more specific to the nature of the CD operations have been put in place.

Thailand: Market intermediaries (such as broker) must have all detail of securities deposited with them that include the list of securities owner, number of securities of each owner and so on. At the period of closing book, broker must provide information of securities owners for CD.

India: The depositories are required to allot a unique demat. account no. to the demat. account holders and all the demat. accounts are linked to the Permanent Account Number (PAN) of the account holders which is a unique identification no issued by the Income Tax Department. They are required to maintain all electronic records of the movement of securities from one demat. account to another. All records and documents are to be kept by the Depositories for a minimum of 5 years.

5. What are the rights of the investor, and how do they operate in practice, as against;

- a) **the issuer,**
 - b) **the primary nominee account operator,**
 - c) **the upper-tier nominee account operator in relation to**
 - i. **voting/receiving of information on shareholders' meetings**
 - ii. **corporate actions that affects price or structure, e.g., payments of dividends**
- 17 Jurisdictions responded (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Romania, Syria, Chinese Taipei, Turkey, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**)
- 3 jurisdiction did not respond (**Ecuador, Poland and Nigeria**)

a) the issuer,

- 12 jurisdictions responded to this (**Argentina, Bangladesh, Macedonia, Pakistan, Poland, Romania, Syria, Turkey, Malaysia, South Africa, Morocco, DIFC, Thailand and India**)

Argentina: Investors have documents proving ownership of their holdings. When a dividend is distributed the announcement is mandatory to be public (as relevant information) and a date is defined establishing the right to fund the dividend for all investors who are registered in the CD on that date. Usually, dividends are paid through the CD, which is contracted by the issuers. This is an additional service that CDs provide in this case for issuers.

Bangladesh: A shareholder has the right to receive notice of a shareholders' meeting; attend such a meeting; and raise an issue related to the businesses conducted at any such meeting.

Macedonia: Regarding the issues, according to article 320 from the Company Law, each shareholder shall be entitled to inspect the by-laws, regulations and the documents of the company (the charter and the other by-laws and all amendments thereto along with the consolidated texts; the minutes and all other documents pertaining to all the general meetings of shareholders; the minutes and the resolutions pertaining to the meetings of the management body and the supervisory board; the annual accounts and other financial statements required to be kept pursuant to the law; all enclosures (documentary ownership evidence and proofs) submitted all public notices and prospectuses for the issue of shares and other securities of the company; all written communication of the company with the company's shareholders; an updated list of the full names and addresses of all elected members of the management body and of the supervisory board; documents pertaining to pledges and mortgages; the reports of the certified auditor and of the authorized appraiser; the ballot-papers and proxies for participation in the general meeting of shareholders in an original or copy form; the company's collective agreement; and the by-laws, regulations and documents as determined by law and the charter), at the company's registered office in the manner stipulated by the company charter. According to para. 2 the shareholders shall exercise their right to be informed about the minutes and the resolutions of the meetings of the management bodies through the non-executive members of the board of directors and/or the supervisory board. According to para.4 in the event that the company does not allow the shareholder to carry out the inspection and copy the by-laws, regulations and documents, the shareholder may submit a proposal to the court in order to obtain access to the by-laws, regulations and documents. The proposal shall indicate the by-laws, regulations and documents that the shareholder wishes to inspect or receive, as well as the form in which the by-laws, regulations or the documents should be delivered.

Pakistan: The issuers are solely responsible:

- (a) for sending notices to any account and sub-account holders of general meetings or any other notices required to be sent to the holders of any securities of the issuer;
- (b) for the purpose of allowing any account and sub-account holders to attend general meetings of any holders of securities of the issuer or to appoint proxies;
- (c) for dispatching dividend or other warrants to any account and sub-account holders;
- (d) for dispatching to any account and sub-account holders any other payments or benefits paid by the issuer or formal offers for subscription of securities of the issuer

Poland: Investor, as a shareholder, have a typical rights like: voting/receiving of information on shareholders' meetings; corporate actions that affects price or structure, e.g., payments of

dividends. Where an investor needs to present a written confirmation of holding rights which arise under the securities entered in his/her account (e.g. for the purpose of participating in the general shareholder meeting of the company whose shares he/she holds), the entity which maintains such an account issues a: certificate with confirmation a right for participation in general shareholder meeting; or in other cases deposit certificate in writing, in the name of the holder.

Romania: the right to have access to sufficient information in respect of the issuer's activity. The issuer has the obligation to inform the investors with respect to the general shareholders meetings and on the company's activity, to inform the public as regards the allocation and payment of dividends or the interests as the case maybe, to nominate as payment agent a financial institution except of the case the issuer is providing itself these kind of services, the right to get dividends and other financial rights, the right to participate and to vote in the general shareholders meeting, the right to dispose of the securities held (e.g. the right to sell out these securities).

Syria: According to Article 120 of Corporate Law of 2011 investors have the right to; profits and interests decided to be distributed to shareholders; a share of all assets of the company including the capital upon liquidation; participation in general shareholders' meetings; a certificate of the shares duly owned; sell, grant and/or mortgage his/her shares in accordance to the related provisions quoted in the Company's Articles of Association; sue in objection to decisions of the general shareholders' assembly or the board of directors, which contravene this Law or the Articles of Association; examine the books of the company; obtain a printed brochure which contains elapsed fiscal Budget, profit and loss accounts, Report of the Board of Directors, Report of the auditor; request the general shareholders' to meet and request an addition of an issue on the agenda adopted by the board of directors.

Turkey: Investors do not have direct access to the records; hence the account operators act on behalf of the investors against issuers.

Malaysia: SICDA stipulates that a depositor of any deposited security whose name appears in the record of depositors shall be entitled to all rights, benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of such securities as if he were a member in the register, a holder in the register of debentures holders or a holder registered in the register of interest holders maintained by a management company under the Companies Act 1965.

The Companies Act 1965 stipulates that a depositor whose name appears in a ROD maintained by BMD shall be deemed to be a member of the listed issuer and shall be entitled to the number of securities stated in the ROD and all rights, benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from, such securities.

South Africa: The investor, if registered, (or shareholder) is entitled to exercise all shareholder rights as provided in the South African Company law against the issuer. Where the investor holds shares via a nominee account, the nominee is the registered shareholder and exercises these shareholder rights against the issuer in terms of the Company law. However, the Company law recognises the rights of beneficial owners, and nominees are required to give effect to instructions in voting, etc. in terms of their mandate or upon receipt of specific instructions. The Act requires rules to be issued in this regard. CD Rule 5.6 deals with the client mandate requirements.

Morocco: The investors have access to all legal and regulatory information published by the issuers. The investors can address complaints to the CDVM; receive invitations to shareholders' meetings along with voting and dividends rights.

DIFC: OSR Appendix 4 – Corporate Governance framework. For example: 'The shareholder should have the opportunity to ask questions or to place items on the agenda of the AGM'; or, The Board of Directors should ensure that no steps are taken which may prevent shareholders consulting with other shareholders concerning their basic rights; or, Minority shareholders should be protected from the abusive actions.

Thailand: Investors have all rights as owner of securities For example,

- Shareholders have the right to inspect the company through meeting and voting at the shareholder meeting.
- A pool of investor can request a shareholder meeting to be held and require the registrar to appoint an inspector to inspect the company books and records.
- Shareholder has the right to inspect the shareholder register book and the evidence of the shareholder registration.
- Shareholder are entitle to dividends pay by the company.
- Shareholder are entitle to a claim on company capital after the company liquidation.

India: SEBI (Depositories and Participants) Regulations, 1996 specifies the obligations of the issuers. In case of contravention of any of the SEBI Regulations and requirements, actions can be initiated against the concerned intermediaries.

b) the primary nominee account operator.

- 8 jurisdictions responded to this (**Macedonia, Pakistan, Syria, Malaysia, South Africa, Morocco, Thailand and India**)

Macedonia: According to article 124 from the Law on securities, an authorized securities market participant shall be obliged to provide, to its clients a notification on each transaction entered into regarding a security no later than two (2) business days after clearance and settlement of such transaction is complete. The submission of the notification shall make in the manner as agreed with the customer.

Pakistan: A participant shall not handle or authorize or permit any handling of book-entry securities entered in the sub-accounts maintained under his account without authority of the sub-account holder and participant shall not, except with the authority of his clients, handle or authorize or permit any handling of book-entry securities beneficially owned by such clients and entered in his account.

Syria: According to Article 7 of the Regulations for Dealing between Brokers and Clients: Security conducting contract shall contain the following:

The client may not authorize a broker to deal with any securities owned by him/her in which he/she authorized another broker to deal, the broker shall immediately inform the client in any possible way (in writing, or by phone or e-mail) of the details any deal done for him, the broker shall reveal any disagreement between his interests and the client's. In such case he shall inform the client, the broker shall inform the client of any possible dangers of a deal, and the client confirms that he is fully aware of these dangers and other losing possibilities, the client has the right to ask for any information, records or correspondence related to him

and the broker shall provide them within 7 days of the request, regarding that the request shall be during the record keeping period.

Malaysia: The investor's rights against the nominee account operator are contractual in nature. The nominee account operator will appear in the book of the issuer as the depositor. Hence, all the rights and benefits would be passed down by the issuer via CD to the nominee account operator for them to distribute to the BO of the securities account.

South Africa: The Primary Nominee Account Intermediary (Participant) must in terms of Rule 5.7 ensure that the election by an investor to deposit securities in the name of the nominee of a Participant and not in its own name in no way diminish the rights of the investor as a shareholder of the issuer. The Participant must ensure that the investor is timely advised of and in a position to exercise its rights as shareholder or legal owner of the securities in the issuer, as if the investor were the registered shareholder or legal owner of the securities.

Morocco: The primary nominee account operator has, by law, to respect the proxy agreement by preserving the rights of the investor and to send quarterly statements stating the details of the investor's account.

Thailand: According to regulations, at the period of closing book CD participants (both intermediaries and custodian) are required to provide the name of the securities owner for the book register and are not allowed to use its own name on the book register as a nominee.

India: SEBI (Depositories and Participants) Regulations, 1996 specifies the obligations of the Depository Participants. In case of contravention of any of the SEBI Regulations and requirements, actions can be initiated against the concerned intermediaries.

- c) the upper-tier nominee account operator in relation to
 - i) voting/receiving of information on shareholders' meetings
 - ii) corporate actions that affects price or structure, e.g., payments of dividends

i.10 jurisdictions responded to this (**Bangladesh, Czech Republic, Korea, Pakistan, Chinese Taipei, Malaysia, Oman, South Africa, Morocco and Thailand**).

Bangladesh: The omnibus account operators attend the AGM and EGM and exercise the voting rights on behalf of the beneficial owners. Dividends are entitled to the beneficial owners through the omnibus account operator.

Czech Republic: List of shareholders for issuer is worked out by CD. The summoning a general meeting must be announced in public press. Corporate actions must be publicly announced. Dividend payout is secured by the primary nominee account operator.

Korea: when the issuer declares a dividend or other benefits for its shareholders as of the record date, the actual owners of shares deposited in the KSD as of the record date are identified. Those actual or "beneficial" owners may exercise certain rights such as the right to share in any distribution of corporate earnings with the involvement of the KSD and/or market intermediaries. On the other hand, they may opt to exercise their voting rights either with or without the involvement of the KSD/market intermediaries.

Pakistan: The voting rights vest with the beneficial owners and the responsibility of disseminating information of meetings and corporate actions etc. vests with the issuers. Corporate actions are made directly in the respective accounts of entitled shareholders in an

indirect manner with the involvement of market intermediaries and CDC in terms of the CDC Regulations and Procedures. Therefore, CDC as the upper-tier nominee account operator is only required to provide the List of Beneficial Owners to the Issuer.

Chinese Taipei: When the issuer convene a shareholders meeting or distributes dividends, the TDCC duly provides a roster of securities owners to the issuer and the issuer itself then notifies the shareholders of the meeting or distributes the dividends.

Malaysia: the rights and benefits would be passed down by the issuer via CD to the nominee account operator for them to distribute to the BO of the securities account.

Oman: Based on the account type opened with CD, the investor or custodian will receive the communication in respect of all rights processed by CD.

South Africa: Where the Upper-tier Nominee Account is the CD itself, it does not have any legal relationship with the investor in the exercising of its voting rights or its right on receiving information on meetings, since the investor has that direct relationship with its “Primary Nominee Account Intermediary”. The mandate (contract) between the investor and its direct intermediary will set out the investor’s instructions in this regard. In the South African context, the Company law and other legislation enable the CD to issue rules and directives on proxy voting and receiving of information on meetings. It also requires mandates to be concluded with minimum requirements between the Primary Nominee account and lower level client, but only to the extent that the law is applicable.

Morocco: The beneficial owner has the right to receive all the information concerning shareholders’ meetings. The upper-tier nominee account operator has the obligation to afford the investor with the necessary documents to allow him to exercise his voting rights. The operator can exercise the voting rights of his client if he is asked too. As a proxy, the operator should be informing the investor of all the corporation action and should be executing all actions that are of benefit to the client.

Thailand: Upper-tier nominee account operator in Thailand is the CD. And the relationship between CD and the investor will only exist once the book is close, and the investors who are registered as shareholder will have a direct claims against its right through CD.

6. How are the investors’ rights protected in case of insolvency of the nominee account operator?

- 18 Jurisdictions responded (**Argentina, Bangladesh, Czech Republic, Ecuador, Korea, Macedonia, Pakistan, Romania, Syria, Chinese Taipei, Turkey, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**)
- Nominee Accounts do not exist in 4 jurisdictions (**Ecuador, Poland, Romania and Turkey**)
- 2 Jurisdictions did not respond (**Poland, Nigeria**)

Argentina: In the case of insolvency, some markets establish warranties on its intermediaries will be triggered for the protection of investors and then, the corresponding market will execute its own rights against the insolvent intermediary. This mechanism is firstly to guarantee the settlement of the operations. Secondly, some markets apply this warranty to assure investors against the undue use of their holdings by the intermediaries, or the appropriation of the securities. The advantage for investors is that they can prove at any time

their ownership on the securities. The following resource that investors have is through the judicial power.

Bangladesh: In case of insolvency of the nominee account operator, the investor can withdraw his fund.

Czech Republic: They are protected by the GUARANTEE FUND OF SECURITIES TRADERS. The Fund's powers include namely the following:

- a) providing compensation for non-released client assets in accordance with the law,
- b) collecting the Fund's sources of assets defined by the law, paying repayable financial assistance and loans, investing the Fund's monetary assets,
- c) fulfilling the information duties defined by the law,
- d) assuming and exercising the rights of customers of a trader to performance in respect of the trader to the extent of their right to the sum of compensation paid from the Fund.

Korea: The nominee account operator is required to establish and maintain a record for its own shareholdings and other separate records for the shareholdings of its clients (the Investor Account Books). Likewise, the KSD is required to establish and maintain records separately for the shareholdings of market intermediaries and of their clients (collectively called as the Market Intermediary Account Books). As such, even in the event of insolvency of the nominee account operator, the investors' assets are duly protected. If any deficiencies arise under certain practical circumstances, the market intermediary and the KSD are required by law to be jointly liable for such deficiencies. Given the characteristics of Korea's securities holding system, the KSD is not deemed as a nominee account operator.

Macedonia: According to article 123 of the Law on securities, the brokerage house shall keep the funds given by clients for buying securities or money received from sale of a customer's securities, in a separate account. The brokerage house shall pay the funds from the sale of securities in the name and on behalf of the client's account within one (1) business day after the receipt of the funds unless otherwise agreed. The funds in the separate account may only be used in accordance with the customer's instructions. The client's funds cannot be included in the assets of the brokerage house in the case of liquidation or insolvency and cannot be used for payment of own liabilities. According to article 66-a of the Law on securities, the CSD obligatory forms a guarantee fund which is composed of the mandatory payments of the members of the CSD that use the services of settlement. The assets of the guarantee fund shall be used especially for settlement the obligations of the members of the CSD when there is not enough money for a settlement of commercial transactions with securities.

Pakistan: In case of insolvency where the CDC is the nominee account operator, the concerned issuer shall prepare and deliver physical share certificates to the beneficial owners maintaining accounts with the nominee account operator. In case of insolvency where CDS Participants other than the CDC are nominee account operators, the CDC shall on the request of the beneficial owners transfer their securities from accounts maintained with the insolvent CDS Participant to the accounts of the beneficial owners maintained with any other CDS Participant.

Romania: Romania does not have nominee accounts. Capital Market Law provides that the securities accounts opened with the central depository on behalf of the intermediaries must be recorded so that to ensure the separation between the securities held for its own account from those held for the account of the investors. The creditors of an intermediary may not, under

any circumstances, touch investors' assets, not even in the case of insolvency proceedings. An intermediary may not use a client's assets in order to secure the transactions concluded for its own account or for the account of another client, except for the case when the client expresses his consent in writing. In case of insolvency of a Participant, in order to protect the customers' assets, the Central Depository automatically transfers the securities, deposited into the Participant's accounts, into individual accounts.

Syria: They are protected by virtue of the Regulations for Dealing between Brokers and Clients, particularly the Article 23, which stipulates:

Finances deposited in client accounts "cash dealer's accounts" referred to in Article (9) hereinabove, and clients' securities that are controlled by brokers, may not undergo liens, attachments, liquidation, or bankruptcy of the brokers.

Chinese Taipei: Securities are directly recorded in the investor's account passbook, and the investor has individual co-ownership in the securities according to the specific securities and quantities thereof that the investor holds. Ownership rights are therefore clear, and would not be affected in the event of insolvency of the depository.

Malaysia: The Beneficial Owner (BO) is protected against the insolvency of a nominee account operator by virtue of the contractual relationship the BO has with the nominee account operator and the general law of trust and the relevant insolvency laws.

Oman: Article (44) of the of The Capital Market law pointed that "In the event the partnership is continued following the death, declaration of ineligibility, bankruptcy or dismissal of a partner, such partner, or his heirs or his legal representatives, as the case may be, shall be entitled to the value of such partner's share in the partnership assessed on the basis of a special inventory list established as of the day of the event which resulted in such partner's separation from the partnership. In case of dispute on the value of such share, the assessment of the share shall be made, at the request of any interested party, by the competent court, on the ground of a report by one or more experts to be appointed by the court unless the parties agree on another way of assessment. The value of the share shall be paid to the beneficiaries in cash or in kind, either in full or in installments as may be agreed, otherwise as may be decided by the competent court. The beneficiaries shall have no share in the subsequent revenues of the partnership."

South Africa: In terms of the Act, securities are ring-fenced in the account and are segregated from the market intermediary's own securities.

Morocco: The beneficiary can at any time of the bankruptcy process ask for the transfer of its securities to any other custodian. This is based on the non-fungible nature of the securities held under custody. Practically speaking, there is no risk related to securities in case of insolvency of the nominee account operator except in fraud cases.

DIFC: The 'investors' rights are protected by the rules that mandate the segregation of client assets from the firm's own assets.

Thailand: Investor assets under the broker are not included in nominee account operator assets in the case of insolvency.

India: In the event of bankruptcy, insolvency, liquidation or winding up of the depository participant, the depository ensures that the investor's rights are protected by managing the investors' accounts till the said accounts are transferred to some other account or are closed.

7. **When a nominee account operator is required to pass benefits on to the beneficial owner, does the law in your jurisdiction ensure that only the beneficial owner can exercise, or benefit from, the rights attached to the securities?**

Yes/No

If Yes, please state legal provisions.

- 18 Jurisdictions responded (**Argentina, Bangladesh, Czech Republic, Ecuador, Korea, Macedonia, Pakistan, Romania, Syria, Chinese Taipei, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**)
- 2 jurisdictions responded as No (**Bangladesh and Ecuador**)
- 16 jurisdictions responded as Yes (**Argentina, Czech Republic, Korea, Macedonia, Pakistan, Romania, Syria, Chinese Taipei, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**)

Argentina: All the securities regulation recognizes from the start the investors' ownership on the securities and there is no exception for those rights. Even when the investors wishes to assist to a shareholders assembly, they are required to obtain a document from the CD crediting that the ownership on their holding and in that process the securities are blocked in the CD account in order not to transfer its ownership at the moment that their holders are assisting to the assembly. On this way, there cannot be a fail between the voting rights and the ownership the securities.

Czech Republic: Capital Market Undertakings Act No. 256/2004 Coll.

Korea: Whenever needed (i.e., the declaration of a dividend), the issuer creates the list of beneficial owners by using the customer information that the KSD passes on to the issuer from the market intermediaries. Under the Capital Markets Act, this list has the same legal effect as the issuer's shareholder register (§316 ②), and the beneficial owners in the list are recognized as the owner of securities who is entitled to exercise shareholder rights (§315 ①).

Macedonia: According to article 283 of the Company Law, shares shall be registered in the register of shareholders of the company maintained in electronic form by the CSD by indicating the full name of the shareholder, his unique ID number, passport number or ID number if the shareholder is a foreign natural person and/or the number of any other identification document valid in his country of origin and under his citizenship, as well as his place of residence, or the business name, the registered office, and the registration number, if the shareholder is a legal person, and other information. According to article 49 of the Law on Securities, all securities issued in the Republic of Macedonia shall be registered in the CSD as electronic records and shall be registered in the name of the owner of such security.

Pakistan: The CDS Participants supply names of beneficial owners of securities in the CDS in accordance with the provisions of Section 9 of the CD Act and the same are deemed to be beneficial owners holding the book-entry securities. In terms of Section 9 of the CD Act, 1997 and Chapter 12 of the CDC Regulations, CDC is required to make available to the respective Issuer the Beneficial Owners Report containing details of entitled shareholders in the CDS who are the beneficial owners for all rights attached to the securities.

Romania: No nominee accounts. For the existent system, the Romanian Company Law and the Capital Market Law explicitly provide the right of shareholders to get dividends and to exercise any other rights attached to shares.

Syria: The Regulations for Dealing between Brokers and Clients, particularly the Article 17, which stipulates:

Brokers shall pay the net value of securities sold for the benefit of clients from the clients' cash accounts through bank wire or transfer, as the case might be, or through bank checks issued duly and stamped as "to be cashed by the first beneficiary only".

Chinese Taipei: When the issuer convene a shareholders meeting or distributes dividends, the TDCC duly provides a roster of securities owners to the issuer and the issuer itself then notifies the shareholders of the meeting or distributes the dividends.

Malaysia: These are provided under SICDA, Companies Act 1965 and Rules of BMD.

- Section 2 - "beneficial owner": in relation to deposited securities, means the ultimate owner of the deposited securities who 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, and does not include a nominee of any description.
- Section 25(4) - Every securities account opened with a CD shall be in the name of the BO of the deposited securities or in the name of an authorized nominee.
- Section 25A(1) - Where an authorized nominee opens a securities such account under subsection 25(4), nominee shall only hold deposited securities for one BO in respect of each securities account.
- Section 107B of Companies Act 1965 stipulates that a depositor whose name appears in a ROD maintained by BMD shall be deemed to be a member of the listed issuer and shall be entitled to the number of securities stated in the and all rights, benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from, such securities.
- Rules of BMD - Guidelines For the Formation of Nominee Companies to Comply with Foreign Investment Committee (FIC) Guidelines
 - It is required in the Memorandum of Association of the nominee account operator to collect and, pass on the benefits of any dividends, bonuses and any other rights associated with any shares, stocks, bonds, obligations, loan stock, debentures or other security to the foreign BO of such shares, stocks, bonds, debentures, loan stock or other securities.

In addition, since the relationship between the nominee account operator and the BO is also contractual in nature, the laws of contracts, trust and agency will also apply in relation to the rights of the BO arising from the securities.

