



Financial Action Task Force

防制洗錢金融行動工作組織

RBA GUIDANCE FOR LEGAL PROFESSIONALS

法律專業人員風險基礎方法指引

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**SECTION ONE: USING THE GUIDANCE
PURPOSE OF THE RISK-BASED APPROACH
第一節：利用本指引—風險基礎方法的目的**

**Chapter One: Background and Context
第一章：背景資料**

1. In June 2007, the FATF adopted Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing: High Level Principles and Procedures, which includes guidance for public authorities and guidance for financial institutions. This was the culmination of extensive consultation between private and public sector members of an Electronic Advisory Group (EAG) established by the FATF.

1. 防制洗錢金融行動工作組織，於 2007 年 6 月採用打擊洗錢與資助恐怖份子風險基礎方法指引：高階原則與程序，包含政府機關指引和金融機構指引。此為防制洗錢金融行動工作組織電子諮詢小組（EAG）公私部門成員之間進行的密集諮詢成果。

2. In addition to financial institutions, the FATF Recommendations also cover a number of designated non-financial businesses and professions (DNFBPs). At its June 2007 meeting, the FATF's Working Group on Evaluation and Implementation (WGEI) endorsed a proposal to convene a meeting of the representatives from the DNFBPs to assess the possibility of developing Guidance on the risk-based approach for their sectors, using the same structure and style as the completed Guidance for financial institutions.

2. 除金融機構外，防制洗錢金融行動工作組織的建議事項，也提及一些指定之非金融事業或人員 (DNFBPs)。在 2007 年 6 月的會議中，防制洗錢金融行動工作組織評鑑及執行工作組 (WGEI) 提案召開指定之非金融事業或人員代表人會議，評估利用已完成之金融機構指引的相同架構和形式，為個別行業擬定風險基礎方法指引的可能性。

3. This meeting was held in September 2007 and was attended by members of organisations which represent lawyers, notaries, trust and company service providers (TCSPs), accountants, casinos, real estate agents and dealers in precious metals and dealers in precious stones. This private sector group expressed an interest in contributing to FATF Guidance on implementing a risk-based approach for their sectors. The Guidance for the DNFBPs would follow the principles of the risk-based approach already established by FATF, and would highlight risk factors specific to the DNFBPs, as well as suggest mitigation strategies that fit with the particular activities and businesses of the DNFBPs. The FATF established another EAG to facilitate the work.

3. 該會議於 2007 年 9 月舉行，有律師、公證人、信託及公司服務業者 (TCSPs)、會計師、賭場、不動產代理人以及貴金屬交易商和寶石交易商的業界組織成員參加。這個私部門團體表示願意協助防制洗錢金融行動工作組織，完成個別產業之風險基礎方法實施指引。指定之非金融事業或人員指引，將遵照防制洗錢金融行動工作組織已建立之風險基礎方法，強調屬於指定之非金融事業或人員特定風險因素，及提出符合指定之非金融事業或人員特定活動及業務風險降低策略之建議。防制洗錢金融行動工作組織另外成立 EAG 推動此工作。

4. The private sector group met again in December 2007 and was joined by a number of specialist public sector members. Separate working groups comprising public and private sectors members were established, and private sector chairs were appointed.

4. 此私部門團體於 2007 年 12 月再次召集會議，一些公部門專家也參加此次會議。另外還成立一個由公私部門代表組成的工作小組，並任命私部門代表為主席。

5. The EAG continued work until this Guidance for legal professionals was presented to the WGEI. After further international consultation with both public and private sectors, the FATF adopted this Guidance at its October 2008 Plenary. Guidance for each of the other DNFBP sectors is being published separately.