Oman: Article (134) of the Executive Regulation of The Capital Market Authority pointed that "The Company licensed for brokerage or portfolio management or margin trading, shall observe the following:

a. Arrangement shall be under written contract concluded between the company and the customer. The contract shall specify the fees, reports to be sent to customers, basis for

allocation of orders, procedures for dividends, bonus shares, rights issue, attendance of general meeting and voting rights.

b. Keep customers securities in segregated accounts under the name and surveillance of the company.

c. Ensure safekeeping of the securities and rights associated with these securities, including the right to vote, receive dividends, notices and financial statements.

d. Any other requirements prescribed by CMA”.

South Africa: The Primary Nominee Account Intermediary (Participant) must in terms of Rule 5.7 ensure that the election by an investor to deposit securities in the name of the nominee of a Participant and not in its own name in no way diminish the rights of the investor as a shareholder of the issuer. The Participant must ensure that the investor is timeously advised of and in a position to exercise its rights as shareholder or legal owner of the securities in the issuer, as if the investor were the registered shareholder or legal owner of the securities.

Morocco: Code (Dahir) of Obligations and Contracts, Chapter II: Mandate between the parties.

DIFC: Personal Property Law (DIFC Law No.9 of 2005) – Part 8 “Investment Entitlements” deals with rights and protections for investment intermediaries’ account holders. The law is flexible enough to permit persons other than the beneficial owner to exercise rights attached to securities, for example, a proxy appointed by the beneficial owner.

Thailand: The relationship between CD and the investor will only exist once the book is close, and the investors who are registered as shareholder will have a direct claims against its right through CD.

India: As per the provisions of Section 10(3) of the Depositories Act, 1996, the beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository.

8. Describe briefly the legal requirements for issuing, holding and transferring the securities (with/without the involvement of intermediaries).

- 18 jurisdictions responded to this (**Argentina, Bangladesh, Ecuador, Korea, Macedonia, Pakistan, Poland, Romania, Syria, Chinese Taipei, Turkey, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**).
- 2 jurisdictions did not respond (**Czech Republic and Nigeria**)

Argentina: The ownership of the securities is in favour of the beneficial owner. The exit of the holdings from a CD account may be due to: a sale of the securities, for which the intermediary will execute an order in the CD to transfer the securities to the buyer; or the beneficial owner directly gives an order to the CD to transfer securities to another account either within the jurisdiction market or to a foreign jurisdiction (to a foreign depository).

Bangladesh: A public limited must issue capital through public offering if its paid up capital exceeds taka fifty crore (taka 500 million) within 3 years of its commercial operation. Apart from this bank, non banking financial institution and insurance companies are obliged to be listed with the stock exchange(s) within three years of commercial operation. For holding securities an investor must open a beneficial owner account (BO account) with the depository

participant or can be involved in an omnibus account which will be operated by a merchant banker or portfolio manager. In case of buy/sale of securities, general investors can buy/sale securities through the depository participants by placing their orders. Transferring of securities is not possible without intermediaries since transfer outside trading floor is not allowed except for permissions granted under regulation 42 of the Listing Regulation of Dhaka Stock Exchange and for all transfer either outside or through the trading floor depository participants are the least required intermediary.

Ecuador: When the issue is public:

- For issuing the corporation has to give the controller the following information:

- o Authorization form
- o Stock Facsímile
- o Public Offering information
- o Rating information

For Holding and Transferring: After the trading the CD does the payments and gives the stocks to the new owners, and then the investor has to go to the issuer to register the new stockholder

Korea: The issuer or its transfer agent may issue securities certificates, while the securities firm may underwrite a new issue of securities. The investor may hold the actual physical securities certificates but has to deposit the certificates with the market intermediary if he or she intends to sell them through a securities exchange. If the latter is the case, the market intermediary must establish a record for this client (which includes its name and the number of shares that he or she holds) and immediately place those securities certificates with the KSD. The investor can deposit his securities with the KSD only with the involvement of the market intermediary and likewise get his securities back from the KSD through the market intermediary. If the investor holds the actual physical securities certificates, the transfer of his or her securities is simply effectuated by the delivery of those securities to the transferee. If his or her securities are deposited with the market intermediary, the transfer of ownership of securities is effectuated by making debits and credits to accounts without the need for the movement of physical certificates. If the investor's securities are transferred to another client of the same market intermediary, changes are only made to the market intermediary's records (the Investor Account Books). On the other hand, if the securities are transferred to the client of a different market intermediary, changes are made to the records of both the two market intermediaries and the KSD (the Investor Account Books and the Market Intermediary Account Books).

Macedonia: For issuance of securities through public offer the issuer submits the following documents: statute of the company; trade registration; financial statements for the previous three years in accordance with the IFRS; report of a certified auditor for the previous three years in accordance with IAS; act for issuing securities; statement of the responsible person, appointed by the issuer as a person responsible for the content of the prospectus and who assures that: the issuance is in compliance with Law on securities and the act of issuance; According to article 31 of the Law on securities, ownership rights of securities are created upon subscribing the security into the owner's account in the CSD and they are transferred to the account of the new owner in the CSD by subscription. The rights from the securities are acquired, transferred or restricted only with the proper registration on the accounts of securities in the CSD, unless otherwise is provided by the law. All data recorded at the CSD related to the ownership of securities shall be deemed to be true and accurate. The statement of the account of securities provided by a CSD to an owner of securities, according to the Law on securities, shall be considered as proof of ownership rights of such securities as of the

date and time such statement was issued. According to the Law on securities, the transfers of securities can be made through: trade transaction on the stock exchange and non-trade transfers (gift agreement, realization of the pledge agreement, inheritance or court decision).

Pakistan: Securities can be issued either in physical form or in book-entry/ dematerialized form by the issuers. Securities once issued in physical form can also be converted into book-entry securities (by depositing into CDS) after being declared eligible for the CDS. It may be noted that those securities that are eligible in the CDS can only be traded for settlement in book-entry form and in case beneficial owners in possession of physical certificates of the CDS eligible securities intend to trade such securities they are first required to convert the said securities into book-entry form. By holding securities in the CDS Accounts (sub-account, investor-account or house-account as the case may be) maintained with the CDC Participants, the beneficial owners can change their securities positions electronically, hence not requiring physical possession of the securities/ certificates. Securities transfers in CDS pursuant to clearing obligations are fully automated whereby securities move directly from the sellers sub-account or house account to the buyers sub-account or house account. All other transfers in the CDS are subject to authorization from the beneficial owner and executed by the operator of such accounts i.e. the CDS Participants. Additionally securities movement in CDS due to any corporate action including right issues, bonus shares, distribution of specie dividend etc. are also made directly in the respective accounts of the entitled shareholders in an indirect manner with the involvement of market intermediaries and CDC.

Poland: The process of a public offering of shares starts with the adoption of a resolution on the public issue of shares by the shareholders of a company during the general shareholder meeting. On behalf of the issuer, the brokerage house submits the prospectus together with an application for its approval to the Polish Financial Supervision Authority (KNF). After the prospectus has been approved by the KNF, the brokerage house carries out the public offering of the issuer's securities in the primary market. Next, the shares of the new issue are registered by the court and at the National Depository for Securities (KDPW). If the public offering is to be combined with the introduction of shares to the regulated market, the next step is to submit an application to the market operator for the admission of the shares of the company to trading in the regulated market. After the shares of the company have been admitted to trading, they are introduced to trading in the regulated market. In order to execute a transaction in the organised market, a customer submits a sell or buy order for financial instruments to the investment firm. Orders may be placed in person or otherwise via the telephone, fax or the Internet. The order is verified by the investment firm. The verification covers, inter alia, checking whether the investor holds the securities he/she wants to sell on his/her account, or whether he/she has a sufficient amount of money if he/she wants to buy them. Next, the order is passed on for execution. The buy and sell orders are matched by the trading system according to strictly specified criteria. The matched orders form a transaction. The market operator sends a confirmation of the execution of the trade to the investment firms which subsequently inform the investor. Upon approval by the investment firm the confirmation of the trade is sent to the clearing house for clearing.

Romania: The central depository will provide the issuer with all information necessary to exercise the rights attached to the securities deposited. After the general shareholders meeting, the issuer provides the central depository with the documents necessary to the registration of the new issued securities. As a matter of example, in case of a social capital increase by cash contribution that involves as well the exercise of the preference rights, the central depository provides the issuer with the information necessary to exercise the attached

rights. After subscription, the issuer submits to the central depository the documents necessary for the registration of the new securities such as the general shareholders meeting decision and the list of the subscriptions. In case of a social capital increase by allocating free shares, the issuer submits to the CD the necessary documents (e.g. GSM decision) so as the new issued share shall be allocated to the right persons.

Syria: Every joint-stock company that is in the process of establishment and intends to issue securities for subscription must obtain the Commission's approval. The request for approval must have documents as the Commission may require. For holding: Only non-Syrian Nationals are governed by special rules according to the sector in which they wish to hold securities. For transfers: via the electronic system adopted in the Stock Exchange.

Chinese Taipei: A company may not issue stock until it has completed incorporation registration procedures or, in the case of issuing new shares, completed procedures to amend its corporate registration information. Any TWSE-listed, GTSM-listed, or emerging stock company that issues new shares does so in dematerialized form without exception, and notifies the TDCC to record the shares. In all trading of securities that are listed on the exchange or traded Over-the-Counter, all settlement of funds and securities is conducted without exception by book-entry transfer operations.

Turkey: Primarily, issuer has to have permission from the Capital Markets Board of Turkey (CMB) for issuance. Issuer, after taking this permission, then applies to CD for membership. After becoming a member to CD, issuer can issue securities in a dematerialized form. All the securities kept in the CD are dematerialized. While intermediaries can hold both floating and non-floating equities, issuers can only hold non-floating equities. Every investor has a unique registry number and can have different accounts in various members, as they are watched and recorded according to this unique number. Securities can be transferred between the members and accounts. As the transfers are completed, the records in the CD are updated according to the transfer operations.

Malaysia: Section 14(1) SICDA - A stock exchange shall prescribe all securities listed or proposed to be listed for quotation on its official list that are required to be deposited with a CD. Section 37 and 38 SICDA require any public offer, bonus and rights issue to be deposited with the CD. Section 25A SICDA provided that an authorized nominee shall only hold deposited securities for one BO in respect of each securities account. Exception is only to exempt authorized nominee where details of the BO are maintained by the exempt authorized nominee subject to the condition that such information should be made available when requested by the regulatory bodies.

Section 29 of the SICDA - Any dealing by a depositor in respect of a deposited security shall be affected by means of an entry in the securities account of the depositor. The transfer of securities can only be effected by the BO of such deposited securities or an authorized nominee as stipulated in Section 29A of the SICDA.

Rules of BMD – All transfers of securities must be in accordance with the rules and directions issued by BMD and is limited to the following circumstances:

- the transfer does not result in change of beneficial ownership
- the transfer is due to a take-over offer;
- the transfer is done among family members
- the transfer involves government authorities;
- the transfer is for pledged or charged securities; or

- the transfer is with prior approval from the CD

Oman: Article (134) of the Executive Regulation of The Capital Market Authority pointed that” The Company licensed for brokerage or portfolio management or margin trading, with the exception of the branches of foreign companies, may operate trust accounts. They shall observe the following:

Arrangement shall be under written contract concluded between the company and the customer. The contract shall specify the fees received by the company and where the securities are to be kept, kind of reports to be sent to customers, basis for allocation of orders among the customers in the event of execution of consolidated orders, procedures for dividends, bonus shares, rights issue, attendance of general meeting and voting rights.

According to Article 134 they should keep customers securities in segregated accounts under the name and surveillance of the company.

South Africa: In South Africa, an issuer may issue un-certificated (dematerialised) securities and the issuer, the CD and its direct participants must make arrangements in accordance with the CD rules for un-certificated securities to be evidenced by way of entry. An issuer has the same obligations in respect of un-certificated securities as it has in respect of certificated securities except that no certificate or written instrument is issued in respect of un-certificated securities (s 37 of the SSA). An issuer must record in its register the number of un-certificated securities issued by it (s 38 of the SSA). Transfer of legal ownership happens on the sub-registers when the respective debit and credit entries are made on the respective sub-registers. Transfer is final and irrevocable and the bona fide purchaser is protected in law. The issuer may elect to issue securities in dematerialised or certificated form in terms of the Act. For securities other than shares, s 42 of the Act makes provision for transfer by a credit and debit entry in the respective accounts. For money market securities, a different holding structure applies where the beneficial owners open accounts directly in the Central Securities Ownership Register held at the CD.

Morocco: The legal requirements for such activities are explained in the following circulars:

- CDVM Circular 06/06 relative to issuing stocks
- CDVM Circular 04/04 relative to issuing bonds
- CDVM Circular 01/08 relative to securities transactions
- CDVM Circular 01/07 relative to transfer of securities

DIFC: The issuance of securities is regulated by the DFSA’s Offer of Securities Rules for offers made in the U.A.E. For securities listed on the Official List of NASDAQ DIFC the Listing Rules of that exchange further specify suitability.

The holding and transferring of securities is governed by the DIFC Companies Law and various DFSA Rulebook modules for AMI’s (applicable to exchanges and clearing houses); for DFSA licensed intermediaries the rules are set out in the Conduct of Business (COB Module), Supervision (SUP) are the modules applicable.

Thailand:

Issuing: All securities listed on the stock exchange are required to designate CD as a registrar.

Holding: Shareholders are able to deposit their securities through CD Participants (such as securities company or custodian). The deposited securities will be kept in the depository system under CD Participants’ accounts on behalf of clients. Apart from securities deposited

in CD Participants' accounts, shareholders are also able to deposit their securities (for securities registered at CD only) in the Issuer Account at CD for their convenience and security. Shareholder can also request for securities certificate in order to hold it's as a physical securities.

Transferring: To transfer securities in the scrip-less system, shareholders can make a request to their securities companies or custodian who will then conduct book-entry transfer transactions through CD systems. For securities in the scrip system, however, shareholders need to submit a securities transfer request form and related documents, together with securities certificates signed by the transferor and transferee to CD. Then, CD will validate the transaction and issue securities certificate to the transferees. For shareholders who deposit their securities in the Issuer Account, they can also transfer securities within the Issuer Account or between CD participants.

India: As per Regulation 42 of the SEBI (Depositories and Participants) Regulations, 1996, a DP has to comply with the following provisions with respect to the securities held in demat. account.

1) Separate accounts shall be opened by every participant in the name of each of the beneficial owners and the securities of each beneficial owner shall be segregated, and shall not be mixed up with the securities of other beneficial owners or with the participant's own securities.

(2) A participant shall register the transfer of securities to or from a beneficial owner's account only on receipt of instructions from the beneficial owner and thereafter confirm the same to the beneficial owner in a manner as specified by the depository in its bye-laws.

(3) Every entry in the beneficial owner's account shall be supported by electronic instructions or any other mode of instruction received from the beneficial owner in accordance with the agreement with the beneficial owner.

9. **Securities Holding System**

9.1 Categorize and briefly explain the type of holding system in place in your jurisdiction.

- a) **Indirect**
- b) **Direct**
- c) **Modified**

➤ All jurisdictions responded (**Argentina, Bangladesh, Czech Republic, Ecuador, Korea, Macedonia, Nigeria, Pakistan, Poland, Romania, Syria, Chinese Taipei, Turkey, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**)

- 9 jurisdictions responded as a) Indirect

Bangladesh: In Bangladesh most of the investors open individual beneficial owner (BO) account with the depository participant (DP). A limited number of investors (46,400 BO account out of 33, 00,000 BO account) operate through omnibus account with merchant banker. All transactions are done in automated way.

Czech Republic: Investment instruments kept in the Central Depository are maintained on the accounts of holders or customer accounts; such holders or owners continue to maintain the asset accounts of their clients.

Korea: In case where the investor deposits his or her securities with the market intermediary, the KSD, not his or her name, appears in the issuer's shareholder register. As such, Korea has the indirect holding system.

Pakistan: In the books of issuer, the securities are entered in the name of CDC. In addition, Pakistan has Investor Accounts which are directly under the control of investors. Nevertheless the Investor Accounts cannot be termed as part of the modified holding system, since in this case also the shares are entered in the name of CDC in the issuer's register (CDC is therefore acting as an intermediary) and the shareholder is not directly registered in the books of issuer.

Oman:

South Africa: For shares, the CD Participants may open accounts for clients in their own name or in the name of nominees. The records of the CD participants are reconciled to the records of the CD.

Morocco: The Moroccan holding system is an Indirect Holding System. The intermediaries can hold accounts on behalf of their customers "nominee accounts." The securities held in these accounts are registered in the books of the CD in the name of intermediaries.

DIFC: The beneficial ownership of the security can be held both directly in the CD, as well as through one or more intermediaries

Thailand: Under the depository services, it maintains the account for its participants, which include intermediary, custodian and general company (issuer). Furthermore, the Securities and Exchange Act also allow CD to accept the transfer of deposited securities into its own name for the owner of such securities.

- 7 jurisdictions responded as b) Direct

Ecuador: When an investor buys a stock through the stock market and the issuer has the CD registration, the CD is the one that records on the register of the issuer and/or holds physical possession of securities certificates so that he or she has the direct relationship with the issuer. Ecuador still uses the traditional way of registering stocks as dematerialization is not functioning as yet.

Korea: The instances of directly holding securities are also found, as some investors opt to hold the physical securities certificates and thus have their names appear in the issuer's shareholder register.

Nigeria:

Pakistan: The Direct holding system exists for physical shares

Turkey: Turkish Holding System is direct holding system where the investor deposits his or her securities his or her name appears in the issuer's shareholder register. Also the Central Registry shall keep the records in electronic format with respect to issuers, intermediary institutions and owners of rights.

Oman: Shares can also be held in physical form

Thailand: Shares can also be held in physical form

- 9 jurisdictions responded as c) Modified

Argentina: The intermediary has the role in the system between the investors and the CDs. Each account in the CDs is managed by some intermediary, who bought securities on behalf of its client, but this client's identity is disclosed from the start and, in terms of property it is separated from the property of the intermediary.

Macedonia: According to the Law on securities the holding system in the Macedonian jurisdiction is modified. The owners can be directly subscribed in the CSD or indirectly. According to the article 52-b of the Law on securities, the accounts of securities can be opened by an authorized securities market participant or other person, who opens an account in his own name and on behalf of a third person. The accounts that can be opened are: proxy account, portfolio account, custodian account and omnibus account.

Nigeria:

Poland: In Poland deposit accounts are global, i.e. they register the general number of securities held by the clients of intermediaries. In their systems, in turn, intermediaries maintain detailed registers for their clients: final investors or other intermediaries. The register of financial instruments for final investors is maintained on securities accounts, where the right to financial instruments is registered.

Romania: The Capital Market Law requires that all classes of securities shall be deposited with the central depository. The securities accounts opened with the central depository on behalf of the intermediaries shall be recorded so that to ensure the separation between the securities held for its own account from those held for the account of the investors. Intermediaries have the obligation to keep individual securities sub-accounts held for the account of the investors and write down daily in their own register the holdings, for each investor, and for each class of securities.

Syria: An electronic system is in place by which all the investors and their ownerships of securities are registered. All the securities are registered in a Register Accounts on the system, and each investor can open a Client Account via the intermediary to buy and/or sell securities. Each investor can ask for a Notification of Ownership or for Notification of his/her account movements and transfers.

Chinese Taipei: An investor is required to open an account of domestic securities trading with his own identification number in Chinese Taipei. Even though an omnibus account is allowed for trading, the settlement and clearing still need to be proceeded through individual sub-account under the omnibus account (please see Appendix A for details). We consider that our system is more like the "Modified Holding System" called in this questionnaire, and the Chinese Taipei Depository & Clearing Corporation (TDCC) represents the nominee account operator.

Malaysia: BMD has a direct relationship with the holders of the securities account. All securities listed and quoted for trading on Bursa Malaysia Securities are immobilized. However, the role of intermediaries is not entirely eliminated in Malaysia as investors can still choose to hold the securities through an authorized nominee.

India: In India, the two depositories facilitate holding of securities in the electronic form and enable securities transactions to be processed by book entry by a DP, who as an agent of the depository, offers depository services to investors. When physical shares are converted in to electronic form, the depository becomes ‘Registered owner’ in the books of the company and investors name is removed from books of the company. Depository is holding shares in its records on behalf of the investors who have opened a demat account with the depository. Hence all benefits are given to the actual investor who is called as a “Beneficial Owner” (BO) of the securities.

9.2 If the answer to Q. 9.1 is (a);

i. How would you classify the nominee account system in your jurisdiction as per the following (tick the appropriate response)?

- i.i Single-tiered structure
- i.ii Multiple-tiered structure

➤ 11 Jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Pakistan, Turkey, Oman, South Africa, Morocco, DIFC and Thailand**).

- 4 jurisdictions have a single-tiered structure (**Argentina, Bangladesh, Korea and Oman**).
- 7 jurisdictions have a multiple-tiered structure (**Czech Republic, Pakistan, Turkey, South Africa, Morocco, DIFC and Thailand**)

ii. Does the nominee account operator require any license/authorization from a public authority?

Yes/No

➤ 10 jurisdictions responded to this question (**Argentina, Czech Republic, Korea, Nigeria, Pakistan, Oman, South Africa, Morocco, DIFC and Thailand**).

- 6 jurisdictions responded as Yes (**Argentina, Czech Republic, Korea, Oman, South Africa and DIFC**).
- 4 jurisdictions responded as No (**Argentina, Pakistan, Morocco and Thailand**).

Argentina: Due to the self-regulation the authorization of the operator corresponds to the securities markets according to the markets’ rules which are firstly approved by this CNV and is subject to the control and enforcement mechanisms of this CNV. In the case of the MAE (Mercado Abierto Electrónico, it is one of the largest securities markets in Argentina) intermediaries, the resolution approving an intermediary to operate requires approval of this CNV.

Pakistan: In case where the depository is the intermediary operating the Nominee Account, as is the case with the CDC, the depository requires registration with the SECP for being established as a Central Depository under the Central Depository Companies (Establishment and Regulation) Rules, 1996.

However, in case a nominee account operator is other than CDC such operator is required to be registered with the Securities and Exchange Commission of Pakistan (SECP) or State Bank of Pakistan under the respective regulatory framework, as the case may be.

iii. Does the nominee account operator have to give standard disclosure to the regulator about the investors whose holding he has?

Yes/No

- 11 Jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Nigeria, Pakistan, Oman, South Africa, Morocco, DIFC and Thailand**).
- 8 jurisdictions responded as Yes (**Bangladesh, Czech Republic, Korea, Nigeria, Oman, South Africa, Morocco and DIFC**).
- **Bangladesh:** There is no specific standard disclosure but the omnibus account operator shall provide the regulator all disclosure as and when required.
- **Czech Republic:** Reporting entities shall submit to the Czech National Bank statement MKT (ČNB) 40-97 “Reports of transactions in investment instruments – investment firm”, Information on persons, instructions and instruments.
- **Korea:** Market intermediaries are required to file certain reports or confirmations with the financial supervisory authorities and the CD, while the CD with the financial supervisory authorities. These requirements include, among others, the disclosure of beneficial owners when it is necessary for the financial supervisory authorities to achieve supervisory and/or examination purposes.
- **Oman:** Depends on the conditions. Article (3) of the Executive Regulation of The CMA ” The Authority shall conduct inspection of entities governed by provisions of the Capital Market Law and regulations, at any time, to examine their compliance with the provisions of the law and regulations and take appropriate action. Such entities shall facilitate the mission of the audit and inspection team and provide all information they request. Information and data accessed by the audit or inspection team shall be treated as confidential information and shall not be disclosed or published.”
- **South Africa:** Both the Companies Act and Securities Services Act make provision for disclosure of beneficial shareholding. The CD collates the prescribed information from beneficial owners from the exchange and from the various CD Participants and send to the issuers currently on a weekly basis; this can also be done ad hoc when required; also the regulators can demand information on holdings at any time from the CD.
- **Morocco:** According to the promulgated anti-money laundering law and the CDVM circular on anti-money laundering 05/10, the nominee account operator has to document all the necessary information allowing the proper identification of the beneficiary owner and has to make sure of the identity of the beneficial owner before executing the transaction. According to the CDVM circular 07/05 on turnaround trade, the operator should keep for a certain period of time a record of all the details concerning the turnaround trades. The custodian, on the other hand, has to submit on monthly basis to the CDVM a detailed list of turnaround trades that took place during that month.
- **DIFC:** Yes - However, disclosures are on a request basis. A nominee account operator may be requested by the regulator or the CD to provide details as to the beneficial holder.
- 3 jurisdictions responded as No (**Argentina, Pakistan and Thailand**)

- **Argentina:** Intermediaries must save this information and provide it in the case of an investigation or inspection of this CNV. Notwithstanding, there is not a periodic disclosure regime about this information. On the other side, the CDs are required to give monthly to the CNV the list of investors and account balances, residents and non-residents identified by name and surname.
- **Pakistan:** While there are no standard disclosure requirements, the SECP is authorized to call for any information in terms of Section 27 of the CD Act.
- **Thailand:** Nominee account operator is not required by law to have a license/authorization. However, most nominee account operator in Thailand is either a Securities Company or CD, of which they are required by law to have license/authorization as business operator, but not as nominee account operator.

9.3 If your jurisdiction uses more than one holding system, please give the percentage of investors using each type of system?

- 5 jurisdictions responded to this question (**Bangladesh, Korea, Pakistan, Thailand and India**).

Bangladesh: Investors transact through individual account- 98.5% (approximate) Investors transact through omnibus account- 1.5% (approximate).

Korea: When it comes to the shares of publicly-held companies, as of September 2010, 11 percent are held in a direct manner, while the remaining 89 percent in an indirect manner.

Pakistan: Indirect system = 84%, Direct system = 16%.

Thailand: Indirect system = 82%, Direct system = 18%

India: Almost 80% of the investors in listed companies hold shares in the demat mode while the remaining 20% in the physical mode. However, almost 99.99% of the trades take place in the dematerialized mode only.

9.4 If your answer to Q. 9.1 above is (b);

i. Did nominee accounts exist in the past in your jurisdiction?

Yes/No

If your answer to Q. 9.4 (i) above is Yes, indicate the reasons for their abolishment.

- 4 jurisdictions responded to this question (**Ecuador, Nigeria, Pakistan and Turkey**)
- **1 jurisdiction responded as Yes (Turkey).**

Turkey: Some misappropriation cases were occurred especially caused by intermediaries.

- 3 jurisdictions responded as No (**Ecuador, Nigeria and Pakistan**)

ii. Do you have a system alternative to nominee accounts in place in your jurisdiction or about to be put in place in the future?

Yes/No

If your answer to Q. 9.4 (ii) above is Yes, state how the alternative system tackles the problems associated with the use of nominee accounts (as detailed in the following sections of this questionnaire).

- 3 jurisdictions responded to this question (**Ecuador, Pakistan and Turkey**)
- All responding jurisdictions responded as No (**Ecuador, Pakistan and Turkey**)

Section II: Operational Framework for Nominee Accounts

1. Please give description of the operation of nominee accounts in your jurisdiction (provide details on pooled accounts or single client accounts, limited purpose or general purpose, single-tiered or multiple-tiered structure of intermediaries, etc.). In case of pooled accounts, also indicate if the investors have rights attached to their respective securities in the pool.

- 14 jurisdictions responded (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Chinese Taipei, Malaysia, Pakistan, South Africa, Morocco, DIFC, Thailand and India**).
- 6 jurisdictions did not respond (**Ecuador, Nigeria, Poland, Romania, Syria and Turkey**).

Argentina: The exit of the holdings from a CD account may be due to: a sale of the securities, for which the intermediary will execute an order in the CD to transfer the securities to the buyer; or the beneficial owner gives an order to the intermediary to transfer securities to another account either within the jurisdiction market or to a foreign jurisdiction (to a foreign depository).

Bangladesh: Pooled account or Omnibus account system is present in Bangladesh. Merchant Bankers and Custodial Banks operate the omnibus accounts. It is a single account of more than one investors and that represents the collective position of securities of the investors. The investors are directly involving themselves in such omnibus account with the account operator only. So there is no upper tier system. Except the voting right, the investors are entitled to get all benefits through their account operator. The omnibus account operators attend the AGM and EGM and exercise the voting rights on behalf of the beneficial owners.

Czech Republic: Investment instruments kept in the Central Depository are maintained on the accounts of holders or customer accounts; such holders or owners continue to maintain the asset accounts of their clients. Within the system of their internal records, investment firms shall ensure continuous and unambiguous identification of investment instruments and monetary funds belonging to each client so that they are able, at any time, to distinguish assets held for one client from assets held for other clients and from their own assets.

Korea: In Korea, a single-tiered nominee account structure exists. The accounts at the CD that the market intermediary opens on their clients' behalf are nominee accounts.

Pursuant to the Act on Real Name Financial Transactions and the Guarantee of Secrecy, the market intermediary is required to use its own name to open an account with the CD, and the CD creates and updates a book for each market intermediary (the Market Intermediary

Account Book). The book includes both the market intermediary's own securities holdings and its clients' securities holdings. To ensure that the clients' assets are segregated from its assets, its account with the CD is divided into two groups of sub-accounts: one for its own assets and the other for the clients' assets. The Market Intermediary Account Book does not show who their clients are and how many shares each of them owns but only the aggregate number of shares owned by their clients.

Likewise, in accordance with the Act on Real Name Financial Transactions and the Guarantee of Secrecy, the investor is required to use his or her real name to open an account with the market intermediary, and the market intermediary creates and updates a book for each client (the Investor Account Book).

Macedonia: According to the article 52-b of the Law on Securities the accounts that can be opened are: proxy account, portfolio account, custodian account and omnibus account.

The proxy account is an account for securities opened by the CSD under the regulations governing the issue of legal representative (e.g. for minors, persons deprived of legal capacity, pension and investment funds management companies), or based on verified Power of Attorney by which the owner of securities shall entrust the management and disposition of its securities and the exercise of the rights of those securities to a third party – proxy. Owner of the securities account is always the person represented by the proxy.

The portfolio account is an account for securities opened by the authorized securities market participant. On the portfolio account the registered securities are managed by the authorized securities market participant, on behalf of the investor-principal and separated from the assets of the authorized securities market participant. Owner of the securities on the portfolio account is the investor-principal.

The custodian account is an account for securities on behalf of the authorized securities market participant or custodian bank of pension and investment funds, opened on a basis of contract for keeping the securities and / or custody agreement of investment or pension funds, on which equity positions of third party are maintained. Owner of the securities in the custodian account is not the authorized securities market participant and / or custodian bank of pension and investment funds, but the person on whose behalf the authorized securities market participant and / or custodian bank for pension and investment funds managed the securities (investor).

Pakistan: The CDC is the Nominee Account Operator. The CDS changes the ownership of securities without any physical movement or endorsement of certificates and execution of transfer instruments. For book-entry securities the name of CDC's CDR and not the beneficial owners appears in the issuer's shareholder register, however based on the details of CDR made available by the CDC only the beneficial owners are entitled to benefit from the rights attached to their shares.

Chinese Taipei: An investor is required to open an account of domestic securities trading with his own identification number in Chinese Taipei. Even though an omnibus account is allowed for trading, the settlement and clearing still need to be proceeded through individual sub-account under the omnibus account. Chinese Taipei Depository & Clearing Corporation (TDCC) represents the nominee account operator. The roster of securities owners maintained by the TDCC is not deemed under the legal system to be the shareholders register. Only when

TDCC submits roster of securities owners to the issuers, the lists are recognize as shareholders register.

An investor will use nominee account only when he makes overseas securities investments through a securities firm. However, that type of trade is not the mainstream in Chinese Taipei. In terms of futures trading, an omnibus account similar to the nominee account is allowed in Chinese Taipei. Regulations require that each individual trader should obtain an ID number before opening an account for futures trading, including each sub-account under the omnibus account. Therefore, the exchange may also recognize the positions held by a sub-account holder under the omnibus account.

Malaysia: Only approved entities (authorized nominees) are allowed to open nominee account with the CD. There are two types of nominees account: authorized nominee and exempt authorized nominee. The securities account held by the authorized nominee has to provide details of the BO whereas the exempt authorized nominee is exempted from SICDA where the details of the BO are not specified in the account. However, the exempt authorized nominee would need to provide the details when requested by the SC, the CD or the Exchange as provided for in the Securities Industry (Central Depositories) (Exemption) Order 2005.

Oman: Custodians and Trusts [normally operated by Brokers licensed to do so] are allowed to open account on behalf of their clients. In case of Custodians, the details of the end-beneficiary account are provided by Custodians and the account is maintained at beneficiary account linked to Custodian. However, for Trusts, the account is maintained at Trust level and details of beneficiaries are provided by Brokers [who operate these] to CMA and CD as and when required.

South Africa: General purpose; Multiple-tiered structure.

Morocco:



DIFC: The DFSA Conduct of Business Module (COB) contains detailed provisions for firms when operating Safe Custody Accounts for clients. This includes detailed requirements regarding Recording, registration, and holding requirements (COB A6.3); Client accounts in relation to client investments (COBA6.6); Holding or arranging custody with third party agents; client disclosure (COB A6.7); Reconciliation (COB A6.9); and, the submission on an annual basis of a Safe Custody Auditor's account (COB A6.10).

Thailand: Thailand has a multi-tiered structure where CD is the upper-tier nominee account holder and securities company as a primary nominee account holder. The account hold at the CD are separated into "local securities" and "foreign securities", which further sub-divided in to "participant for client" account and "participant for own proprietary" account.

India: The investor who is known as beneficial owner (BO) has to open a demat account through any DP for dematerialization of his holdings and transferring securities. When physical shares are converted in to electronic form, the depository becomes 'Registered owner' in the books of the company and investors name is removed from books of the company. Depository is holding shares in its records on behalf of the investors who have

opened a demat account with the depository. Hence all benefits are given to the actual investor.

2. Describe the regulatory approach and method used in your jurisdiction to identify and track the ultimate beneficial owners of securities held by nominee account operator?

- 14 jurisdictions responded (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Chinese Taipei, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**).
- 6 jurisdictions did not respond (**Ecuador, Nigeria, Poland, Romania, Syria and Turkey**).

Argentina: The account number is unique and has the identification of the beneficial owner. The rules on CDs contemplate that each investor will be given of a Sub-Account through its depositing agent (intermediary) in the CD.

Bangladesh: The regulator gets periodical information from the nominee account operator about the beneficial owner as per law. If requires the regulator can ask for any other information to the nominee account operator and they are obliged to provide such information as the nominee account operator maintains the information of the beneficial owners.

Czech Republic: Within the system of their internal records, investment firms shall ensure continuous and unambiguous identification of investment instruments and monetary funds belonging to each client so that they are able, at any time, to distinguish assets held for one client from assets held for other clients and from their own assets. The internal records shall also include records of the third-party account in which the individual investment instruments and monetary funds of each client are kept.

Korea: Under the Capital Markets Act, once the issuer determines the record date, it sends a notice to inform the CD of the record date. Then, the CD is required to send the issuer the details of beneficial owners which include the information on their identity and the type and number of shares owned as of the record date (§315-3). In most of the times, to proceed with this request from the issuer, the CD requests the market intermediaries to submit the information on beneficial owners, and the market intermediaries must do so without undue delay (§315-4). Once this information is conveyed to the issuer, it must create the list of beneficial owners and make it publicly accessible (§316-1). Again, this list has the same legal effect as the shareholders' register (§316-2).

Macedonia: According to the legislation, during the opening of any type of account, the authorized securities market participant is obliged to have the following data: for domestic physical persons: name, address and unique ID number of the citizen; for foreign individuals: name, citizenship and passport number; for all legal entities: name, address and registered office of such entity and unique identification number of the issuer issued by the Central Register of the Republic of Macedonia. During the supervision of the authorized securities market participants, the MSEC, according to the Law on securities has authority to check all information regarding the beneficial owners of securities.

Pakistan: Section 9 of the Central Depositories Act, 1997 provides comprehensive framework for identifying ultimate beneficial owner.

9. Central depository to supply information.—

(1) Every issuer which is a company or other body corporate and whose securities are entered in the central depository system of a central depository shall request the central depository, at such times as may be prescribed in the regulations, for a list of the names and other relevant details of the account-holders and subaccount holders, holding the book-entry securities of such issuer together with details of the book-entry securities of such issuer entered in the accounts of such account-holders or sub-account holders, as the case may be—

(a) for sending notices to any account-holders and sub-account holders of general meetings of the holders of any securities of the issuer;

(b) for sending any other notices to any account holders and sub-account holders which are required to be sent by the issuer to holders of any securities of the issuer;

(c) for the purpose of allowing any account-holders and sub-account holders to attend general meetings of any holders of securities of the issuer or to appoint proxies for this purpose;

(d) for dispatching dividend or other warrants to any account-holders and sub-account holders;

(e) for dispatching to any account-holders and sub-account holders any other payments or benefits paid by the issuer; or

(f) for dispatching to any account holders and sub-account holders formal offers for subscription of securities of the issuer.

Chinese Taipei: The TDCC handles the computer processing of beneficial owner data associated with all central depository and book-entry operations of the participants. The TDCC-BES system conducts securities trading settlement and related transfer base on the levels of ultimate beneficiary. It is different from some foreign CDs which adopt the Indirect Holding System and only maintain data on nominee account level. Our type of holding system does not fall exactly into any one of the three categories mentioned in this questionnaire but is most similar to the Modified Holding System. However, the roster of securities owners maintained by the TDCC is not deemed under our legal system to be the shareholders register. Only when TDCC submits roster of securities owners to the issuers, the lists are recognize as shareholders register.

Malaysia: This is provided for under the law as follows:

- Section 25A (2) of the SICDA - an authorized nominee shall furnish to the CD the name and other particulars of the BO of the securities deposited in the securities account, opened in the name of the authorized nominee.
- Securities Industry (Central Depositories) (Exemption) Order 2005 – An exempt authorized nominee would need to provide information or document relating to the deposited securities in the securities account as and when requested by the SC, the CD or the Exchange.

Oman: Custodians and Trusts [normally operated by Brokers licensed to do so] are allowed to open account on behalf of their clients. In case of Custodians, the details of the end-beneficiary account are provided by Custodians and the account is maintained at beneficiary account linked to Custodian. However, for Trusts, the account is maintained at Trust level and details of beneficiaries are provided by Brokers [who operate these] to CMA and CD as and when required.

South Africa: Both the Companies Act and Securities Services Act make provision for disclosure of beneficial shareholding. The CD collates the prescribed information from beneficial owners from the exchange and from the various CD Participants and send to the issuers currently on a weekly basis; this can also be done ad hoc when required; also the regulators can demand information on holdings at any time from the CD.

Morocco: According to the circular on anti-money laundering 05/10, the nominee account operator has to ensure the identification of the ultimate beneficial owner. The whole documentation related to this identification should be available for on site and on paper investigations.

DIFC: The tracking of ultimate beneficial owners of securities is not centralised. It remains the responsibility of the licensed and regulated intermediary to be able to reconcile the holdings of its clients against its holding in the upper-tier nominee account operator or CD. Adequate systems and controls need to be in place.

Thailand: Market intermediaries (such as broker) must have all detail of securities deposited with them that include the list of securities owner, number of securities of each owner and so on. At the period of closing book, broker must provide information of securities owners for CD.

India: The issuer has access to the details of the beneficial owners through its share transfer agent.

3. Multiple-Tiered Structure Having Pooled Nominee Accounts/Omnibus Accounts

3.1 Is the multiple-tiered structure that involves the operation of pooled nominee accounts or omnibus accounts allowed in your jurisdiction? Yes/No

- 13 Jurisdictions responded to this question (**Bangladesh, Czech Republic, Korea, Macedonia, Nigeria, Pakistan, Chinese Taipei, Turkey, Malaysia, South Africa, Morocco, DIFC and Thailand**).
- 6 jurisdictions did not respond (**Argentina, Ecuador, Poland, Romania, Syria and Oman**)
- 7 jurisdictions responded as Yes (**Macedonia, Chinese Taipei, Malaysia, South Africa, Morocco, DIFC and Thailand**)
- 6 jurisdictions responded as No (**Bangladesh, Czech Republic, Korea, Nigeria, Pakistan and Turkey**)

3.2 If the answer to Q. 3.1 is Yes;

(a) How is the ultimate beneficial owner at the bottom of the multiple-tiered structure, whose securities are held in a pooled nominee account by the primary nominee account operator, identified?

Please indicate any problems, if encountered, in identifying the beneficial owners of securities and any measures, if taken, to address the problem.

- 8 jurisdictions responded (**Bangladesh, Macedonia, Chinese Taipei, Malaysia, South Africa, Morocco, DIFC and Thailand**)

Bangladesh: As per the contract made between the beneficial owner and portfolio manager (merchant banker), the beneficial owner is identified. The name of the omnibus account operator is listed with Central Depository but not the name of the beneficial owners. As a

result the actual beneficial owners cannot be sorted out without the help of omnibus account operator and they are not getting the legal ownership. Even the beneficial owner does not appear to be concerned about the issue. However, Securities and Exchange Commission of Bangladesh is working on the issue to solve the problem.

Macedonia: The omnibus account is on the name of the authorized securities market participant and / or custodian bank of investment and pension funds, and on behalf of the individual non-resident client, or more non-resident clients. The authorized securities market participant and / or the custodian bank of pension and investment funds can open only one omnibus account in the CSD. Transfer of securities that are already registered to another securities account, the CSD will conduct at the request of the authorized securities market participant. With the application a request of the owner of the securities that were registered to another account must be submitted. The authorized securities market participant and the custodian bank pension and investment funds are obliged to keep separate records for the state of the securities for each client and at the request of the MSEC to submit full data for all clients and the number of securities in their property.

Chinese Taipei: After close of market each day, the declarant of omnibus account positions must use the Exchange online reporting system to separately report the positions of each individual account under the omnibus account.

Malaysia: The identity of the ultimate BO is tracked through the exempt authorized nominee's records which are bound by the requirement of Securities Industry (Central depositories) (Exemption) Order 2005 to disclose the name and other particulars of the BO of the securities deposited in the securities account, opened in the name of the authorized nominee.

In certain selective situations, banking secrecy provisions has been used as a basis for inability to provide the BO's information. In such situations, the SC, Exchange or CD will work closely with the relevant regulator to ensure availability of such information.

South Africa: In the current South African context, the ultimate beneficial owner can only be disclosed by the CD if it holds in two layers below the CD. The existing legislation does not regulate further down in the holding chain. There are specific confidentiality rules (set out in CD Rules 4.2) that apply to information sharing.

Collating information from various holders in the holding chain is a problem as it is very tedious. Transparency should be encouraged by IOSCO. Although new legislation is proposed (new "Financial Markets Bill") that will attempt to regulate all holdings in the holding chain, the best solution would be a different holding model where beneficial holders are directly reflected at the upper-tier in their own name.

Morocco: Multiple tiered structure is allowed only for Global Custodians. As the global custodian deals on behalf a beneficial owners living in a foreign country and taking into consideration the nature of turnaround trades, it is quite difficult to verify whether the global custodian's client is the ultimate end beneficiary. However, according to the circular on anti-money laundering, the global custodian should have all the documents allowing the identification of their clients and make sure of the identity of the beneficiary owner.

The global custodian executes orders for intermediaries acting on behalf of different end beneficiaries with homogenous orders. Hence, the main problem encountered is the difficulty to identify the end beneficiaries.

DIFC: DFSA Rules COB provides for the disclosure to the client whose securities are involved to disclose the involvement of a third party custodian. In the case where assets are kept the client facing custodian need to have adequate systems and controls in place to monitor the securities held at the third party. Although the period required to identify the beneficial owners may be extended, no problems have been encountered in obtaining these.

Thailand: Market intermediaries (such as broker) must have all detail of securities deposited with them that include the list of securities owner, number of securities of each owner and so on. At the period of closing book, broker must provide information of securities owners for CD.

In the past Thailand has encountered problems with identifying the beneficial owner, in the case where foreign investor hold an omnibus account for its end client overseas. The retrieval process of the owner information in this circumstance is relied on the regulation in the foreign investor jurisdiction or the foreign investor consent. Which mean the regulator in Thailand has no way of confirming the true identity of the beneficial owner directly.

(b) Is the use of pooled nominee accounts or omnibus accounts allowed to the following investors?

- i. Domestic investors**
- ii. Institutional Investors**
- iii. Foreign investors**

- 9 jurisdictions responded to this question (**Bangladesh, Macedonia, Pakistan, Chinese Taipei, Malaysia, South Africa, Morocco, DIFC and Thailand**).
- 10 jurisdictions did not respond (**Argentina, Czech Republic, Ecuador, Korea, Nigeria, Poland, Romania, Syria, Turkey, Oman and India**).
- 6 jurisdictions provided a response a i. Domestic investors (**Bangladesh, Chinese Taipei, Malaysia, South Africa, DIFC and Thailand**)
- 4 jurisdictions provided a response as ii. Institutional investors (**Chinese Taipei, Malaysia, DIFC and Thailand**).
- 8 jurisdictions provided a response as iii. Foreign investors (**Bangladesh, Macedonia, Pakistan, Chinese Taipei, Malaysia, Morocco, DIFC and Thailand**).
- In **Pakistan** even though, there is no specific provision in the present regulatory framework allowing pooled nominee account or omnibus account for any of the above category (Group accounts in CDS were banned in 2005), in case of the foreign investors operating through international brokers having no custody accounts with the global custodians there is a possibility that accounts of international broker are used as pooled accounts by the foreign investor.

(c) If the answer to Q. 3.2 (b) is (ii) or (iii), is your jurisdiction able to tackle securities crimes such as stock price manipulation, since the foreign investors may hide their identity using a pooled/omnibus account?

Yes/No

Please explain your answer to Q. 3.2 (c).

- 9 jurisdictions responded to this question (**Bangladesh, Macedonia, Pakistan, Chinese Taipei, Malaysia, South Africa, Morocco, DIFC and Thailand**).
- 11 jurisdictions did not respond (**Argentina, Czech Republic, Ecuador, Korea, Nigeria, Poland, Romania, Syria, Turkey, Oman and India**).
- 8 jurisdictions responded as Yes (**Bangladesh, Macedonia, Pakistan, Chinese Taipei, Malaysia, Morocco, DIFC and Thailand**).

Bangladesh: There is no scope for the foreign investors to hide their identity as the securities custodial submit their periodical reports to the Commission (regulator).

Macedonia: According to article 52-b para. 5 from the Law on securities, the authorized securities market participant and the custodian bank pension and investment funds are obliged to keep separate records for the state of the securities for each client and at the request of the MSEC to submit full data for all clients and the number of securities in their property.