5. EAG 持續運作，直至向 WGEI 提出法律專業人員指引為止。在與公部門和私部門進一步進行國際間諮詢後，防制洗錢金融行動工作組織在 2008 年 10 月會員大會中通過本指引。目前正陸續出版其他指定之非金融事業或人員各領域的指引。

Purpose of the Guidance

指引目的

6. The purpose of this Guidance is to:

6. 此指引的目的為：

- Support the development of a common understanding of what the risk-based approach involves.
- 推動對風險基礎方法所涉基本瞭解。
- Outline the high-level principles involved in applying the risk-based approach.
- 對風險基礎方法的高階適用原則，提出概略說明。
- Indicate good practice in the design and implementation of an effective risk-based approach.
- 針對有效風險基礎方法的設計與執行，提供良善作法。

7. However, it should be noted that applying a risk-based approach is not mandatory. A properly applied risk-based approach does not necessarily mean a reduced burden, although it should result in a more cost effective use of resources. For some countries, applying a rules-based system might be more appropriate. Countries¹ will need to make their own determinations on whether to apply a risk-based approach, based on their specific money laundering/terrorist financing risks, size and nature of the DNFBP activities, and other relevant information. The issue of timing is also relevant for countries that may have applied anti-money laundering/counter-terrorist financing (AML/CFT) measures to DNFBPs, but where it is uncertain whether the DNFBPs have sufficient experience to implement and apply an effective risk-based approach.

7. 然而，應注意的是，使用風險基礎(risk-based)方法並非強制性。適當地採用風險基礎方法，不必然表示負擔減少，但可能改善資源之使用成本效益。對某些國家來說，採用規則基礎(rules-based)的系統可能更為恰當。各國家¹ 必須根據其特定洗錢／資助恐怖份子風險、指定之非金融事業或人員活動規模及性質，以及其他相關資訊，自行決定是否採用以風險為基礎之方法。對已經針對指定

¹ All references in the FATF Recommendations and in this document to country or countries apply equally to territories or jurisdictions.

¹ 防制洗錢金融行動工作組織建議及本文件中論及「國家」的部分同樣適用於「地區」或「司法管轄地」。

之非金融事業或人員，採取可能防制洗錢/打擊資恐（AML/CFT）措施，但不確定指定之非金融事業或人員，對於有效風險基礎方法，是否擁有足夠執行經驗的國家而言，時機也是重要議題。

Target Audience, Status and Content of the Guidance

指引的適用對象、情況與內容

8. This Guidance has been prepared for, and in relation to, legal professionals.² The legal professionals sector includes various professions, including lawyers and notaries, and in some countries there are also different categories of lawyers e.g. barristers and solicitors. Many legal professionals are required to comply with specific legislation and regulation and rules and regulations enacted or adopted by professional associations or other self regulatory organisations (SROs). The activities of legal professionals are very diverse, as are the legal and professional obligations with which they are required to comply. The specifics of an individual legal professional's and/or a firm or other collection of legal professionals' particular risk-based processes should accordingly be determined based on the activities undertaken by the legal professional, the ethical and existing supervisory structure for legal professionals and the susceptibility of a legal professional's activities (both generally and particularly) to money laundering and terrorist financing.

8. 本指引針對法律專業人士編撰並適用於法律專業人士。² 法律專業人士包括律師及公證人等多種職業，某些國家還有不同類別的律師，例如出庭律師（barristers）和事務律師（solicitors）。許多法律專業人士，必須遵守特定法規，以及專業人員協會或其他自律團體（SROs）頒布或通過的規章。法律專業人員的活動非常多元，必須遵守的法律及專業義務也一樣非常多樣。因此，個別法律專業人員及／或法律專業人員事務所，或其他組織之特定風險基礎流程的細節，應取決於該法律專業人員從事之活動、職業道德及既有監督結構以及相關活動（一般及特定）對洗錢和資助恐怖份子的敏感度。

9. Legal professionals provide a range of services and activities that differ vastly, such as in their methods of delivery and in the depth and duration of the relationships formed with clients. This Guidance is written at a high level to take into account the differing practices of legal professionals in different countries, and the different levels and forms of supervision or monitoring that may apply. It is not intended as a template for national legislation imposing obligations on legal professionals or SROs. Each country and its national authorities should aim to establish an active dialogue with its legal professionals and other DNFBP sectors that will be mutually beneficial in establishing effective systems to combat money laundering and terrorist financing.