Article 170 of the Law on securities, prohibits an authorized securities market participant or other legal entity or physical person to create a false impression for a particular security on the market with: concluding trade transaction with securities in such a manner that its execution does not result in a change of owner; issuing order for buying or selling of securities with previous knowledge that the equivalent order is given or will be given for buying or selling the same securities from another person for about the same price, in order to create fictitious price of the securities or the creation illusion of active trading in the securities.

Article 172 of the Law on securities, prohibits an authorized securities market participant or other legal entity or physical person, when buying or selling of securities: to use methods and mechanisms in order to perform fraudulent actions; to provide false price sensitive information or failed to give price sensitive information which under the circumstances can cause delusion; to engage in activity that has or would have purpose of fraud of a person or his misleading.

Pakistan: Both the frontline and apex regulator are empowered to call for information in respect of foreign investors through their custodian banks and through this way can tackle any securities crime by conducting thorough investigation.

Chinese Taipei: Foreign investors won't be able to hide their identity using an omnibus account. Omnibus account is required to file position reports, including regular monthly reports, daily large position reports, and sub-account reports. Whenever there is any change to a sub-account, the declarant of omnibus account positions is required to report the change to the Exchange.

Malaysia: The ultimate BO will be identified and tracked through the exempt authorized nominee which is bound by the requirement of Securities Industry (Central Depositories) (Exemption) Order 2005 to disclose the name and other particulars of the BO of the securities deposited in the securities account opened in the name of the authorized nominee.

Morocco: Yes, yet it is difficult in practice due to commercial and extraterritorial reasons. Nominee accounts operators do not reveal in some cases the identity of their clients.

DIFC: The DFSA takes a two-tiered approach to the prevention of market misconduct and/or financial crime including mentioned stock price manipulation. The exchange and clearing house for NASDAQ DIFC is the frontline regulator for its markets. Monitoring is facilitated in that all exchange member ID's are available in real-time for both orders and transactions. Market surveillance applications such as SMARTS are operational at the exchange to monitor conduct that causes disorderly markets or form a possible breach of the DIFC's Markets Law. Under the Markets Law DFSA can request all information from members or their clients, in or outside the DIFC. To facilitate the legality of such requests the DFSA has entered into a large number of bi-lateral MoUs and is also an Appendix A signatory of the IOSCO MMoU.

Thailand: Appropriate rules and regulation are in place to deal with crimes such as stock price manipulation. However, the problem with indentifying the true beneficial owner in foreign country does present a stumbling block in dealing with such case.

- 1 jurisdiction responded as No (**South Africa**)

(d) Can the investor enforce rights against an upper-tier nominee account operator?

- i. normally,**
- ii. in the event of breach of duty by the intermediary,**
- iii. in the event of breach of duty by the upper-tier intermediary,**
- iv. in case of insolvency of the intermediary,**
- v. any other situation (please explain)**

- 7 jurisdictions responded to this question (**Bangladesh, Pakistan, Malaysia, South Africa, Morocco, DIFC and Thailand**).

- 3 jurisdictions responded as i. normally (**Pakistan, Malaysia and Morocco**)
- 3 jurisdictions responded as ii. In the event of breach of duty by the intermediary, (**Bangladesh, Pakistan and Thailand**)
- 3 jurisdictions responded as iii, in the event of breach of duty by the upper-tier intermediary (**Pakistan, South Africa and DIFC**)
- 2 jurisdictions responded as iv. In case of insolvency of the intermediary (**Bangladesh and Pakistan**).
- 1 jurisdiction responded under v. any other situation (**South Africa**).

South Africa: Legislation (Companies Act) makes provision for certain warranties and indemnities with regard to the instruction to transfer dematerialised securities. No transfer may take place in the relevant accounts, unless a proper authenticated instruction to transfer has been received by the operator.

Morocco: Since the investor and the nominee account operator are foreigner, it is the foreign law that applies. In addition, since the investor has no direct relationship with upper-tier nominee account operator, enforcing investor rights might be.

Malaysia: This would depend on whether there is a direct contractual relationship between the investor and the upper-tier nominee account operator failing which the investor would have to rely on the primary nominee account holder to enforce those rights on its behalf. In the case of insolvency of the intermediary, this would depend on what contractual arrangements are in place between the relevant parties as well as the general law of contract, trust agency and insolvency.

4. Disclosure Requirements on the Nominee Account Operator

4.1 Are there any disclosure requirements on the nominee account operator regarding securities credited to nominee accounts relating to;

- a) taxation,**
- b) company law,**
- c) related party transactions,**
- d) takeover regulation,**
- e) money laundering,**
- f) control of regulated entities or,**
- g) any other matter**

➤ 11 jurisdictions responded to this question (**Argentina, Bangladesh, Korea, Macedonia, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC and India**).

- 3 jurisdictions responded as a) taxation (**Bangladesh, Macedonia and South Africa**)
- 4 jurisdictions responded as b) company law (**Korea, Macedonia, Pakistan and South Africa**)
- 3 jurisdictions responded as c) related party transactions (**Bangladesh, Oman and South Africa**)
- 2 jurisdiction responded as d) takeover regulation (**Korea and South Africa**)
- 9 jurisdictions responded as e) money laundering (**Bangladesh, Korea, Macedonia, Pakistan, Oman, South Africa, Morocco, DIFC and India**)
- 2 jurisdiction responded as f) control of regulated entities (**Bangladesh and South Africa**)
- 3 jurisdictions responded under g) any other matter (**Argentina, Pakistan and Malaysia**)

Argentina: The operator is required to save the information relating its operations and the information related to the “know your client” principle, but it is not public. The information just could be required in an investigation or inspection procedure.

Pakistan: Additionally wherever the information is required by the SECP, the State Bank of Pakistan, the stock exchanges or any other person acting on their behalf, the nominee account operators are bound to provide any such information in terms of Section 21, 23 and 27 of the CD Act, 1997.

Malaysia: Disclosure is based on ad-hoc on request basis.

4.2 Is there any requirement to disclose details of beneficial owners of securities held with the intermediary? Please explain.

- 13 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**).

Argentina: The obligation is set over the CD directly and the CNV requires it monthly and may require any information that it considers necessary to fulfill its regulatory and enforcement objectives. Notwithstanding, the information about accounts titular's is confidential. The information about the securities deposited in the accounts is treated in the regulation relating to the issuers of those securities.

Bangladesh: Apart from periodical reports, which include status of the portfolio of the beneficial owner of omnibus accounts, there is no such disclosure requirements of beneficial owner, but the regulator can ask for details of beneficial owner as and when required.

Czech Republic: The central depository and a person maintaining a separate register of investment instruments shall provide details from the register and documents that they are required to store pursuant to Article 99a(1) to:

- a) a court for the purposes of court proceedings,
- b) an executor for the purposes of execution proceedings, to which the owner of the investment instrument is a party,
- c) bodies active in criminal proceedings for the purposes of criminal proceedings,
- d) a tax administrator for the purposes of administration of the taxes of the owner of the investment instrument,
- e) the Czech National Bank for the purposes of:
 1. supervision of the financial market,
 2. the bank information system pursuant to a special legal rule governing the activity of the Czech National Bank,
 3. compilation of the balance of payments of the Czech Republic according to the Foreign Exchange Act,
- f) a bankruptcy trustee for the purposes of bankruptcy proceedings to which the owner of the investment instrument is a party,
- g) a composition trustee for the purposes of composition proceedings to which the owner of the investment instrument is a party,
- h) the Security Information Service for the purposes of performance of tasks pursuant to a special legal rule governing the activities of the Security Information Service,
- i) the Ministry when fulfilling the reporting duty pursuant to a special legal rule on the fight against money laundering or a special legal rule on the implementation of international sanctions in order to maintain international peace and security, protect fundamental human rights and combat terrorism.

Korea: The market intermediary should notify the CD of the details of beneficial owners such as their national identification numbers (the employer identification number in the case of corporate investors) and addresses, while the CD should notify the issuer of the details of beneficial owners such as their names and addresses and the type and number of shares owned.

Macedonia: Regarding the omnibus account, the authorized securities market participant and the custodian bank pension and investment funds are obliged to keep separate records for the state of the securities for each client and at the request of the MSEC to submit full data for all clients and the number of securities in their property.

Pakistan: Section 9 of the Central Depositories Act, 1997 provides comprehensive framework for identifying ultimate beneficial owner and is reproduced below:

9. Central depository to supply information.—

(1) Every issuer which is a company or other body corporate and whose securities are entered in the central depository system of a central depository shall request the central depository, at such times as may be prescribed in the regulations, for a list of the names and other relevant details of the account-holders and subaccount holders, holding the book-entry securities of such issuer together with details of the book-entry securities of such issuer entered in the accounts of such account-holders of sub-account holders, as the case may be—

(a) for sending notices to any account-holders and sub-account holders of general meetings of the holders of any securities of the issuer;

(b) for sending any other notices to any account holders and sub-account holders which are required to be sent by the issuer to holders of any securities of the issuer;

(c) for the purpose of allowing any account-holders and sub-account holders to attend general meetings of any holders of securities of the issuer or to appoint proxies for this purpose;

(d) for dispatching dividend or other warrants to any account-holders and sub-account holders;

(e) for dispatching to any account-holders and sub-account holders any other payments or benefits paid by the issuer; or

(f) for dispatching to any account holders and sub-account holders formal offers for subscription of securities of the issuer.

Malaysia: Securities Industry (Central Depositories) (Exemption) Order 2005 – An exempt authorized nominee would need to provide information or document relating to the deposited securities in the securities account when requested by the SC, the CD or the Exchange.

Oman: Depends on requirements.

South Africa: The CD issues CD rules and Directives on the disclosure of beneficial downloads. In the South African context, below the CD (as the upper-tier), you may find two or more levels lower down in the chain of holdings until you get to the “ultimate investors.” The CD (as Upper-tier Nominee Account) can however only “drill down” two layers (levels), that is down to the “Primary Nominee Account” (direct Participant) and one level lower, namely the Broker level).

Morocco: According to the circular on anti-money laundering 05/10 and the CDVM circular 07/05 on turnaround trade, it is mandatory that the intermediary identifies the ultimate beneficial owner. The documents allowing the identification of the beneficial owners should be available with the intermediary at any given time.

DIFC: This requirement may arise upon request of the DFSA or pursuant to obligations under the exchanges Business Rules or clearing houses Custodians Terms and conditions.

Thailand: There is a requirement that requires Securities Company to disclose the information of its client.

India: The code of conduct specified in the SEBI (Depositories and Participants) Regulations, 1996 specifies that the DP shall not divulge to other clients, press or any other person any information about its clients which has come to its knowledge except with the

approval / authorization of the clients or when it is required to disclose the information under the requirements of any Act, Rules or Regulations. Further, every DP is required to submit periodic returns to SEBI and to every depository in which it is a participant in the format specified by SEBI or the bye-laws of the depository, as the case may be.

5. What records are legally required to be maintained by the nominee for the securities held in nominee accounts?

- 13 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**).

Argentina: Information about securities owners', such as name, nationality, domicile, issue and quantity are required to be maintained day by day and saved. In addition, depository entities are under a disclosure regime similar to the issuers.

Bangladesh: Structure and price of portfolio, description, number, price of securities of the portfolio and net and total price of the portfolio at the date of submission, transaction date, details of transaction with buy /sale of the concerned period, all financial entitlement including interest, profit, bonus, share and debenture, cost of client's portfolio management, description of expected risk associated with investment decision as well as withdraw of investment decision as per the view expressed by the portfolio manager.

Czech Republic: The account of the owner kept by a person authorized to maintain a follow-up record must contain at least the following data about the person for whom the account is kept, and the investment instruments kept therein. The following data are recorded on the Asset Account, depending on the account nature, with the structure below:

identity of the person for which the owner's account was established, ISIN, quantity of investment instruments, data regarding PPN, data regarding the co-owner of the investment instrument and the size of its share, an indication of the limited transferability of the investment instrument specified by the issuer, whether the investment instrument is subject to a right of lien, data regarding the manager or another person entitled to exercise the rights associated with the investment instrument, and details regarding the person who is the lien creditor, data on the separately transferable rights and their separation from the investment instrument.

Korea: The market intermediary should establish and maintain the Investor Account Book for each client. This record should contain, among others, the name and address of the client, the type and number of shares he or she owns, the name of the issuer of those shares, and transactions or events leading to changes in the number of shares owned. The same is also the case for the CD and its Market Intermediary Account Book.

Macedonia: According to the legislation, the nominee is required to maintain the following records: for domestic physical persons: name, address and unique ID number of the citizen; for foreign individuals: name, citizenship and passport number; for all legal entities: name, address and registered office of such entity and unique identification number of the issuer issued by the Central Register of the Republic of Macedonia. According to the Trading rules of Macedonian Stock Exchange, the nominee is maintaining the following additional information about the client: customer experience in investments in securities, knowledge about the legislation regarding the securities and/or the acts of the Stock Exchange, financial opportunities of the client, expectations of the client from the investment in securities, the

purposes of the investment in securities, the level of knowledge for the risk from investments in securities.

Pakistan: Records of all account openings, account maintenance and all securities transactions are required to be maintained in a manner as provided in the CDC Regulations.

Malaysia: There is no specific record retention requirement imposed on nominee account operators. However, generally they would need to comply with the Companies Act's record retention requirements. In any case, bulks of the shareholders information are maintained by the CD.

Oman: Article (159) of the Executive Regulation of The Capital Market Authority provides that "Trading by the staff of the company shall be pursuant to the following rules:

1. Trading shall only be through the company for which the staff is working and shall disclose this account to the company. The provision shall also apply on the partners and directors.
2. Prior approval shall be obtained from the general manager of the company or equivalent.
3. Inform the compliance officer of all their accounts and the accounts of their spouses, minor children, their sole companies and institutions. They shall also provide the compliance officer with any additional information they request on these accounts.
4. The company shall inform the Department of Trading Surveillance at MSM of all trading accounts stated in the above clause.
5. Compliance officer shall review all the trading by the staff to ensure they are not trading on the basis of undisclosed information or in breach of the statutory requirements.
6. The company shall keep a register on the trading by each staff member and the compliance officer shall review this register regularly.

South Africa: Mandate between the nominee and the investor/client and all other documentation required by the specific CD Participant. Documents as prescribed by law, for example copy of identification number, etc.

Morocco: The nominee should be holding all the documents concerning the identification of the client as well as the documents regarding the transactions that have been made on behalf of the investor.

DIFC: Additional to the requirements as an DFSA Authorized Firm, the terms and conditions for custodians and clearing members with respect to securities listed and admitted to trading to NASDAQ DIFC govern the records required to be maintained. The terms and conditions are a contractual obligation between NASDAQ DIFC as operator of the CD and the (nominee) account operator.

Thailand: Securities Companies are required to maintain the "KYC" record of its client for a minimum of 5 years.

India: In terms of the provisions of the SEBI (Depositories and Participants) Regulations, 1996, every DP is required to maintain the following records and documents, namely: -

- (a) Records of all the transactions entered into with a depository and with a beneficial owner;
- (b) Details of securities dematerialized, rematerialized on behalf of beneficial owners with whom it has entered into an agreement;
- (c) Records of instructions received from beneficial owners and statements of account provided to beneficial owners; and

(d) Records of approval, notice, entry and cancellation of pledge or hypothecation, as the case may be.

The above documents and records are to be preserved by the DP for a minimum period of five years.

6. Which of the following significant problems are faced in your jurisdiction with regard to the use of nominee accounts? Please tick the relevant problem and classify the problems with regard to significance.

- a) shareholders rights,
- b) improper asset allocation,
- c) communication problems,
- d) money laundering,
- e) others (please specify)

➤ 13 jurisdictions responded to this question (**Argentina, Korea, Macedonia, Nigeria, Pakistan, Turkey, Malaysia, Oman, South Africa, Morocco, DIFC and Thailand**)

- 2 jurisdictions faced No significant problems (**Korea and Malaysia**)

Korea: The records of securities ownership at the CD are separately created and maintained for the market intermediary's own securities holdings and those of its clients. In addition, after declaring a dividend or other shareholder benefits, the issuer is obliged to create the list of beneficial owners, and this list has the same legal effect as the shareholders' register. These requirements have proved effective in deterring the aforementioned problems associated with the use of nominee accounts.

Malaysia: No substantial issues as there are clear regulatory requirements and contractual relationship between the nominee account operator and the investors.

- 8 jurisdictions responded as a) shareholder rights (**Argentina, Macedonia, Nigeria, Pakistan, Turkey, South Africa, Morocco and DIFC**).
- 8 jurisdictions responded as b) improper asset allocation (**Argentina, Macedonia, Nigeria, Pakistan, Turkey, South Africa, Morocco and DIFC**).
- 8 jurisdictions responded as c) communication problems (**Argentina, Macedonia, Nigeria, Pakistan, Turkey, South Africa, Morocco and DIFC**).
- 8 jurisdictions responded as d) money laundering (**Argentina, Macedonia, Nigeria, Pakistan, Oman, South Africa, Morocco and DIFC**).
- 4 jurisdiction responded as e) others (**Nigeria, South Africa, Thailand and India**)

South Africa: Pledge, attachments

Thailand: Stock Price manipulation and use of inside information

India: Delay in dematerialization of securities and deficiencies in the account opening procedures

Classification of problem in relation to significance: 1 (Most significant) 5 (Least significant)

Type of problems faced with nominee accounts	<u>Argentina</u>	<u>Macedonia</u>	<u>Nigeria</u>	<u>Pakistan</u>	<u>Turkey</u>	<u>South Africa</u>	<u>Morocco</u>	<u>DIFC</u>	<u>Thailand</u>	<u>India</u>
(a) shareholders rights	5	4	3	5	3	1	2	5		
(b) improper asset allocation	1	5	2	2	1	3	1	5		
(c) communication problems	5	4	4	4	4	2	3	5		
(d) money laundering	5	5	5	3		5	1	5		
(e) others			1	N/A		4	5		1	3

Section III: *Shareholder Identification and Information Flow to Shareholder*

1. Please indicate the record retention requirements for shareholder identification and period of retention after the end of business relationship applicable to:

- i. Central Depository
- ii. Nominee Account Operator
- iii. Issuer in place

i. Central Depository

- 13 jurisdictions responded to this (Argentina, Bangladesh, Korea, Macedonia, Pakistan, Chinese Taipei, Turkey, Malaysia, Oman, South Africa, Morocco and DIFC).

Argentina:

Record retention requirements: Name, Domicile, Nationality, Issue, Quantity

Retention after the end of business relationship: Everlasting

Bangladesh:

Record retention requirements: 7 years

Retention after the end of business relationship: 7 years

Korea:

Record retention requirements: N/A

Retention after the end of business relationship: Market Intermediary Account Book (10 Years)

Macedonia:

Record retention requirements: Documentation refers to the clients, securities, clearance and settlement, as well as accounting records and documentation on the financial operations of the authorized securities market participant.

Retention after the end of business relationship: 5 years

Pakistan:

Record retention requirements: 10 years

Retention after the end of business relationship: 10 years

Chinese Taipei:

Record retention requirements: 15 years

Retention after the end of business relationship: 15 years

Turkey:

Record retention requirements: 10 years

Retention after the end of business relationship: 10 years

Malaysia:

Record retention requirements: 7 years

Retention after the end of business relationship: 7 years

Oman:

Record retention requirements: documents and registers relating to the operations

Retention after the end of business relationship: 10 years

South Africa:

Record retention requirements: 5 years

Retention after the end of business relationship: 5 years (to be changed to 7 years)

Morocco:

Record retention requirements: No retention period required

Retention after the end of business relationship: No retention period required

DIFC:

Record retention requirements: 6 years

Retention after the end of business relationship: 6 years

India:

Record retention requirements: Records and Documents

Retention after the end of business relationship: 5 years

ii. Nominee Account Operator

- 13 jurisdictions responded to this (**Argentina, Bangladesh, Czech Republic, Korea, Nigeria, Pakistan, Chinese Taipei, Malaysia, Oman, South Africa, Morocco, DIFC and India**)

Argentina:

Record retention requirements: Name, Domicile, Nationality, Issue, Quantity, registry of transactions

Retention after the end of business relationship: Everlasting

Bangladesh:

Record retention requirements: 12 years

Retention after the end of business relationship: 12 years

Czech Republic:

Record retention requirements: At least 5 years

Retention after the end of business relationship: At least 5 years

Korea:

Record retention requirements: Retained in the form of documents and/or electronic data

Retention after the end of business relationship: Investor Account Book (10 Years)

Nigeria:

Record retention requirements: N/A.

Retention after the end of business relationship: 5 years

Pakistan:

Record retention requirements: 10 years

Retention after the end of business relationship: 10 years

Chinese Taipei:

Record retention requirements: 15 years

Retention after the end of business relationship: 15 years

Malaysia:

Record retention requirements: 7 years

Retention after the end of business relationship: 7 years

Oman:

Record retention requirements: documents and registers relating to the operations

Retention after the end of business relationship: 10 years

South Africa:

Record retention requirements:

Retention after the end of business relationship: 5 years

Morocco:

Record retention requirements: 10 years

Retention after the end of business relationship: 10 years

DIFC:

Record retention requirements: 6 years

Retention after the end of business relationship: 6 years

India:

Record retention requirements: Records and Documents

Retention after the end of business relationship: 5 years

iii. Issuer in place

- 11 jurisdictions responded to this (**Argentina, Bangladesh, Korea, Pakistan, Chinese Taipei, Turkey, Malaysia, Oman, South Africa, Oman and DIFC**)

Argentina:

Record retention requirements: Name, Domicile, Nationality, Issue, Quantity,

Retention after the end of business relationship: Everlasting

Bangladesh:

Record retention requirements: 12 years

Retention after the end of business relationship: 12 years

Korea:

Record retention requirements:

Retention after the end of business relationship: Shareholders Register (10 Years)

Pakistan:

Record retention requirements: 10 years

Retention after the end of business relationship: 10 years

Chinese Taipei:

Record retention requirements: Permanent

Retention after the end of business relationship: Permanent

Turkey:

Record retention requirements: Records are kept at the CD (10 years)

Retention after the end of business relationship: Records are kept at the CD (10 years)

Malaysia:

Record retention requirements: 7 years

Retention after the end of business relationship: 7 years

Oman:

Record retention requirements: documents and registers relating to the operations

Retention after the end of business relationship: 10 years

South Africa:

Record retention requirements:

Retention after the end of business relationship: 15 years for paper register (to be changed to 7 years)

Morocco:

Record retention requirements: No retention period required

Retention after the end of business relationship: No retention period required

DIFC:

Record retention requirements: 6 years

Retention after the end of business relationship: 6 years

2. Does the beneficial owner of the nominee account have the choice to disclose or not to disclose his/her personal information to the issuer?

Yes/No

- 14 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Nigeria, Pakistan, Chinese Taipei, Malaysia, South Africa, Morocco, DIFC and Thailand**).
 - 2 jurisdictions responded as Yes (**Nigeria and DIFC**)
 - 12 jurisdictions responded as No (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Chinese Taipei, Malaysia, South Africa, Morocco, Thailand and India**)
- 3. If a beneficial owner does not want to have his/her identity disclosed, can the beneficial owner exercise his/her shareholder rights such as voting, dividends, or any other corporate actions through the nominee account operator which holds the beneficial owner's securities on his/her behalf?**

Yes/No

- 12 jurisdictions responded to this question (**Bangladesh, Czech Republic, Macedonia, Nigeria, Chinese Taipei, Turkey, Malaysia, South Africa, Morocco, DIFC, Thailand and India**)
 - In 1 jurisdiction (**Turkey**) it is not possible to register the securities in the name of the depository (or its nominee) but the securities shall be registered in the name of beneficial right owner (investor).
 - 6 jurisdictions responded as Yes (**Bangladesh, Macedonia, Nigeria, Malaysia, South Africa and DIFC**)
 - 5 jurisdiction responded as No (**Chinese Taipei, Czech Republic, Morocco, Thailand and India**)
- 4. Even if the beneficial owner may opt for anonymity behind the nominee account, is there any situation where the information of this beneficial owner is disclosed for particular purposes such as regulatory and tax purposes?**

Yes/No

If your answer to Q. 4 above is Yes, please explain.

- 11 jurisdictions responded to this question (**Bangladesh, Czech Republic, Macedonia, Nigeria, Chinese Taipei, Malaysia, Oman, South Africa, Morocco, DIFC and Thailand**)
- 10 jurisdictions responded as Yes (**Bangladesh, Czech Republic, Macedonia, Nigeria, Malaysia, Oman, South Africa, Morocco, DIFC and Thailand**)

Bangladesh: For regulatory and tax purpose the information of the beneficial owner may be disclosed if that is required by the regulator and the tax authority.

Czech Republic: Such situations are stated in § 115 of Capital Market Undertakings Act No. 256/2004 Coll. Where required by law, the Central Depository and the person maintaining a separate register of investment instruments are obliged to provide data regarding the owners of investment instruments maintained in their registers. The Central Depository shall render the data from the Central Register and from the separate records of the Central Depository to

the person referred to in Art. 115 of the Act, on the basis of a written or electronic request, unless a different form of the request filing is agreed upon.

Macedonia: The authorized securities market participant and the custodian bank pension and investment funds are obliged to keep separate records for the state of the securities for each client and at the request of the MSEC to submit full data for all clients and the number of securities in their property.

Malaysia: There are legal provisions requiring such disclosures:

An authorized nominee shall furnish to the CD the name and other particulars of the BO of the securities deposited in the securities account, opened in the name of the authorized nominee.

Securities Industry (Central Depositories) (Exemption) Order 2005 – An exempt authorized nominee would need to provide information or document relating to the deposited securities in the securities account when requested by the SC, the CD or the Exchange.

Oman: The CMA can require any information for regulatory purpose. Article (3) of the Executive Regulation of The CMA points that” The Authority shall conduct inspection of the entities governed by the provisions of the Capital Market Law and the regulations thereof, at any time, to examine their compliance with the provisions of the law and regulations and take appropriate action. Such entities shall facilitate the mission of the audit and inspection team and provide all information they request. All information and data accessed by the audit or inspection team shall be treated as confidential information and shall not be disclosed or published.”

South Africa: Securities Services Act, 2004 makes provision for disclosure of information by the CD.

Morocco: According to a circular issued by the CDVM on anti-money laundering 05/10, the identity of the beneficial owner should be known by the intermediary.

DIFC: By way of a regulatory request pursuant to the DIFC’s Markets or Regulatory Law.

Thailand: Yes, the regulation is open for the transfers of this information for regulatory purpose

- 1 jurisdiction responded as No (**Chinese Taipei**)

5. For the corporate rights of beneficial owners to be exercised, does the regulatory framework (tick the relevant response);

- a) Indicate procedures (i.e., standard form, templates to be used), or**
- b) Entitle the issuer to impose procedures/documents to be used?**

➤ 12 jurisdictions responded to this question (**Argentina, Korea, Macedonia, Pakistan, Chinese Taipei, Turkey, Malaysia, Oman, South Africa, Morocco, Thailand and India**)

- All jurisdictions responded as a) indicate procedures.
- 1 jurisdiction Thailand also responded as b) entitle the issuer to impose procedures

6. Do issuers have direct or indirect access to information regarding the holding of;

- a) The nominee; and**
- b) The beneficial owner?**

- 14 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Chinese Taipei, Turkey, Malaysia, Oman, South Africa, Morocco, DIFC and Thailand**)

a) The nominee

- 5 jurisdictions responded to this (**Bangladesh, Korea, Oman, South Africa and DIFC**)

Bangladesh: The issuers have indirect access to information regarding the holding of the nominee (omnibus account operator) from the Central Depository or from the concerned merchant banker. The issuers can get information of the beneficial owner from the omnibus account operator.

Korea: As the CD appears as the owner of securities in the shareholders' register of the issuer, the issuer has no direct access to information regarding the market intermediaries.

South Africa: If the nominee is recorded as legal owner in the electronic "subregister", the issuers have access to information through the CD.

DIFC: Under the CSD terms and conditions prescribed by the exchange for members, the CSD is entitled to make available to the issuer a report detailing the ownership of deposited securities of restricted issuers i.e. issuers' whose foreign ownership is restricted. (Para 6.7)

b) The beneficial owner

- 8 jurisdictions responded to this (**Argentina, Korea, Macedonia, Pakistan, Turkey, South Africa, Morocco and Thailand**)

Argentina: CDs are required to issue a document containing the sales and purchases of the securities corresponding to the indicated issuer and the document must be provided to that issuer up to date, day by day. In addition, CDs issue holding certificates for investors to assist and exercise their voting rights in corporate annual meetings.

Korea: The issuer has direct access to the information regarding the beneficial owners, only when it is able to create the list of beneficial owners as of the record date. In other times of the year, it does not have direct access to such information.

Macedonia: According to article 283 from the Company Law, shares shall be registered in the register of shareholders of the company maintained in electronic form by the Central Securities CSD by indicating the full name of the shareholder, his unique ID number, passport number or ID number if the shareholder is a foreign natural person and/or the number of any other identification document valid in his country of origin and under his citizenship, as well as his place of residence, or the business name, the registered office, and the registration number, if the shareholder is a legal person, and other information. Each

person registered in the register of shareholders in the manner prescribed by the company law shall be deemed to be a shareholder of the company.

Pakistan: The CDC is required to make available to the issuer a List of Beneficial Owners as and when required by the Issuer in terms of its Regulations.

Turkey: Issuers can have direct access to information regarding the holding of beneficial right owners if the beneficial right owner allows their information to be disclosed.

South Africa: The issuers will also have access to the information of the beneficial owner through the “beneficial download” procedure as prescribed in the CD rules and Directives.

Morocco: No, an issuer can only have access to information of the beneficial owner if the beneficial has nominal accounts.

Thailand: The issuer can request for the book register to close in order to obtain information on the beneficial owner of the share.

- 4 jurisdictions provided one response for both a) and b) (**Czech Republic, Chinese Taipei, Malaysia and India**).

Czech Republic: The Central Depository shall issue extracts from the issue records:

- a) for the issuer, always upon the issue or cancellation of an issue of securities;
- b) upon the issuer’s request;
- c) to a request of the Czech National Bank ;
- d) pursuant to an issuer’s notification on the change into physical form
- e) in other cases stipulated by valid legislation.

The extract from the issue records shall contain details regarding the owners of the Asset Account kept in the Central Depository on which the securities of the given issue are kept as of the required date of the extract from the issue records, together with the data regarding the numbers of the securities kept on such accounts. Details regarding the owners of the Asset Account are provided to the extent of the record of persons. The extract from the issue records also includes:

- a) data regarding the holders of the accounts kept in the follow-up records, and the number of securities kept on such accounts;
- b) data regarding the manager or another person entitled to exercise the rights associated with the securities;
- c) data regarding the lien creditor, to the extent of the data in the record of persons (as regards pledged securities), and data regarding the number of the securities to which the right of lien applies;
- d) numbers assigned to the securities kept on the Asset Accounts in the Central Depository and the follow-up records, if the extract from the issue records is to be issued for the purpose of drawing lots within the meaning of the applicable provisions of the Commercial Code;
- e) Information regarding PPN, if the extract is issued according to Art. 111 (4) and (5) and Art. 113 (2) of the Act Capital Market Undertakings Act No. 256/2004 Coll. as amended.

The scope of the extract from the issue records according to the previous paragraph shall be determined by the applicant requesting the extract.

Chinese Taipei: Before a stock or corporate bond issuer calls a shareholders meeting or corporate bondholders meeting, or decides to distribute dividends or bonus or other benefits, or pays principal or interest, the TDCC notifies the issuer of the true name or title and domicile or residence of the owner of stocks or corporate bonds held in its custody and the amount held by such owner, and upon such notice by the TDCC, the information is deemed to have been entered into the issuer's shareholders register or corporate bond counterfoils.

Malaysia: Issuers have indirect access to information regarding the holding of the nominee and BO as the record of depositors (shareholders) is maintained by the CD. The issuers would have to submit a request to the CD for record of its shareholders which would include nominees and the direct BO. The issuer can also request its registered shareholders to inform whether they are the BO or trustee of the securities account as stated in Section 69O of Companies Act 1965.

India: The issuer through his share transfer agent has access to the holding of all the shareholders.

7. Information Flow

7.1 Is the information flow between CDs, registrars, issuer agents, the issuers, and nominee account operators automated?

Yes/No

- 16 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Nigeria, Pakistan, Chinese Taipei, Turkey, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**)
- 9 jurisdictions responded as Yes (**Argentina, Czech Republic, Nigeria, Pakistan, Turkey, Oman, South Africa, Morocco and India**).
- 7 jurisdictions responded as No (**Bangladesh, Korea, Macedonia, Chinese Taipei, Malaysia, DIFC and Thailand**)

7.2 If your answer to Q. 7.1 above is Yes;

a) What is the level of automation?

- i. High**
- ii. Medium**
- iii. Low**

10 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Nigeria, Pakistan, Turkey, Oman, South Africa, Morocco and India**)

5 jurisdictions responded as i. High (**Argentina, Czech Republic, Turkey, Morocco and India**)

4 jurisdictions responded as ii, Medium (**Nigeria, Pakistan, Oman and South Africa**)

1 jurisdiction responded as iii. Low (**Bangladesh**)

b) Are the securities directly posted in the name of the investor after settlement?

Yes/No

9 jurisdictions responded to this question (**Argentina, Bangladesh, Macedonia, Pakistan, Turkey, Oman, South Africa, Morocco and India**)

7 jurisdictions responded as Yes (**Argentina, Macedonia, Pakistan, Turkey, Oman, Morocco and India**)

2 jurisdictions responded as No (**Bangladesh and South Africa**)

c) Who has access to this information?

- i. CD**
- ii. issuer**
- iii. registrar**
- iv. nominee account operator**
- v. any other**

11 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Macedonia, Nigeria, Pakistan, Turkey, Oman, South Africa, Morocco and India**)

9 jurisdictions responded as i. CD (**Argentina, Bangladesh, Czech Republic, Macedonia, Pakistan, Turkey, Oman, South Africa and India**).

5 jurisdictions responded as ii. Issuer (**Argentina, Macedonia, Pakistan, Oman and South Africa**)

4 jurisdictions responded as iii. Registrar (**Argentina, Nigeria, Pakistan and South Africa**)

5 jurisdictions responded as iv. Nominee Account Operator (**Argentina, Bangladesh, Czech Republic, Macedonia and South Africa**).

4 jurisdictions responded under v. any other (**Argentina, Turkey, South Africa and Morocco**)

Argentina: The beneficial owner (investor) has electronic access to the account, which is updated daily. Investors also have the quarterly statement in paper.

Turkey: The intermediaries which the related investors have accounts in.

South Africa: Investor, if they want to inspect the electronic register in terms of the procedure laid down in the Companies Act.

Morocco: The Custodian

7.3 If your answer to Q. 7.1 above is No, when and how can the issuer or its agents recognize actual shareholders?

- 7 jurisdictions responded to this (**Bangladesh, Korea, Macedonia, Chinese Taipei, Malaysia, South Africa and Thailand**)

Bangladesh: If the issuer required the information, they can get the information from the omnibus account operator.

Korea: The issuer can recognize its actual shareholders, when the CD sends the issuer the information regarding the beneficial owners in case of an ordinary shareholders' meeting or an interim dividend declaration (within 18 days from the record date) or in other cases (within 6 days from the record date).

Macedonia: According to article 283 para.5 from the Company Law, upon a request of the company, the CSD shall notify the company of the changes made to the register of shareholders.

Chinese Taipei: At the book closure period, the TDCC prepares a roster of the names of securities owners on optical disk, and notifies the issuer to come to pick it up.

Malaysia: the issuer or its agents recognize actual shareholders as and when they request for the ROD from CD.

South Africa: Only through disclosure mechanisms

Thailand: Once the book register is closed

7.4 Do prevailing regulations oblige intermediaries to provide information to the issuer on:

(i) the nominee?

Yes/No

(ii) the beneficial owner?

Yes/No

15 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Nigeria, Pakistan, Chinese Taipei, Turkey, Malaysia, South Africa, Morocco, DIFC, Thailand and India**)

In 1 jurisdiction (**Malaysia**) the CD maintains the shareholder's information. Hence, there is no direct relationship between the issuer and brokers. Nevertheless, if the issuer is to request for a ROD from BMD, it would have details of the nominee and BO.

(i) the nominee

13 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Nigeria, Pakistan, Chinese Taipei, South Africa, Morocco, DIFC, Thailand and India**)

- 5 jurisdictions responded as Yes (**Bangladesh, Czech Republic, Nigeria, Chinese Taipei and South Africa**).
- 8 jurisdictions responded as No (**Argentina, Korea, Macedonia, Pakistan, Morocco, DIFC, Thailand and India**)

(ii) the beneficial owner

14 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Nigeria, Pakistan, Chinese Taipei, Turkey, South Africa, Morocco, DIFC, Thailand and India**)

- 6 jurisdictions responded as Yes (**Czech Republic, Korea, Pakistan, Chinese Taipei, South Africa and Thailand**).

- 8 jurisdictions responded as No (**Argentina, Bangladesh, Macedonia, Nigeria, Turkey, Morocco, DIFC and India**)

7.5 What action, if any, can be taken against intermediaries or shareholders who do not provide the requested information?

9 jurisdictions responded to this question (**Bangladesh, Czech Republic, Korea, Pakistan, Chinese Taipei, Oman, South Africa, Thailand and India**)

Bangladesh: Enforcement action can be taken against the intermediaries or shareholders for not providing the information. Enforcement action includes penalty, license cancellation or suspension etc.

Czech Republic: Depends on Circumstances. Capital Market Undertakings Act No. 256/2004 Coll.

Korea: If the market intermediary fails to send the CD the information regarding the beneficial owners upon its request, it may be subject to monetary fines under law.

Pakistan: Disciplinary proceedings can be initiated under the CD Act and CDC Regulations which may range from penal action, restriction or suspension of rights of CDS.

Chinese Taipei: The TDCC always duly provides the information in accordance with law.

Oman: This case is breach for article (3) of the Executive Regulation of The Capital Market Authority. So, the case shall be transferred to Disciplinary Committee.

South Africa: The legislation provides that CD rules and Directives are binding on the CD participants and makes provision for payment of fines, other penalties, disciplinary hearings, suspension and termination.

Thailand: Action can be taken against Securities Company for not complying with the rules of conduct. Shareholders will not receive his/her right if the information is not disclosed to the issuer.

India: If the intermediaries or shareholders do not provide the requested information, actions such as imposition of monetary penalty, debarment from accessing the market for a certain period, freezing of investor accounts etc can be taken.

7.6 Do issuers have to maintain a pre-annual general meeting (AGM) register for their AGM?

Yes/No

15 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Nigeria, Pakistan, Chinese Taipei, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**)

- 8 jurisdictions responded as Yes (**Bangladesh, Korea, Pakistan, South Africa, Malaysia, DIFC, Thailand and India**)

- 7 jurisdictions responded as No (**Argentina, Czech Republic, Macedonia, Nigeria, Chinese Taipei, Malaysia and Oman**)

7.7 If the answer to Q. 7.6 above is No, then how do issuers know about their shareholders who have expressed the desire to vote?

6 jurisdictions responded to this question (**Argentina, Czech Republic, Macedonia, Chinese Taipei, Malaysia and Oman**)

Argentina: Issuers must accept all credited shareholders in the annual meeting, who also have voting rights.

Czech Republic: Issuers do not have such knowledge.

Macedonia: According to article 391 para. 1, from the Company Law, each shareholder who intends to participate to the called general meeting of shareholders shall be obliged to report his proposed attendance at the meeting no later than prior to the commencement of the scheduled general meeting of shareholders. The management is to prepare a list of registered shareholders which is to be compared with the list of registered shareholders with the shareholders' register, obtained from the CSD, forty-eight hours prior to maintenance of the general meeting.

Chinese Taipei: The TDCC provides the roster of securities owners to the issuer, and the issuer itself then notifies the investors of the general meeting.

Malaysia: The shareholders will either personally cast a vote on the day of the AGM or appoint a proxy to cast the vote, in which case the proxy form would need to reach the issuer prior to the AGM.

Oman: CD provides the details since it acts as the Registrar

8. Please list any other shareholders rights/benefits or information (apart from matters of the AGM) which the issuer is required to convey to its shareholders and how these rights are conveyed to the beneficial owners of securities.

12 jurisdictions responded to this (**Argentina, Bangladesh, Korea, Macedonia, Pakistan, Chinese Taipei, Turkey, Malaysia, Oman, Morocco, DIFC and India**)

Argentina: All disclosure regimes for issuers: accounting, relevant information, etc.; first refusal right in a split, voting rights, participation in the dividends.

Bangladesh: The beneficial owners can be entitled the dividends, right shares or bonus shares through the omnibus account operator.

Korea: Shareholder rights or benefits other than those associated with the matters of the shareholders' meeting may be exercised with or without the beneficial owner's indicating his or her intention to exercise such rights. One example of the latter is the right to dividends. Dividend payments by the issuer are automatically conveyed from the CD to the market intermediary and to the ultimate beneficial owner. On the other hand, in the event of a rights issue, the beneficiary owner must indicate his or her willingness to participate in the rights

issue through the market intermediary and the CD. And then, new shares of the issuer are conveyed reversely from the CD to the market intermediary and to the ultimate beneficial owner.

Macedonia: According to article 320 from the Company Law, each shareholder shall be entitled to inspect the by-laws, regulations and the documents of the company (the charter and the other by-laws and all amendments thereto along with the consolidated texts; the minutes and all other documents pertaining to all the general meetings of shareholders; the minutes and the resolutions pertaining to the meetings of the management body and the supervisory board; the annual accounts and other financial statements required to be kept pursuant to the law; all enclosures (documentary ownership evidence and proofs) submitted all public notices and prospectuses for the issue of shares and other securities of the company; all written communication of the company with the company's shareholders; an updated list of the full names and addresses of all elected members of the management body and of the supervisory board; documents pertaining to pledges and mortgages; the reports of the certified auditor and of the authorized appraiser; the ballot-papers and proxies for participation in the general meeting of shareholders in an original or copy form; the company's collective agreement; and the by-laws, regulations and documents as determined by law and the charter), at the company's registered office in the manner stipulated by the company charter. According to para. 2 the shareholders shall exercise their right to be informed about the minutes and the resolutions of the meetings of the management bodies through the non-executive members of the board of directors and/or the supervisory board. According to para.4 in the event that the company does not allow the shareholder to carry out the inspection and copy the by-laws, regulations and documents, the shareholder may submit a proposal to the court in order to obtain access to the by-laws, regulations and documents. The proposal shall indicate the by-laws, regulations and documents that the shareholder wishes to inspect or receive, as well as the form in which the by-laws, regulations or the documents should be delivered.

Pakistan: The issuers are solely responsible:

- (a) for sending notices to any account and sub-account holders of general meetings or any other notices required to be sent to the holders of any securities of the issuer;
- (b) for the purpose of allowing any account and sub-account holders to attend general meetings of any holders of securities of the issuer or to appoint proxies;
- (c) for dispatching dividend or other warrants to any account and sub-account holders;
- (d) for dispatching to any account and sub-account holders any other payments or benefits paid by the issuer or formal offers for subscription of securities of the issuer.

Chinese Taipei: The issuer is required to convey to shareholders matters including the convening of shareholders meetings, distributions of rights or dividends, and of any capital reduction, merger or consolidation, or seasoned equity offering.

Turkey: Issuers are required to provide information regarding corporate actions both to the Public Disclosure Platform (PDP) and CD. Issuers use the CD system to convey to shareholders their financial rights such as issues, distributions and dividends. In payments and distributions such as dividends, coupon payments or redemptions, the CD allocates the cash amounts from issuers to participants. Participants distribute payments to investors on the basis of information they take from the CD. In rights issues, the owners who want to use pre-emptive rights also transfer their payments to the CD through participants. CD passes on the payments to issuers, and allocates the shares that it has received from issuers to investor accounts. A similar operation takes place in bonus issues without the cash transfer leg.

Malaysia: The issuers of listed securities will make public announcements on corporate exercises such as dividend, rights issue, offer for sale, bonus issue, share split etc to the shareholders and the announcements are available on the exchange's website. For rights issue or offer for sale, a letter of offer will be issued to the securities account holder and likewise a letter of allotment will be issued to the registered investors for bonus, share split and share consolidation exercises. Such notices will be issued to the registered shareholders. For investors maintaining accounts with the nominees account operators, the rights will be conveyed to the BO of securities based on the contractual arrangement between the BO and the nominee.

Oman: Directly by the issuer to investors based on the contact information provided by CD.

Morocco: Issuers are held to communicate, via the media (at least in one newspaper) semi-annual and annual financial information. In addition, the issuer is required to convey the following rights and benefits: shareholders' voting rights, dividends, and protect minority rights. Under the Moroccan jurisdiction, the issuer is required to provide within the 15 days prior to the shareholders' meeting the following information: The agenda, the details about proposed projects, all the available financial document, a list of executives present in the meeting, the management report, the audit report, a list of shareholders and the type and share of securities that they hold. Shareholders can rely on court intervention if the issuer refuses to disclose the defined information.

DIFC: There are regulatory requirements pursuant to DFSA's OSR to publically announce any shareholders rights/benefits or information to the market. The method for a security admitted to the Official List of an AMI in the DIFC is through the company announcement platform of the AMI. For example, pre-emptive rights would require shareholder approval.

India: Every issuer whose securities have been declared as eligible for dematerialization in a depository shall give information to the depository about book closures, record dates, dates for the payment of interest or dividend, dates for annual general meetings and other meetings, dates for redemption of debentures, dates for conversion of debentures and warrants, call money dates and such other information at the time and in the manner as may be specified by the depository in its bye-laws or agreement:

9. If the law in your jurisdiction protects certain rights of minority shareholders, can the minority shareholder identify/have access to the information regarding the ownership of securities held in the nominee account?

11 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Malaysia, Oman, South Africa, Morocco and DIFC**).

- In 9 jurisdictions (**Argentina, Bangladesh, Korea, Macedonia, Pakistan, Malaysia, Oman, South Africa and DIFC**) minority shareholder can identify/have access to the information regarding the ownership of securities held in the nominee account.

Korea: Under Korea's Commercial Code, minority shareholders may act collectively, for instance, to request the issuer to convene an extraordinary shareholders' meeting, dismiss a board director, inspect company documentation, or file a class action suit, on condition that their combined interests in the company exceed a certain threshold. If this condition is

satisfied, those minority shareholders can have access to the information regarding the beneficial owners as of the relevant record date.

Macedonia: According to article 283 para.6 from the Company Law, each shareholder shall be entitled, upon request, to inspect all data registered in the register of shareholders' of the company in which he is a shareholder. Access shall be enabled by the CSD. A shareholder requesting urgent access to the shareholders' register shall be granted access within a period of not longer than one working day. In all other cases, the shareholder requesting access to the shareholders' register shall specify the day of the intended inspection. Data obtained from the inspection shall be used exclusively for the purpose of exercising the shareholders' rights. According to para.7 each shareholder is entitled to receive a copy of the data recorded in the shareholders register of the company in which he is a shareholder upon prior request submitted to the CSD.

Pakistan: Every issuer is required under the Companies Ordinance, 1984 to file a list of shareholders (Form A) with the SECP on an annual basis which is available for inspection by any person including the minority shareholders.

Malaysia: All shareholders are treated fairly as there is a strict secrecy provision in SICDA. The identity of the BO under the authorized nominee account is disclosed except for the exempt authorized nominee account which is maintained on an omnibus basis. Under the Companies Act 1965, the register of shareholders and register of substantial shareholders are also available for vetting by any shareholders at the registered office of the issuer. Nevertheless, SICDA stipulates that a minority shareholder being a member of an issuer may require the issuer to furnish him/her a copy of the ROD, but only so far as it relates to the names, address, and the number of securities.

South Africa: The Companies Act makes disclosure compulsory in certain instances.

DIFC: there are protection provisions in place for the protection of minority shareholders but certain minority shareholders can not identify/access information regarding the ownership of securities by other minority shareholders.

- 2 jurisdiction provided a response as No (**Czech Republic and Morocco**)

Section IV: *Regulatory Structure for Intermediaries in Relation to Nominee Accounts*

1. What rules are applicable to the existence, establishment and operation of nominee intermediaries? Please explain.

13 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**).

Argentina: To settle a CD is required to raise a minimum equity, as well as it is needed to present: an account plan, operating manuals, security measures, informatic systems, internal rules, and the additional requirements that must be met by issuers (i.e., by-laws, list of members of the CG boards, financial statements, investor protection code, etc.). The periodic disclosure regime in relation to the company is similar to what is required to issuers.

Bangladesh: Securities and Exchange Commission (Merchant Banker and Portfolio Manager) Regulations, 1996 and Securities and Exchange Commission (Securities Custodial Services) Regulations, 2003 are applicable to the existence, establishment and operation of nominee account operator (omnibus account operator).

Czech Republic: Capital Market Undertakings Act No. 256/2004 Coll. and Decrees of Czech National Bank.

Korea: Under the Capital Markets Act, the market intermediaries are subject to certain licensing and business conduct regulations. Legal provisions applicable to the existence, establishment, and operation of the CD are also found in the Capital Markets Act and the KSD's Regulation on the Deposit of Securities.

Macedonia: For the existence, establishment and operation of nominee intermediaries the rules are stipulated in the Law on securities and by-laws derived from the law. The rules are same as the rules for establishment and operation of authorized securities market participant-intermediary.

Pakistan: The existence, establishment and operation of nominee intermediaries is presently governed under the CD Act and the Central Depositories (Establishment and Regulation) Rules, 1996. The operations of the CDC are governed under the CD Act and the Regulations made thereunder.

Malaysia: Rules of BMD and Guidelines for the Formation of Nominee Companies to Comply with FIC Guidelines.

Oman: Article (134) of the Executive Regulation of The Capital Market Authority pointed that” The Company licensed for brokerage or portfolio management or margin trading, with the exception of the branches of foreign companies, may operate trust accounts. They shall observe the following:

- a. Arrangement shall be under written contract concluded between the company and the customer. The contract shall specify the fees received by the company and where the securities are to be kept, kind of reports to be sent to customers, basis for allocation of orders among the customers in the event of execution of consolidated orders, procedures for dividends, bonus shares, rights issue, attendance of general meeting and voting rights.
- b. Keep customers securities in segregated accounts under the name and surveillance of the company.
- c. Ensure safekeeping of the securities and rights associated with these securities, including the right to vote, receive dividends, notices and financial statements.
- d. Any other requirements prescribed by CMA”.

South Africa: Nominees must fulfill criteria to be registered and approved by the self-regulatory organisations (i.e. the Exchange in the case of the broker and the CD in the case of the participant) or any other nominee that must be approved by the Regulator (s 36 of the Securities Services Act). The registrar keeps a list of all approved nominees.

Morocco: There are no applicable rules for nominee intermediaries under the Moroccan jurisdiction. However, for brokerage firm, which might be acting as nominee intermediary, the rules applicable are defined by the CDVM circular 01/10 relative to brokerage firms. The circular explains and specifies the organizational structure, the human resources, technical

resources, financial resources, backups, archival procedures, internal control tolls required for nominee intermediaries.

DIFC: Providing or Arranging for Custody is defined as a Financial service in the DFSA's General Module (GEN) and is a licensed activity. The DFSA Conduct of Business Module (COB) contains detailed provisions for firms operating Safe Custody Accounts for clients. This includes detailed requirements regarding Recording, registration, and holding requirements (COB A6.3); Client accounts in relation to client investments (COB A6.6); Holding or arranging custody with third party agents; client disclosure (COB A6.7); Reconciliation (COB A6.9); and, the submission on an annual basis of a Safe Custody Auditor's account (COB A6.10).

Thailand: Securities Companies are required to obtain license from the Minister of Finance. CD can only be operated by the exchange or its subsidiaries.

India: The Depositories Act, 1996 and SEBI (Depositories and Participants) Regulations, 1996 contain provisions with respect to the existence, establishment and operation of depositories and DPs.

2. Please describe how client accounts are separated from the intermediary's own account?

13 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**).

Argentina: The account code has two parts one corresponding to the intermediary (collective account) and the other to the beneficial owner (Sub-Account).

Bangladesh: It is mandatory for the intermediaries to maintain their separate account.

Czech Republic: Investment firms shall ensure continuous and unambiguous identification of investment instruments and monetary funds belonging to each client so that they are able, at any time, to distinguish assets held for one client from assets held for other clients and from their own assets. The internal records shall also include records of the third-party account in which the individual investment instruments and monetary funds of each client are kept.

Korea: In accordance with the Capital Markets Act, the records of securities ownership at the CD are separately created and maintained for the market intermediary's own securities holdings and those of its clients.

Macedonia: According to article 123 of the Law on securities, the brokerage house shall keep the funds given by clients for buying securities or money received from sale of a customer's securities, in a separate account. The brokerage house shall pay the funds from the sale of securities in the name and on behalf of the client's account within one (1) business day after the receipt of the funds unless otherwise agreed. The funds in the separate account may only be used in accordance with the customer's instructions. The client's funds cannot be included in the assets of the brokerage house in the case of liquidation or insolvency and cannot be used for payment of own liabilities.

Pakistan:**HOUSE ACCOUNT:**

An Account maintained on the CDR by an Account Holder for recording Book-entry Securities beneficially owned by the Account Holder.

SUB-ACCOUNT:

A sub-account maintained, as part of the account of a participant, in accordance with the regulations by a central depository in the name of a sub-account holder so as to record the title of the sub-account holder to any book-entry securities entered in such sub- account.

Malaysia: When a nominee account is opened with CD by an intermediary, the intermediary is required to make a declaration whether the intermediary is the BO of such account or is acting as a nominee for its client. In the event the intermediary is the BO then this will be indicated in the CDS and in the event it is acting as a nominee for its client, the intermediary will state the name of its client in CDS.

Oman: Article (157) of the Executive Regulation of The Capital Market Authority pointed that” Segregation of customers funds shall be pursuant to the following rules:

1. All funds belonging to customers shall be deposited and kept in a separate bank account (account) of the company, which shall be titled as “customer account”. Customer funds would include amounts received from customer for purchases, amounts received from settlement of his sales and dividends received on his account.
2. The company shall use the funds deposited in customer’s account to fulfill the settlement of obligations due to MSM and other brokers arising from the purchases for the account of that customer.
3. If the customer does not have sufficient deposits to cover his purchases or a customer’s cheque fails to clear the bank, the deficit shall not be covered from the funds of other customers.
4. The funds deposited in the customer’s account may not be lent or used by the company for its other operations or purposes or pledged or otherwise used as collateral.
5. The company shall appropriate its commissions and fees earned to the general bank account of the company.
6. The audited and un-audited reports of the company’s account shall reflect both the amounts due to customers, and the amounts deposited in the customer’s account.
7. The licensed company may not charge the customer interest on amounts due to the company unless the company is licensed to provide margin financing.”

Also article (158):” The securities held by the company shall be segregated pursuant to the following rules:

1. No licensed company shall hold customer securities except pursuant to a written contract. The contract must be signed by the customer and the general manager of the company. The contract must state the conditions of operation of the account.
2. Companies holding customer securities in the name of the company must continuously maintain accurate separate accounts clearly identifying the assets and transactions belonging to each customer and portfolio. The back office shall record the transactions and make reconciliations on a daily basis.”

South Africa: Segregation is required in Account Structure.

Morocco: The mechanism of assets segregation imposes on the intermediary to open with the central depository two separate accounts (clients’ account and operator’s account). Operations are registered under two different codes. 001for operations related to beneficiary

owner and 000 for proper operation of the intermediary. Every order given by a beneficial owner should be directly recorded on the clients' account opened with the central depository.

DIFC: Separation is through Account structure.

Thailand: Securities Companies must maintain books and records for each of its client's assets and segregate it from those of the Securities Company.

India: As per Regulation 42(1) of the SEBI (Depositories and Participants) Regulations, 1996, separate accounts shall be opened by every participant in the name of each of the beneficial owners and the securities of each beneficial owner shall be segregated, and shall not be mixed up with the securities of other beneficial owners or with the participant's own securities.

3. Intermediaries Custody of Investors' Accounts

3.1 Are the intermediaries allowed to take custody of investors' accounts in any circumstances?

Yes/No

14 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Turkey, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**).

- 8 jurisdictions responded as Yes (**Argentina, Bangladesh, Macedonia, Pakistan, South Africa, Morocco, DIFC and Thailand**).
- 5 jurisdictions responded as No (**Czech Republic, Korea, Turkey, Malaysia, Oman and India**).

3.2 If Yes, how does the law safeguard any misconduct by the nominee account operators (i.e., an intermediary's short selling or lending of client securities held in the nominee account)? Please describe briefly.

10 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Macedonia, Pakistan, Malaysia, South Africa, Morocco, DIFC and Thailand**).

Argentina: The nominee account is property of investors, so that the CD just can authorize movements in the account under the existence of an order: selling, lending (need a receipt or a supporting document). The conduct of the intermediaries is also enforced by their corresponding SROs.

Bangladesh: Short selling or lending of client securities is prohibited for the nominee account operator (omnibus account operator).

Czech Republic: Investment firms shall ensure that the client funds and funds of the investment firm are kept in separate accounts. Investment firms may use client investment instruments to pursue transactions on their own account or on the account of some other client if the client provides prior express consent to the use of the investment instruments under specifically stipulated conditions. A client who is not a professional client (hereinafter "retail client") must grant his consent in writing or in some other equivalent manner. Such

consent must be provided in a separate document and, in the case of electronic contact, by means of a separate data report. An investment firm shall make available to retail clients its rules or principles for use of client investment instruments for transactions on the investment firm's own account or on the account of some other client and the rules or principles for the provision of consent

Macedonia: According to the article 129-a from the Law on securities, prior to the performing service –keeping of securities, the authorized securities market participants (bank or brokerage house) is obliged to sign a contract with the client in writing, regulating their common rights and obligations in performance of keeping of securities. The authorized securities market participants may dispose the securities that are kept on separate accounts only upon an order of the owner on whose behalf they provide the service of keeping securities.

Pakistan: Section 24 of the CD Act provides for conditions of securities transactions to or from any sub-account. Further, the detailed mechanism of securities transactions is also provided in the CDC Regulations. Additionally CDC through its monitoring and compliance system (both on-site and off-site) ensures that the client securities are safeguarded from any misuse by the nominee account operator.

Malaysia: The SICDA and Rules of BMD have provisions for penalty for any non-compliance of the stipulated provisions and The Guidelines on Market Conduct and Business Practices for Stockbrokers and Licensed Representatives set out clear prohibition on unauthorized use of client accounts.

South Africa: In terms of the Securities Services Act and CD Rules and directives, intermediaries are prohibited to go into debit balance. The mandate between the relevant parties may also contain certain protective measures. In terms of common law, all custodians have certain duties and obligations towards its clients, including the duty to conduct its business in a proper way.

Morocco: In case nominee account operators are under the control of the regulator, The CDVM conducts regular inspections that aim to make sure that the nominee account operator does not carry out fraudulent transactions that might constitute a risk for the clients. In addition, the intermediaries are required to communicate on a regular basis documents to the regulator for control purposes.

DIFC: DFSA's COB Module has the following provision that governs the safeguarding the use of nominee accounts: An Authorized Firm must not use a Client's Safe Custody Investment for its own purpose or that of another Person without that Client's prior written permission.

Thailand: The Law restricts a Securities Company from taking any action against the client's asset that will in affect alter the client's right to such asset, it restricts the Securities Company from using one client's asset for the benefit of another client and requires a Securities Company to take the necessary action in order to ensure that the client will receive all the rights and benefits from the share that the client is holding through the Securities Company.

4. Does the law in your jurisdiction require the nominee account operators across all tiers to treat fairly all beneficial owners in their nominee accounts? (For example, is it possible that, in the absence of appropriate legal provisions, a lower-tier

intermediary unfairly allocates to the investors in its nominee account the securities that have been allocated to that account by the upper-tier intermediary?)

Yes/No

If yes, please briefly describe.

12 jurisdictions responded to this question (**Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**).

- 10 jurisdictions responded as Yes (**Czech Republic, Korea, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**).
- 2 jurisdictions responded as No (**Bangladesh and Macedonia**).

Czech Republic: The law requires owners to be treated fairly.

Korea: Under the Capital Markets Act, all market intermediaries, including the nominee account operators, should provide financial services fairly under the principle of good faith.

Pakistan: The regulatory framework provides in detail the principles for fair and equal treatment of all beneficial owners.

Oman: Under the CMA regulations companies shall comply with internationally accepted rules of professional and ethical code of conduct and shall maintain their own code of conduct in accordance with requirements set out by CMA”.

South Africa: The current legislation only regulates up to a certain layer in the holding chain.

Thailand: Since the Securities Act requires the intermediary to register the beneficial owner of the share as the owner at the close of book register, the problem mention in the question does not arise.

5.Liens of Intermediaries

5.1 Are there rules regarding liens of intermediaries over the investor’s nominee accounts?

Yes/No

13 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC and India**).

- 9 jurisdictions responded as Yes (**Argentina, Bangladesh, Korea, Pakistan, Malaysia, Morocco, DIFC, Thailand and India**).
- 4 jurisdictions responded as No (**Czech Republic, Macedonia, Oman and South Africa**).

5.2 If Yes, please describe the rules and also indicate if they are mandatory.

9 jurisdictions responded (**Argentina, Bangladesh, Korea, Pakistan, Malaysia, Morocco, DIFC, Thailand and India**).

Argentina: Liens are not required by regulation but implemented in voluntary bases by SROs (Self Regulated securities markets).

Bangladesh: It is mandatory as per bilateral contract.

Korea: The Commercial Code's provisions pertaining to the lien of the commercial agent apply mutatis mutandis to the market intermediary. In other words, the Commercial Code gives the market intermediary the right to impose a lien on its client's securities, until the client's debt obligations are satisfied (§111).

Pakistan: The terms and conditions of agreement between the beneficial owner and the nominee account operator attached to the Standardized Account Opening Form prescribed under the CDC Regulations empowers the CDS Participants to establish the lien over securities available in an investors nominee account in exceptional circumstances such as failure to make payments etc.

Malaysia: It is not mandatory for intermediaries to have a lien over the investors' nominee accounts. The arrangement is contractual in nature. The Rules of Bursa Malaysia Securities Berhad states that for every purchase of securities by a client, the intermediary/broker may have a lien on all the securities pursuant to a written agreement between the client and the intermediary/broker.

In the event where a client is owing the intermediary/broker money for the purchase of any securities, The Rules of Bursa Malaysia Securities Berhad also provides the intermediary/broker the right to borrow the purchased securities for the purposes of pledging to the extent of the amount that the client is owing to the intermediary/broker for such a period until the client has settled his/her obligations.

Morocco: According the CDVM circular 06/06 relative to issuing stocks in the stock exchange, the intermediary is free to set any financial guarantee (cash, stocks, or other) to respect the specific requirements as prescribed in the prospectus. Sometimes, the prospectus specifies the minimal financial guarantee requirements. In this case, the intermediaries are obliged to respect these requirements.

DIFC: Under DFSA COB Rules (6.13.4) an Authorized Firms holding collateral must disclose to the Client the terms governing how the collateral will be held, must not be registered in that Client's own name, and in the case of insolvency excess collateral will be sold and client money distributed in accordance with DFSA rules if a domestic firm, or subject to another regime if a non-domestic firm.

Thailand: The Securities Company can hold client asset in its nominee account as collateral if the client has taken out securities financing with the company. Again, at the period of closing book, it broker must provide information of securities owners for CD.

India: A beneficial owner desirous of creating a pledge or a hypothecation on a security owned by him can make an application to the depository through his DP. Subject to the pledge agreement, the beneficial owner may invoke the pledge and the depository shall have to amend its records accordingly. No transfer of security in respect of which a notice or entry

of pledge or hypothecation is in force shall be effected by a DP without the concurrence of the pledgee or the hypothecatee as the case may be.

6. Is the nominee account operator required to install proper controls and technical systems for data storage and processing to deal with transactions in its nominee accounts?

Yes/No

14 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Nigeria, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**).

- 13 jurisdictions responded as Yes (**Argentina, Bangladesh, Czech Republic, Korea, Nigeria, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**).
- 1 jurisdiction responded as No (**Macedonia**).

7. Protection of Beneficial Owner in Case of Insolvency

7.1 Is the beneficial owner protected against the insolvency of a nominee account operator?

Yes/No

If Yes, please explain.

14 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Nigeria, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**).

- All jurisdictions responded as Yes.

Argentina: In the cases in which the securities market raises lien on intermediaries regarding nominee accounts holdings, the market offers a resource to protect the investor against insolvency of the intermediary. In the case where this resource does not exist, the investor has the judicial way.

Bangladesh: In case of insolvency of the nominee account operator, the investor can withdraw his/her fund as per regulation 30(1)(c) of Securities and Exchange Commission (Merchant Banker and Portfolio Manager) Regulations, 1996.

Czech Republic: They are protected by the GUARANTEE FUND OF SECURITIES TRADERS. The Fund's powers include namely the following:

- a) providing compensation for non-released client assets in accordance with the law,
- b) collecting the Fund's sources of assets defined by the law, paying repayable financial assistance and loans, investing the Fund's monetary assets,
- c) fulfilling the information duties defined by the law,
- d) assuming and exercising the rights of customers of a trader to performance in respect of the trader to the extent of their right to the sum of compensation paid from the Fund.

Korea: Although its name does not appear in the shareholders' register, the beneficial owner of securities deposited at the CD is deemed as the owner of those securities under law. In

addition, as the records of securities ownership at the CD are separately created and maintained for the market intermediary's own securities holdings and those of its clients, the creditors of a failed market intermediary cannot take any legal actions (i.e., seizure) against the clients' assets placed in the CD.

Macedonia: According to article 123 from the Law on securities, the brokerage house-intermediary shall keep the funds given by clients for buying of securities or the money received from the sale of a customer's securities, in a separate account which shall be opened for that particular purpose. According to para 6, the client's funds cannot be included in the assets of the brokerage house in the case of a liquidation or insolvency and cannot be used for payment of the brokerage house's liabilities. Furthermore, according to article 129-a para 3 from the Law on securities, securities which on behalf of a client are kept on a separate account in authorized securities market participants are in the ownership of the client and cannot enter into the assets of the authorized securities market participants or liquidation or bankruptcy assets, nor cannot be used for settlement of their liabilities.

Pakistan: The nominee account operators act as custodian of the securities of beneficial owners. In case of insolvency where the CDC is the nominee account operator, the concerned issuer shall prepare and deliver physical share certificates to the beneficial owners maintaining accounts with the nominee account operator. In case of insolvency where CDS Participants other than the CDC are nominee account operators, the CDC shall on the request of the beneficial owners transfer their securities from accounts maintained with the insolvent CDS Participant to the accounts of the beneficial owners maintained with any other CDS Participant.

Malaysia: the BO is protected against the insolvency of a nominee account operator by virtue of the contractual relationship the BO has with the nominee account operator and the general law of trust and agency and the relevant insolvency laws.

South Africa: From a securities perspective, securities are segregated, but since money ("cash") is fungible, it will be trapped in the insolvent Participant.

Morocco: A guarantee fund is established aiming at protecting the investors against insolvency of nominee account operators acting as custodians. The brokerages firms contribute to this fund biannually. The fund is, managed by the CDVM, is placed in a current account in the treasury. The fund contributions are calculated based on the value of securities and cash held in nominee account on a semi-annual basis. A similar structure exists for banks. Please refer to question 6 in Section I.

DIFC: The purpose of recording, registering or holding Investments in a Client Account is to ensure that monies and assets belonging to Clients are separately identifiable from those belonging to the Authorized Firm such that, following a Distribution Event, any subsequent distribution of monies/assets may be made in proportion to each Client's valid claim over those assets/monies.

Thailand: The client assets are separated from those of the operator.

India: In an event of solvency of a DP, the depository takes over the custody of the investor accounts. Every beneficial owner of that participant has the option of either getting his securities held with the participant transferred to another participant, or get the securities rematerialized. Till such time, the BO's account is managed by the depository.

7.2 Does the beneficial owner have to rely on the intervention of a court or liquidator?

Yes/No

14 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Nigeria, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**).

- 6 jurisdictions responded as Yes (**Bangladesh, Malaysia, Oman, South Africa, Morocco and DIFC**).
- 8 jurisdictions responded as No (**Argentina, Czech Republic, Korea, Macedonia, Nigeria, Pakistan, Thailand and India**)

7.3 In what way is the answer different if the insolvency is of an upper-tier nominee account operator?

In 10 responding jurisdictions the answer is the same as 7.1 above. (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Nigeria, Pakistan, Malaysia, Oman and Morocco**)

In 1 jurisdiction (**South Africa**) if the account was opened at CD level, the CD will move the account of the insolvent intermediary to an account of a solvent intermediary as indicated on the system of the CD. This solution is currently being investigated.

In 1 jurisdiction (**DIFC**) the upper-tier Nominee Account Operator is a limited purpose entity which is by statute not allowed to absorb losses and has no budget of its own.

8. Is there any specific penalty, fine, etc., defined under the law to deal with cases of fraud or misconduct on the side of the nominee account operator?

13 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**).

Argentina: The CNV is solely entitled to raise administrative sanctions. The maximum penalty that the CNV is able to impose, for instance in the case of a CD, is the permanent cancellation of the license to operate. Nominee accounts operators are intermediaries belonging to some SRO so that those intermediaries are under the enforcement power by the corresponding SRO. In the same way, SROs are under the enforcement power by this CNV.

Bangladesh: Yes, enforcement action can be taken against the nominee account operator under the law to deal with cases of fraud or misconduct. Enforcement action includes penalty, license cancellation or suspension etc.

Czech Republic: Capital Market Undertakings Act or Criminal Code is applied.

Korea: The Capital Markets Act provides for a wide range of business conduct regulations, and many of them also apply to the market intermediary's activities associated with the operation of nominee accounts. If it violates legal provisions pertaining to the operation and

administration of nominee accounts, it may be subject to imprisonment of up to one year or monetary fines of up to KRW30 million.

Macedonia: According to article 238 para 1 point 15 from the Law on securities the brokerage house shall be fined with 4.000 to 5.000 euro in denar counter value for misdemeanour if according to article 123 fails to keep the assets of the client on a separate account; fails to pay to the client the funds from selling of securities; it makes payments from clients' assets for transactions concluded in its own name and own account; it uses one client's assets for the benefit of any other client.

Pakistan: Section 28 of the CD Act provides for the following fines/ penalties:

28. Offences. –

(1) Whoever knowingly and willfully contravenes or attempts to contravene or abets the contravention of any of the provisions of this Act or the regulations made thereunder shall be punishable with a fine which may extend to five hundred thousand rupees and to a further fine not exceeding ten thousand rupees for every day if such contravention continues after the imposition of the fine.

(2) Notwithstanding anything contained in sub-section (1), whoever knowingly and wilfully contravenes or attempts to contravene or abets the contravention of the provisions of section 24 shall be punishable with a fine which may extend to one million rupees and to a further fine not exceeding twenty thousand rupees for every day after the first contravention during which the contravention continues or with imprisonment for a term which may extend to five years, or with both.

(3) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(4) Notwithstanding anything contained in sub-section (3), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other employee of the company, such director, manager, secretary or other employee shall also be deemed to be guilty of the offence.

Malaysia: SICDA Section 47 and 48 - Fine not exceeding 10 million ringgit or imprisonment not exceeding 10 years or both;

Section 49 - Fine not exceeding 1 million ringgit or imprisonment not exceeding 10 years or both;

Section 51 - Fine not exceeding 1 million ringgit or imprisonment not exceeding 5 years or both.

Oman: No but the following procedures are taken in cases of any breach related to securities in Capital Market Authority:

1. If the breach is proven, the issue can be settled after paying the stated penalty amounts.
2. In case the breaching party refuses settlement, the case shall be transferred to Disciplinary Committee that looks up lawsuit and pronounces sentence to the breacher by referring to Chapter five (Penalties) of Capital Market Law.

3. The accused party may appeal the Committee's sentence in the Complaint Committee. The decision of the Complaint Committee shall be final whether approving or releasing the complaint. In case the complaint is disapproved, the concerned party may contest the decision of the Complaint Committee in front of the Court of Administrative Justice to contest CMA's decision."

South Africa: Normal legal rules will apply.

Morocco: Yes, if the entity acting as nominee account operator is under the control of the CDVM.

DIFC: Any breach of DFSA's rules or DIFC laws can be sanctioned appropriately as provided by powers defined in the DIFC Regulatory and available to the DFSA as its financial services regulator.

Thailand: Securities Companies that fail to comply with the following measure given in the law may face a fine not exceeding 300,000 baht and further fine not exceeding 10,000 baht for everyday that the failure continues. Furthermore, the person responsible for the operation of the company may face imprisonment for a term not exceeding 1 year or a fine not exceeding 300,000 baht.

India: As per the provisions of Chapter V of the SEBI (Intermediaries) Regulations, 2008, following actions can be initiated against the DP for contravention of Acts and Regulations laid down by SEBI:

- (i) Suspension of certificate of registration for a specified period;
- (ii) Cancellation of certificate of registration;
- (iii) Prohibiting the noticee to take up any new assignment or contract or launch a new scheme for the period specified in the order;
- (iv) Debarring a principal officer of the noticee from being employed or associated with any registered intermediary or other registered person for the period specified in the order;
- (v) Debarring a branch or an office of the noticee from carrying out activities for the specified period;
- (vi) Warning the noticee.

9. What are the legal requirements for internal control systems to prevent misconduct of nominee account operators?

13 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**).

Argentina: The regulation establishes the requirement of having internal control procedures. At the moment of the registration in order to obtain the license, the CD must present the internal control system. It is assessed technically by the CNV in order to decide approval or rejection. Nominee accounts operators are intermediaries belonging to some SRO so that those intermediaries are under the enforcement power by the corresponding SRO. In the same way, SROs are under the enforcement power by this CNV.

Bangladesh: A compliance officer of the portfolio manager must be engaged by the merchant banker to prevent misconduct of nominee account operator.

Czech Republic: Rules for Prudent Provision of Investment Services order, that an investment firm shall introduce control and security measures applicable to the processing and recording of data and an internal control system..

Korea: In accordance with the Capital Markets Act, the market intermediary is required to put in place internal controls to ensure legal compliance, sound business conduct, and investor protection. It is also required to appoint a compliance officer in charge of evaluating the implementation of and fine-tuning those internal controls.

Macedonia: According to article 192 form the Law on securities, the MSEC shall perform inspection of the operation of the authorized securities market participants with respect to enforcement of the Law on securities, by-laws deriving from the Law on securities and the rules of self-regulatory organizations. According to article 193, the MSEC may perform regular and extraordinary inspection and inspection may be on-site and off-site. According to article 194, after direct or indirect inspection of the operation of the authorized securities market participants, the MSEC shall make: a decision on elimination of the identified irregularities or a decision on temporary prohibition of operation, or decision on revocation of the license, consent or approval that the MSEC issues pursuant to the Law on securities.

Pakistan: Chapter 13 of the CDC Regulations provides for framework for monitoring and compliance with the CDC Regulations whereby internal audit department of CDC is not only responsible for designing controls for CDC but also ensures compliance of other CDS Participants with the CDC Regulations through on-site and off-site inspections.

Malaysia: As only specified entities can be a nominee account operator, and such entities are regulated by the SC or Central Bank, they would be subject to the internal control requirements imposed by the respective regulators.

Oman: Article (147) of the Executive Regulation of The Capital Market Authority pointed that” Compliance officer shall ensure the company’s compliance with legal requirement provided in the Capital Market Law, the regulation and directives and any other requirements specifically: Ensure adequacy of internal regulation and audit, verify implementation and ensure that improvements are introduced to the systems and control processes.”

South Africa: The CSD Rules and directives spell out rules on reporting, audit processes, monitoring, risk management, compliance officers security measures and controls, supervision.

Morocco: If the nominee account operator is under the control of the regulator, according to the CDVM circular 06/01 relative to the function of internal control, he has to ensure the conformity of operations and internal procedures, the liability of the data processing, and the quality of the information system and organization of the firm. The company should make sure that an internal controller is hired and that he is aware of the legal framework in practice. The company should inform the CDVM about the identity of this person and afford to the controller all the independence and resources required for practicing his duties.

DIFC: Under DFSA COB Rules (6.13) there are rules governing the holding of collateral including Client Investments. An Authorized Firm must have systems and controls to ensure proper safeguarding of Client Investments (6.13(2)).

Thailand: A Securities Company is required to have an internal control procedure in place to safeguard client asset.

India: As per Regulation 34 of the SEBI (Depositories and Participants) Regulations, 1996, every depository shall have adequate mechanisms for the purposes of reviewing, monitoring and evaluating the depository's controls, systems, procedures and safeguards. Further, as per Regulation 46 of the said Regulations, every participant shall have adequate mechanism for the purposes of reviewing, monitoring and evaluating the participant's internal accounting controls and systems.

10. How does the regulator ensure that beneficial shareholders receive their shareholder rights and payouts? And what regulatory measures can be taken to counter the problems posed by nominee accounts?

B. 13 jurisdictions responded to this question (**Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**).

Argentina: The CNV has power to sanction the breaches of the rules, for which any investor can make a report to the CNV any misconduct by any of the market agents.

Bangladesh: If the regulator receives any complaint from the beneficial owner in this regard, the nominee account operator will be asked to clarify the matter. If the nominee account operator fails to give any reasonable answer or solve the problem, the regulator will go for enforcement action, which includes penalty, license suspension, or cancellation that depends on merit of the issue.

Czech Republic: Regulator in all cases acts according to appropriate Act.

Korea: By conducting examination of the market intermediaries and the CD, the Financial Supervisory Service ascertains whether they take appropriate actions to ensure that the beneficial owners receive their shareholder rights and dividends. As the records of securities ownership at the CD are separately created and maintained for the market intermediary's own securities holdings and those of its clients, it is almost practically impossible for the market intermediary to engage in misconduct involving its client's securities. In addition, the licensing and business conduct regulations for the market intermediaries, as well as the examination of the CD, have proved effective in nearly eliminating the likelihood of misconduct or other problems that could take place in connection with the operation of nominee accounts.

Macedonia: The MSEC is authorized for implementation of the Law on securities and the Company Law, in the part of protection the shareholders rights. According to the Company law, the shareholders have a voting right, participation in the profit (right of dividend), the right of remaining assets following the settlement of liabilities towards the creditors in proportion to the nominal values of their shares, etc.

Pakistan: The SECP as the apex regulator of the capital markets is there to ensure that adequate regulatory framework and appropriate level of compliance with the same is available to protect the beneficial shareholders rights and payouts. As also given in earlier sections of the questionnaire such rights and payouts are covered extensively in both the CD Act and the CDC Regulations.

Malaysia: These are provided under SICDA, Companies Act 1965 and Rules of BMD. The details are as follows:

- Section 2 - "beneficial owner": in relation to deposited securities, means the ultimate owner of the deposited securities who 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, and does not include a nominee of any description.
- Section 25(4) - Every securities account opened with a CD shall be in the name of the BO of the deposited securities or in the name of an authorized nominee.
- Section 25A(1) - Where an authorized nominee opens a securities such account under subsection 25(4), nominee shall only hold deposited securities for one BO in respect of each securities account.
- Section 107B of Companies Act 1965 stipulates that a depositor whose name appears in a ROD maintained by BMD shall be deemed to be a member of the listed issuer and shall be entitled to the number of securities stated in the and all rights, benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from, such securities.
- Rules of BMD - Guidelines For the Formation of Nominee Companies to Comply with Foreign Investment Committee (FIC) Guidelines.
- It is required in the Memorandum of Association of the nominee account operator to collect and, pass on the benefits of any dividends, bonuses and any other rights associated with any shares, stocks, bonds, obligations, loan stock, debentures or other security to the foreign BO of such shares, stocks, bonds, debentures, loan stock or other securities.

In addition, since the relationship between the nominee account operator and the BO is also contractual in nature, the laws of contracts, trust and agency will also apply in relation to the rights of the BO arising from the securities.

Oman: By audit and surveillance.

South Africa: The CD only regulates the CD participants. Beneficial Shareholders must take steps and report irregularities with the appropriate bodies or take legal action.

Morocco: The CDVM circular 01/08 relative to securities transactions define in a very clear way all the procedures and measures that a custodian should consider while dealing with securities operations.

DIFC: A requirement is in place (COB A6.6) to ensure that beneficial shareholders receive their legitimate rights and pay-outs. Where the safe custody is provided at the Authorized Firm COB 6.13.2 stipulates that an Authorized Firm which holds or controls Client Investments must have systems and controls in place to ensure the proper safeguarding of Client Investments.

Thailand: Securities Companies must maintain books and records for each of its client's assets and segregate them from those of the Securities Company. The Law requires the intermediary to register the beneficial owner of the share as the owner at the close of book register. The Law requires Securities Companies to take the necessary action in order to ensure that the client will receive all the rights and benefits from the share that the client is holding through the Securities Company.

India: As per the provisions of Section 10(3) of the Depositories Act, 1996, the beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository. For contravention of acts by the depository or DP actions in the form of cancellation of registration, suspension, warnings, etc. can be levied.

Analysis Of Responses

To date regulatory authorities of following 20 jurisdictions have provided responses to the survey questionnaire:

Argentina, Bangladesh, Czech Republic, DIFC, Ecuador, India, Korea, Macedonia, Malaysia, Morocco, Nigeria, Oman, Pakistan, Poland, Romania, Syria, South Africa, Chinese Taipei, Thailand and Turkey.

Fifteen jurisdictions stated that they use the nominee account system: **Argentina, Bangladesh, Czech Republic, DIFC, India, Korea, Macedonia, Malaysia, Morocco, Nigeria, Oman, Pakistan, Chinese Taipei, South Africa and Thailand.** Morocco reported that the activity of nominee account operator is not regulated by the competent authority; however the nominee account operator is acting as a proxy on behalf of the beneficial owner. Five jurisdictions do not use nominee accounts: **Ecuador, Poland, Romania, Syria and Turkey.**

Securities holding

In most of the jurisdictions securities are dematerialized and registered by book-entry either with the issuer or with the CD or CD's participants. (**Argentina, Macedonia, Syria, Romania, Turkey, Poland, Czech Republic, Oman, Morocco**). In other jurisdictions it was reported a combined holding of securities between inscribed physical certificate and dematerialized and registered by book entry of the issuer/CD (**India, Nigeria, Chinese Taipei, Pakistan, Malaysia, South Africa**) while two jurisdictions have only inscribed physical certificates. One jurisdiction (**Bangladesh**) uses the system of bearer of physical certificates. **DIFC and Thailand** reported to have all securities holding systems.

CD establishment, role and relationship with the beneficial owner

Central Securities Depositories are established in all jurisdictions. Two jurisdictions (**Romania and India**) have two CSD's ensuring the clearing and settlement of the transactions performed on the stock exchanges existing in the country.

The main role of the securities depository is to provide securities custody and post-trading services. In addition to these main tasks, the CD's in the surveyed jurisdictions provide services such as:

- Transfer of ownership;
- Management of the ISIN codes;
- Delivery and transfer of securities;
- Facilitation of borrowing and lending of securities
- Additional services provided on behalf of the issuers

In **Pakistan**, the CD is providing depository and custody services both for listed and non-listed securities. In **Syria**, the CD deals with the ownership transfers due to inheritance, transfers due to legacy, ownership transfers in enforcement of final court judgments, securities grants in favor of duly registered religious and social entities and charities, family transfers including first and second class relations and between spouses, transfers among shareholders in case of suspending listing or trading.

In most of the jurisdictions surveyed the beneficial owner does not have a direct relationship with the CD, securities being deposited via market intermediaries as participants to the CD's system. In other jurisdictions as **Bangladesh, Malaysia and Oman** the investor has a direct relationship with the Central Depository. **Poland and Romania** have a global accounts system opened by the intermediaries on behalf of their clients (the CD participants register the general number of securities held by the clients). In **Korea**, in most of the times, the beneficial owner's shares are recorded in the shareholders' register in the name of the KSD. However, whenever the issuer declares a dividend or convenes a shareholders' meeting, the shareholders' register is updated to enable the issuer to identify who are the beneficial owners as of the record date.

Accounts holders

In 65% of the jurisdictions that responded to the survey only market intermediaries are entitled to open an account with the CD showing that there is no direct relationship between the investor and the central depository. In **Bangladesh, Macedonia, Pakistan, Romania, Malaysia, Oman and DIFC** both intermediaries and investors can open individual accounts with the CD.

Tracing back securities

The analysis shows that most jurisdictions have mechanisms in place to trace back the ownership of securities. Information sufficient to identify the beneficial owner is required to be kept. This information include at least: the name, the address, the national identification code for natural persons or the registration code with the trade registry for moral persons, the amount of the securities held etc. In **Macedonia**, in the case of bonds, certificates of deposit, and several types of bills: the amount of the interest rate; method of interest calculation; payment dates; maturity date and date of registration of the security in the CSD. In the case of preferred shares, preferences as to dividends; voting right and/or liquidation proceeds and date of registration of the security in the CSD. In **Romania**, the CD is responsible to trace back the securities held in the individual accounts, for global accounts this responsibility lies with the intermediaries' ad participants to the CD's system. In **India** records and documents are to be maintained by the depositories for a minimum of 5 years. In **Bangladesh, Malaysia and South Africa** this type of information should be stored for 7 years, while in **Pakistan** it should be stored for 10 years and in **Chinese Taipei** for 15 years.

Investors' rights

Most of the responses provided that the investors' enjoy the shareholders rights conferred by the Company Law against the issuer including the right to be noticed and to attend general meetings or to appoint proxies, the right to get dividends or other form of the payment of benefits, voting rights, the right to attend the GSM, and the right to be informed on the activities performed by the issuer including the access to the company's documents (instruments of incorporation, minutes and resolutions passed). In **Turkey**, investors do not have direct access to the records, hence the account operators act on behalf of the investors against issuers and in **South Africa** the nominee is exercising the shareholder's rights against the issuer. In **Macedonia**, in case the issuer refuses the investor to exercise the right to be informed, the latter can obtain access through a court's decision.

As regards the investors' rights against the primary nominee account operator, they are exercised on a contractual basis. In most cases, the participant to the CD has to inform the

investor on the transactions made on his account and it has to get the consent of the investor when performing transactions with the securities beneficially owned by the clients. In **Malaysia**, the nominee appears in the book of the issuer as the depositor therefore all the rights and benefits would be passed down by the issuer via CD to the nominee. In **South Africa**, the Participant must ensure that the investor is timely advised of and in a position to exercise its rights as shareholder or legal owner of the securities in the issuer, as if the investor were the registered shareholder or legal owner of the securities. In **India** SEBI (Depositories and Participants) Regulations, 1996 specifies the obligations of the Depository Participants. In case of contravention of any of the SEBI Regulations and requirements, actions can be initiated against the concerned intermediaries

In **Czech Republic, Korea, Pakistan, Chinese Taipei** the CD is providing the list of shareholders especially to the purpose of dispatching dividends and other payment rights or to the purpose to summoning the general shareholders' meeting. The advertisement of the GSM is the responsibility of the issuer while the payment of dividends is secured by the primary nominee account operator. **Except of Bangladesh**, the central depository has no direct relationship with the investors in terms of exercising their voting rights and participation in the general shareholders meetings. In **Korea**, beneficial owners may opt to exercise their voting rights either with or without the involvement of the KSD/market intermediaries. In **Thailand** the relationship between CD and the investor will only exist once the book is close, and the investors who are registered as shareholder will have a direct claims against its right through CD.

Protection in case of insolvency

The protection of the investors in case of the primary nominee account insolvency is given by the requirement for the intermediary/CD to assure the segregation of the clients' assets. The client's money cannot be included in the assets of the brokerage house in the case of liquidation or insolvency and cannot be used for payment of own liabilities. In **Macedonia** the brokerage house has the obligation to separately keep the money given by clients for buying securities and money received from sale of a customer's securities. The brokerage house had to pay the funds from the sale of securities in the name and on behalf of the client's account within one business day after the receipt of the funds unless otherwise agreed. In **Czech Republic and Macedonia**, the investors' are protected by forms of compensation schemes (the Guarantee Fund of Securities Traders in Czech Republic and a guarantee fund established by the CD in Macedonia). In **Argentina**, warranties are established by market over their intermediaries that will be triggered for the protection of investors. The corresponding market will execute its own rights against the insolvent intermediary. In **India**, in the event of bankruptcy, insolvency, liquidation or winding up of the depository participant, the depository ensures that the investor's rights are protected by managing the investors' accounts till the said accounts are transferred to some other account or are closed.

In **Syria**, clients' securities that are controlled by brokers, may not undergo liens, attachments, liquidation, or bankruptcy of the brokers and in **Oman**, in the event the partnership is continued following the death, declaration of ineligibility, bankruptcy or dismissal of a partner, such partner, or his heirs or his legal representatives, as the case may be, shall be entitled to the value of such partner's share in the partnership assessed on the basis of a special inventory list established as of the day of the event which resulted in such partner's separation from the partnership. In **Thailand**, investor assets under the broker are not included in nominee account operator assets in the case of insolvency.

Beneficial owners' rights

The analysis shows that there are rules in place assuring that beneficial owners benefit from the rights attached to the securities. Securities are registered with the central depository/ CD Participants, the beneficial owners being entitled to exercise the shareholder rights. Approximately 90% of respondents stated that the beneficial owner can exercise the right attached to shares and this is protected by law.

Most of the respondents have explained the operations between the CD and the intermediary.

Holding system

In **Bangladesh, Czech Republic, DIFC, Korea, Morocco, Pakistan, Oman, South Africa and Thailand** there is an indirect holding system, accounts being opened with the intermediary or the CD on behalf of the clients. In **Bangladesh**, both market intermediaries and investors are allowed to open accounts with the Central depository. However, Bangladesh reported that a limited number of investors operate through omnibus accounts. In **India, Pakistan, Korea and Thailand** in the issuer entry book is registered the name of the Central Depository.

The direct holding system is used in 7 jurisdictions (**Ecuador, Korea, Nigeria, Pakistan, Turkey, Oman and Thailand**). In the issuer's book entry is registered the name of the securities holder in case of the physical shares. In **Korea, Pakistan, Oman and Thailand** both indirect and direct holding systems has been reported.

In the jurisdictions that reported a modified system (**Argentina, India, Macedonia, Nigeria, Poland, Romania, Syria, Chinese Taipei, Malaysia**) the accounts are opened via an intermediary. **Romania and Chinese Taipei** reported the obligation for the intermediary to open individual clients' sub-accounts.

Structure of the nominee accounts

The analysis of the responses shows that more than 60% of the jurisdictions have a multiple tiered structure of the nominee accounts system in place. In **Argentina, Bangladesh, Korea and Oman** there is a single-tiered structure with a single layer of intermediaries handling the accounts of the individual investors. In **Czech Republic, DIFC, Pakistan, Turkey, South Africa and Thailand** the system is multiple tiered where multiple layers of intermediaries (nominee account operators) exist between the issuer and ultimate investors. **Morocco** reported that the nominees accounts are not regulated in the country but the nominee account operator is acting as a proxy on behalf of the beneficial owner.

Authorization of the nominee account operator

The authorization of the nominee account operator granted by the competent authority is a mandatory requirement in **Czech Republic, DIFC, Korea, Pakistan, Oman and South Africa** while in **Argentina and Morocco** the authorization is not necessary. In **Argentina**, due to the self-regulation the authorization of the operator corresponds to the securities markets according to the markets' rules which are firstly approved by this CNV and is subject to the control and enforcement mechanisms of this CNV. In the case of the MAE (Mercado

Abierto Electrónico, it is one of the largest securities markets in Argentina) intermediaries, the resolution approving an intermediary to operate requires approval of this CNV.

Standard disclosure

Out of 11 jurisdictions that replayed to this question, in **Czech Republic, Korea, Nigeria, Morocco, Oman and South Africa** there are standard disclosure requirements for the nominee account operator as regards the investors whose holdings it is managing. In **Korea, Morocco and in South Africa** disclosure requirements are clearly meant to identify the beneficial owner. In **Czech Republic** the entities disclose information on persons, instructions and instruments while in **Oman** the entities have the obligation to make available all the information requested by the authorities during an audit or inspection mission.

The use of the system

In **India, Korea, Pakistan and Thailand** more the 80% of the investors use the indirect system while in Bangladesh almost 90% of the investors are trading through individual accounts.

Nominee accounts used in the past

In **Turkey**, in the past there was a nominee accounts system in place but it was abolished due to some misappropriation cases occurred especially caused by intermediaries

Section II: Operational Framework for Nominee Accounts

Background

From Section II onwards only the jurisdictions which have Nominee Accounts in place have provided responses. Seventy five percent of the respondents (**Argentina, Bangladesh, Czech Republic, DIFC, India, Korea, Malaysia, Macedonia, Morocco, Nigeria, Oman, Pakistan, South Africa, Chinese Taipei and Thailand**) permit the use of nominee accounts for securities holding purposes. In **Pakistan**, the CD is also the nominee account operator.

Regulatory Approach In Identifying And Tracking Ultimate Beneficial Owners of securities held by nominee account operator

13 jurisdictions require the nominee account operators to maintain sufficient information and records to identify the beneficial owners of securities held by nominee account operators.

The CD system in **Argentina, Czech Republic and Chinese Taipei** directly identifies the beneficial owners of the securities. **Bangladesh** and **Thailand** require periodical information from nominee account operators to disclose the beneficial ownerships of the securities held. In **Korea** and **Pakistan**, the CD is able to generate detailed information on the beneficial owners. The tracking of ultimate beneficial owners of securities in **DIFC** is not centralised. It remains the responsibility of the licensed and regulated intermediary to be able to reconcile the holdings of its clients against its holding in the upper-tier nominee account operator or CD. Meanwhile, in **India**, the details of the beneficial owners can be obtained from the share transfer agent.

In **Bangladesh, Macedonia, Malaysia, Morocco and Oman**, the information on the beneficial owners of securities needs to be furnished as and when requested by the regulators.

While there are CD rules and directives on the disclosure of beneficial owners, due to legislative limitation, the CD in **South Africa** can only “drill down” up to two layers (levels) below the nominee account operators.

Multiple-Tiered Structure Having Pooled Nominee Accounts/Omnibus Accounts

Seven jurisdictions allow multiple-tiered structure that involves the operation of pooled nominee accounts or omnibus accounts (**DIFC, Macedonia, Malaysia, Morocco, South Africa Chinese Taipei and Thailand**). In **Morocco**, only global custodians are permitted to operate pooled nominee accounts or omnibus accounts and these custodians should have all documentations to identify and confirm the identity of the beneficial owner.

As for other jurisdictions, **Chinese Taipei** obliges the beneficial owners of omnibus account to report their shareholding to the Exchange by the end of each market day.

The nominee account operators in **Macedonia** and **Malaysia** are required to maintain separate records on the beneficial owners of the securities held and such information shall be disclosed as and when requested by the regulators. **South Africa** can only trace the identity of the beneficial owner if the holding is not more than two layers below the CD. The existing legislation does not regulate holding that is further down in the holding chain. Hence, collating information from various holders in the holding chain is a problem as it is very tedious.

In **Malaysia**, under certain selective situations, banking secrecy provisions has been used as a basis for inability to provide the beneficiary owner’s information. In such situations, the Securities Commission Malaysia, Exchange or CD will work closely with the relevant regulator to ensure availability of information required.

The situation in **Morocco** is slightly different in which global custodian executes orders for intermediaries acting on behalf of different end beneficiaries with homogenous orders. Hence, it is difficult to identify the end beneficiaries. Similarly, in **Thailand**, it faces problem with foreign omnibus account and has through the arrangement of IOSCO MMoU sought assistance from the relevant foreign regulators to retrieve information on the beneficial owners. Nonetheless, in practice, it is noted that such effort could be time and resource consuming.

Usage of Pooled Nominee Or Omnibus Accounts

Nine jurisdictions allow operations of pooled nominee or omnibus accounts, of which **DIFC, Malaysia, Chinese Taipei and Thailand** allow all categories of investors (domestic, institutional and foreign) to do so. Eighty nine percent of the jurisdictions responded that they do not prohibit foreign investors to operate such type of account.

Macedonia and **Morocco** only allow foreign investors to operate pooled nominee or omnibus accounts. In **Pakistan**, the present regulatory framework does not allow pooled nominee account or omnibus account (Group accounts in CDS were banned in 2005). Nevertheless, there is a possibility that a foreign investor may still operate under a pooled account through

an international broker. **Bangladesh** allows both domestic and foreign investors to open pooled nominee or omnibus accounts. In **South Africa**, only domestic investors can do so.

Addressing Securities Crimes

Eight jurisdictions responded that they are able to tackle securities crimes such as stock price manipulation even though the foreign investors may hide their identity using a pooled/omnibus account (**Bangladesh, DIFC, Macedonia, Malaysia, Morocco, Pakistan, Chinese Taipei** and **Thailand**). In **Bangladesh** and **Chinese Taipei**, information on the beneficial investors needs to be submitted to the regulators periodically. As for **DIFC, Macedonia, Malaysia** and **Pakistan**, such information can be obtained upon request.

In certain jurisdictions such as **Morocco, Thailand** and **South Africa**, obtaining the identity of the end beneficial owners remains a challenge especially if the shareholders concerned are residing in a foreign country.

Enforcement of rights against an upper-tier nominee account operator

Seven jurisdictions responded that generally investors in their respective country are able to enforce their rights against an upper-tier nominee account operator (**Bangladesh, DIFC, Malaysia, Morocco, Pakistan, South Africa** and **Thailand**).

Nevertheless, the circumstances may vary. Under normal circumstances, the investors in **Malaysia, Morocco** and **Pakistan** are able to enforce their rights. However, in **Malaysia** this would depend on whether there is a direct contractual relationship between the investor and the upper-tier nominee account operator failing which the investor would have to rely on the primary nominee account holder to enforce those rights on its behalf. In the event of breach of duty by the intermediary, investors in **Bangladesh, Pakistan** and **Thailand** would be in the position to do the same. In the event of a breach of duty by upper tier intermediary, investors in **Pakistan** and **South Africa** would be able to exercise their rights. When it comes to insolvency of the intermediary, **Bangladesh** and **Pakistan** investors are able to enforce their rights.

In **South Africa**, there are legal provisions for certain warranties and indemnities with regard to the instruction to transfer dematerialized securities. No transfer may take place in the relevant accounts unless a proper authenticated instruction to transfer has been received by the operator. Meanwhile, **Morocco** had two constraints: foreign law applies when the investor and nominee account operator are foreigners and the investor has no direct relationship with the upper-tier nominee account operator to enforce the investor rights.

In **DIFC**, the investors' rights are enforceable on the entity providing the service and with which the investor has a contractual relationship with. The upper-tier intermediary has legal title to securities listed on the official list.

Disclosure Requirements on the Nominee Account Operator

12 jurisdictions responded that they have some form of disclosure requirements as follows (**Argentina, Bangladesh, DIFC, India, Korea, Macedonia, Malaysia, Morocco, Oman, Pakistan, South Africa** and **Thailand**). Money laundering is the most common requirement which is applicable to 83% of the respondents.

	Taxation	Company Law	RPT	Takeover	Money Laundering	Control of Regulated Entities	Others
Argentina	-	-	-	-	-	-	√
Bangladesh	√	-	√	-	√	√	-
DIFC	-	-	-	-	√	-	-
India	-	-	-	-	√	-	-
Korea	-	√	-	√	√	-	-
Macedonia	√	√	-	-	√	-	-
Malaysia	-	-	-	-	-	-	√
Morocco	-	-	-	-	√	-	-
Oman	-	-	√	-	√	-	-
Pakistan	-	√	-	-	√	-	√
South Africa	√	√	√	√	√	√	-
Thailand	-	-	-	-	√	-	-

In **Argentina**, the operator is required to maintain information relating its operations and the “know your client” principle which should be made available for investigation or inspection purpose. Similarly, when the information is required by the SEC Pakistan, the State Bank of Pakistan, the stock exchanges or any other person acting on their behalf, the nominee account operators are bound to provide any such information. In **Malaysia**, disclosure is based on ad-hoc on request basis.

Lastly, in **DIFC**, the reporting entity and individual involved in a related party transaction are obliged to disclose the transaction. The direct parties involved in a take-over offer, i.e. acquiring party, are obliged to disclose such information. A nominee account operator that is also a DFSA authorized firm should have systems and controls in place to prevent and detect money laundering or other financial crimes.

Disclosure of beneficial owners on securities held with the intermediary

Thirteen jurisdictions require the intermediary to disclose details of beneficial owners of securities held with the entity (**Argentina, Bangladesh, Czech Republic, DIFC, India, Korea, Macedonia, Malaysia, Morocco, Oman, Pakistan, South Africa and Thailand**).

Argentina requires monthly information disclosure to be provided to the regulator. The regulator may also request for such information as and when required. This is similar to the requirement imposed by **Bangladesh, Czech Republic, DIFC, Korea, Macedonia, Malaysia Morocco, Pakistan and Thailand**.

In **South Africa**, while the CD rules require disclosure of beneficial owners, the main obstacle is the limitation of obtaining details of the beneficial ownership if the holding is more than two layers (levels) as the legislation does not provide authority for enquiry beyond that.

Statutory Records Keeping Requirements

Generally, it is a legal requirement in **Argentina, Bangladesh, Czech Republic, DIFC, India, Korea, Macedonia, Malaysia, Morocco, Oman, Pakistan, South Africa and Thailand** for the nominee account operators to maintain basic information on the securities holders such as name, national identity number or passport number, shareholding details and

transaction records. **Bangladesh** further requires structure and price of portfolio, cost of client's portfolio management, description of expected risk associated with investment decision as well as withdraw of investment decision as per the view expressed by the portfolio manager to be maintained.

In **Czech Republic**, data regarding the co-owner of the investment instrument and the size of its share, an indication of the limited transferability of the investment instrument specified by the issuer, whether the investment instrument is subject to a right of lien, data regarding the manager or another person entitled to exercise the rights associated with the investment instrument, and details regarding the person who is the lien creditor, data on the separately transferable rights and their separation from the investment instrument need to be maintained.

According to the Trading rules of **Macedonian** Stock Exchange, the nominee needs to maintain the following additional information on the client: customer experience in investments in securities, knowledge about the legislation regarding the securities and/or the acts of the Stock Exchange, financial opportunities of the client, expectations of the client from the investment in securities, the purposes of the investment in securities, the level of knowledge for the risk from investments in securities. In **Thailand**, similar KYC records of clients need to be kept for a minimum of 5 years.

Malaysia does not have specific record retention requirement imposed on nominee account operators. However, generally they would need to comply with the Companies Act's record retention requirements. In any case, bulk of the shareholders information is maintained by the CD. **Morocco** further requires the nominee to maintain documents in relation to transactions that have been made on behalf of the investors.

In **DIFC**, the terms and conditions for custodians and clearing members to maintain the required records are a contractual obligation between NASDAQ DIFC as operator of the CD and the (nominee) account operator.

Problems Faced On Usage of Nominee Accounts

Three jurisdictions do not face any significant problems on usage of nominee accounts (**DIFC, Korea and Malaysia**). For jurisdictions that face significant problems, money laundering, shareholders' rights and communication are considered to be the most serious ones. Money laundering is a key issue in Argentina, DIFC, Macedonia, Nigeria, Oman and South Africa.

Type of problems faced with nominee accounts	<u>Argentina</u>	<u>Macedonia</u>	<u>Nigeria</u>	<u>Pakistan</u>	<u>Turkey</u>	<u>South Africa</u>	<u>Morocco</u>	<u>DIFC</u>	<u>Thailand</u>	<u>India</u>
(a) shareholders rights	5	4	3	5	3	1	2	5		
(b) improper asset allocation	1	5	2	2	1	3	1	5		
(c)	5	4	4	4	4	2	3	5		

communication problems										
(d) money laundering	5	5	5	3		5	1	5		
(e) others			1	N/A		4	5		1	3

* 5 = Most Significant, 1 = Least significant

Section III: *Shareholder Identification and Information Flow to Shareholder*

Record Retention Requirements

All responding jurisdictions have record retention requirements in place for the Central Depository, Nominee Account Operator and Issuer. The records that are retained include documents and registers relating to the operations, particulars of investor and other important documentation. The period of retention of documentation after the end of business relationship ranges from 5-15 years depending on the jurisdiction and in some cases documentation is retained on a permanent basis.

Anonymity of Beneficial Shareholder

In only 14% of the responding jurisdictions (**Nigeria and DIFC**), the beneficial owner of the nominee account has the choice of whether to disclose or not to disclose his or her personal information to the issuer. Where the beneficial owner opts for anonymity, in approximately 55% of the responding jurisdictions he or she can still exercise shareholder rights such as voting, dividends and any other corporate actions through the nominee account operator. In **Chinese Taipei and Morocco** the shareholders cannot exercise their rights in case they opt for anonymity. In **Turkey** it is not possible to register the securities in the name of the depository (or its nominee) instead the securities have to be registered in the name of the beneficial owner. However, even in cases where an investor opts for anonymity information on the beneficial shareholder has to be disclosed under certain circumstances such as for tax, regulatory and money laundering purposes in almost all jurisdictions.

Regulatory Framework for Corporate Rights to be exercised

The regulatory framework in all 12 responding jurisdictions **Argentina, Korea, Macedonia, Pakistan, Chinese Taipei, Turkey, Malaysia, Oman, South Africa, Morocco, Thailand and India** indicates procedures (i.e standard form, templates to be used) in order for corporate rights of beneficial owners to be exercised. However, In Thailand the issuer is also entitled to impose procedures / documents which can be used for corporate rights of beneficial owners to be exercised.

Access to Information

In most responding jurisdictions the issuer has access to information regarding holding of the nominee through the CD. The Issuer has direct access to information on beneficial owner in Turkey and Korea while in 80% of responding jurisdictions this access is indirect through the CD. In addition, in **Argentina and South Africa** the beneficial owner has electronic access to its own account which is updated daily while in **Morocco** the Custodian also has access to

information relating to beneficial holding. In 6 of the 7 responding jurisdictions the issuers have access to information regarding the holding of the nominee through the Central Depository while in 1 jurisdiction (Korea), the issuer has no direct access to information regarding the nominee as the CD appears as the owner of securities in the register of the issuer. Generally in **Argentina, Czech Republic, Korea, Macedonia, Malaysia, Pakistan, Chinese Taipei, Turkey, South Africa and Thailand** have either direct or indirect access to information regarding the holding of the beneficial owner either through the Central Depository, by creating a list of beneficial owners or through the share transfer agent, while in 1 jurisdiction (**Morocco**) an issuer can only have access to information of the beneficial owner, if the beneficial owner has nominee accounts. In **Thailand** the issuer can request for the book register to close in order to obtain information on the beneficial owner of the share. In **India** the issuer through his share transfer agent has access to the holding of all the shareholders.

Information Flow

Around 56% of the jurisdictions have automated information flow between CDs, registrars, issuer agents, issuers and nominee account operators while in **Bangladesh, Korea, Macedonia, Chinese Taipei, Malaysia, DIFC and Thailand** the information flow is not automated. The level of automation in half of the responding jurisdictions is high while 40% of the jurisdictions stated a medium level of automation. **Bangladesh** on the other hand reported a low level of automation. After settlement the securities in **Argentina, Macedonia, Pakistan, Turkey, Oman, Morocco and India** are directly posted in the name of the investor while in **Bangladesh and South Africa** this is not the case. In jurisdictions where information flow is not automated the issuer recognizes actual shareholders through requesting the CD.

In **Argentina, Korea, Macedonia, Pakistan, Morocco, DIFC, Thailand and India** regulations do not oblige intermediaries to provide information to the issuer on the nominee while in **Bangladesh, Czech Republic, Nigeria, Chinese Taipei and South Africa** they do. In the case of the beneficial owner, intermediaries do not have to provide the information to issuers in approximately 60% of the jurisdictions. In **Malaysia** the CD maintains the shareholders information; hence there is no direct relationship between the issuers and brokers. In all 9 responding jurisdictions intermediaries or shareholders that do not provide the requested information can be charged with monetary fines, sanctions, suspension or disciplinary action. The shareholders rights in almost all jurisdictions encompass the right to be informed on dividend distribution, right shares, and also to inspect the company documents. The information is generally communicated through public announcement or through media.

Minority Shareholders

In approximately 80% of the responding jurisdictions the law protects the rights of minority shareholders and entitles them to have access to the information regarding the ownership of securities held in the nominee account. According to the Company Law in **Macedonia**, each shareholder shall be entitled upon request, to inspect all data registered in the register of shareholders' of the company in which he is a shareholder. In **Pakistan** every issuer is required to file a list of shareholders with the regulator on an annual basis which is available for inspection by any person, including minority shareholders. In **DIFC**, there are protection provisions in place for the protection of minority shareholders but certain minority

shareholders can not identify/access information regarding the ownership of securities by other minority shareholders.

On the other hand in **Czech Republic and Morocco** the law does not enable minority shareholders to have such access to information.

Section IV: Regulatory Structure for Intermediaries in Relation to Nominee Accounts

Rules Applicable for the Operation of Nominee Accounts

All 13 responding jurisdictions **Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India** have rules applicable to the existence, establishment and operation of nominee intermediaries. The account structure in all responding jurisdictions clearly segregates the intermediary's own account from the client's account which minimizes the chances of misappropriation. The intermediary creates an account for an investor which it can only use with prior consent of the investor. In **Malaysia** when a nominee account is opened with the CD by an intermediary, it is required to make a declaration whether it is the beneficial owner of such account or acting as a nominee for its client. Where the intermediary is the owner, its name will be indicated in the CDS and where it is acting as a nominee for its client, the name of the client will be recorded in the CDS. In **India** As per Regulation 42(1) of the SEBI (Depositories and Participants) Regulations, 1996, separate accounts shall be opened by every participant in the name of each of the beneficial owners and the securities of each beneficial owner shall be segregated, and shall not be mixed up with the securities of other beneficial owners or with the participant's own securities.

Intermediary's Custody of Investor Accounts

In 8 of the 14 responding jurisdictions intermediaries can take custody of investors' accounts in certain circumstances. In these jurisdictions intermediary misconduct relating to custody of investors' accounts is safeguarded through rules laid down by Self Regulatory Organizations or the Securities Regulator. In **Argentina** the nominee account is property of investors, so that the CD just can authorize movements in the account under the existence of an order: selling, lending (need a receipt or a supporting document). The conduct of the intermediaries is also enforced by their corresponding SROs. In **Thailand** the Law restricts a Securities Company from taking any action against the client's asset that will in affect alter the client's right to such asset, it restricts the Securities Company from using one client's asset for the benefit of another client and requires a Securities Company to take the necessary action in order to ensure that the client will receive all the rights and benefits from the share that the client is holding through the Securities Company. Further laws are in place in over 80% of the responding jurisdictions which require nominee account operators to treat all beneficial shareholders equally hence misappropriation across multiple tiers of intermediaries is minimal. However, in Bangladesh and Macedonia, no such rules exist. In **Thailand**, since the Securities Act requires the intermediary to register the beneficial owner of the share as the owner at the close of book register, the problem mention in the question does not arise.

Liens of Intermediaries

Argentina, Bangladesh, Korea, Pakistan, Malaysia, Morocco, DIFC, Thailand and India have rules in place regarding liens of intermediaries over investor's accounts. It is not mandatory for intermediaries to have a lien over the investor's account in most jurisdictions; instead the agreement is contractual in nature. These rules need to be stated clearly in the

terms and conditions of agreement between the beneficial owner and the nominee account operator. In **Thailand** the Securities Company can hold client asset in its nominee account as collateral if the client has taken out securities financing with the company. In **Korea** the Commercial Code's provisions pertaining to the lien of the commercial agent apply mutatis mutandis to the market intermediary. In other words, the Commercial Code gives the market intermediary the right to impose a lien on its client's securities, until the client's debt obligations are satisfied. In **Pakistan** the terms and conditions of agreement between the beneficial owner and the nominee account operator attached to the Standardized Account Opening Form prescribed under the CDC Regulations empowers the CDS Participants to establish the lien over securities available in an investors nominee account in exceptional circumstances such as failure to make payments etc.

Protection of Beneficial Owners in Case of Insolvency

In case of insolvency of the nominee account operator all jurisdictions have mechanisms in place to protect the beneficial owner. In **Argentina** liens can be raised on intermediaries regarding nominee account holdings. In the **Czech Republic** they are protected through the Guarantee Fund of Securities Traders and in **Malaysia** the Beneficial Owner is protected against the insolvency of a nominee account operator by virtue of the contractual relationship the Beneficial Owner has with the nominee account operator. In **India**, in the event of solvency of a Depository Participant, the depository takes over the custody of the investor accounts. Every beneficial owner of that participant has the option of either getting his securities held with the participant transferred to another participant, or get the securities rematerialized. Till such time, the BO's account is managed by the depository. However, in case of insolvency, the beneficial owner may need to rely on the intervention of a court or liquidator in **Bangladesh, Malaysia, Oman, South Africa, Morocco and DIFC**. In **South Africa** a solution is currently being devised for insolvency of an upper-tier nominee account operator. Where the account was opened at the CD level, the CD will move the account of the insolvent intermediary to an account of a solvent intermediary.

Regulatory Sanctions to Fraud or Misconduct

Misconduct or fraud on the side of the nominee account operator is charged with administrative fines and penalties under the law in all jurisdictions **Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India**. In **Korea** it is a criminal offence having imprisonment of up to one year or monetary fines of up to KRW 30 million can be subjected on nominee account operators. In **Macedonia** such misdemeanor can be charged with a fine of Euros 4000-5000 as per the Law on Securities while in **Pakistan** a monetary fine of up to Rs. 1 million can be charged. In **Thailand** Securities Companies that fail to comply with the following measure given in the law may face a fine not exceeding 300,000 baht and further fine not exceeding 10,000 baht for everyday that the failure continues. Furthermore, the person responsible for the operation of the company may face imprisonment for a term not exceeding 1 year or a fine not exceeding 300,000 baht. However, in **Morocco** penalties and sanctions can only be imposed where the entity acting as the nominee account operator is under the control of CDVM.

Internal Controls

All responding jurisdictions **Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India** have legal

requirements in place for internal control systems to prevent misconduct of nominee account operators. In **Bangladesh** a compliance officer of the portfolio manager must be engaged by the merchant banker in order to prevent misconduct. In **South Africa** the CSD Rules and directives spell out rules on reporting, audit processes, monitoring, risk management, compliance officers, security measures & controls and supervision. In **DIFC** under DFSA COB Rules (6.13(2)) an Authorized Firm must have systems and controls to ensure proper safeguarding of Client Investments. In **Pakistan** Chapter 13 of the CDC Regulations provides for framework for monitoring and compliance with the CDC Regulations whereby internal audit department of CDC is not only responsible for designing controls for CDC but also ensures compliance of other CDS Participants with the CDC Regulations through on-site and off-site inspections. In **India** as per Regulation 34 of the SEBI (Depositories and Participants) Regulations, 1996, every depository shall have adequate mechanisms for the purposes of reviewing, monitoring and evaluating the depository's controls, systems, procedures and safeguards. Further, as per Regulation 46 of the said Regulations, every participant shall have adequate mechanism for the purposes of reviewing, monitoring and evaluating the participant's internal accounting controls and systems.

Regulatory Measures to protect Beneficial Shareholders

Regulators in **Argentina, Bangladesh, Czech Republic, Korea, Macedonia, Pakistan, Malaysia, Oman, South Africa, Morocco, DIFC, Thailand and India** are empowered to ensure that beneficial shareholders receive their shareholder rights and payouts. Securities regulators act in accordance with the Law based on investor complaints and through conducting examination, audit and surveillance of the market intermediaries and the CD. In **Korea** and **Pakistan** by conducting examination of the market intermediaries and the CD, the Financial Supervisory Service Korea and the Securities and Exchange Commission Pakistan ascertain whether they take appropriate actions to ensure that the beneficial owners receive their shareholder rights and dividends. As the records of securities ownership at the CD are separately created and maintained for the market intermediary's own securities holdings and those of its clients, it is almost practically impossible for the market intermediary to engage in misconduct involving its client's securities. In addition, the licensing and business conduct regulations for the market intermediaries, as well as the examination of the CD, have proved effective in nearly eliminating the likelihood of misconduct or other problems that could take place in connection with the operation of nominee accounts. In **Thailand** Securities Companies must maintain books and records for each of its client's assets and segregate them from those of the Securities Company. The Law requires the intermediary to register the beneficial owner of the share as the owner at the close of book register. The Law requires Securities Companies to take the necessary action in order to ensure that the client will receive all the rights and benefits from the share that the client is holding through the Securities Company. In **South Africa** the CD only regulates the CD participants. Beneficial Shareholders must take steps and report irregularities with the appropriate bodies or take legal action. In addition to other requirements in **Malaysia**, since the relationship between the nominee account operator and the BO is also contractual in nature, the laws of contracts, trust and agency will also apply in relation to the rights of the BO arising from the securities.