9. 法律專業人員提供服務和活動範圍廣泛，在交付方式及與委託人建立之關係的深度和期間等方面，均有顯著差異。本指引以高階角度撰寫，考慮不同國家法律專業人員的不同慣例，以及可能適用的不同監理或監管水準和形式。其目的並非作為規範法律專業人員或自律團體義務的國家立法範本。各國家及其當局應與法律專業人員和其他指定之非金融事業或人員積極對話，共同致力於建立打擊洗錢及資助恐怖份子的有效系統。

² This refers to sole legal practitioners and partners or employed legal professionals within professional firms. It is not meant to refer to “internal” (*i.e.* in-house) professionals that are employees of other types of businesses, nor to legal professionals working for government agencies, who may already be subject to separate measures that would combat money laundering and terrorist financing. See FATF 40 Recommendations Glossary, definition of “Designated Non-Financial Businesses and Professions” (e).

² 泛指個人法律執業者及法律專業公司、事務所合夥人或雇用之法律專業人員。不包括受雇於其他型態企業的「內部」（亦即內聘）專業人員，亦不包括為政府單位工作的法律專業人員，這些人可能已經受其他打擊洗錢及資助恐怖份子個別措施的規範。請參閱防制洗錢金融行動工作組織 40 項建議術語表，「指定之非金融事業或人員」之定義（e）。

10. The following general observations about legal professionals should help inform the approach. Consideration should also be given to the particular activities performed by legal professionals on a national, provincial, or local basis. Because legal professionals typically refer to those benefiting from their services as “clients” rather than “customers”, that term is thus generally used throughout this paper, except where specific terms of art such as “customer due diligence” and “know your customer” are used (in such cases a customer can be equated to a client).

10. 以下關於法律專業人員的一般觀察，應有助於建立這個方法。針對法律專業人員在國家、省或地方執行的特定活動，應予評估。由於法律專業人員通常將其服務對象稱為「委託人」而非「客戶」，因此，本指引將普遍使用此術語，但在「客戶審查」及「認識你的客戶」等特定專業術語中，「客戶」可能就是「委託人」。

11. For purposes of this Guidance, legal professionals include both lawyers and notaries.

11. 在本指引中，法律專業人員包括律師及公證人。

- Lawyers are members of a regulated profession and are bound by their specific professional rules and regulations. Their work is fundamental to promoting adherence to the rule of law in the countries in which they practice. Lawyers hold a unique position in society by providing access to law and justice for individuals and entities, assisting members of society to understand their increasingly complex legal rights and obligations, and assisting clients to comply with the law. Lawyers have their own professional and ethical codes of conduct by which they are regulated. Breaches of the obligations imposed upon them can result in a variety of sanctions, including disciplinary and criminal penalties. The provisions contained in this Guidance, when applied by each country, are subject to professional secrecy and legal professional privilege. As is recognised by the interpretative note to the FATF Recommendation 16, the matters that would fall under legal professional privilege or professional secrecy and that may affect any obligations with regard to money laundering and terrorist financing are determined by each country. Likewise, ethical rules that impose obligations, duties, and responsibilities on legal professionals vary by country. The legal professionals’ counseling and advisory role, especially in an increasing regional and global marketplace, does not generally involve a cash handling function.
- 律師是一種受監管的職業，需要遵守特定的專業人員規範。他們的工作基本上就是增進執業國家的法律遵循程度。律師在社會中有很特殊的地位，為個人和組織提供法律管道，協助社會成員瞭解愈來愈複雜的法律權利和義務，以及協助委託人遵守法律。律師有他們自己必須遵守的專業及道德行為準則。違反加諸於他們的義務，可能會受到各種不同的制裁，包括紀律及刑事懲罰。各國家應用本指引的規定時，皆受專業機密及法律專業人員特權規範。正如防制洗錢金融行動工作組織第 16 項建議解釋性說明所承認，各國可自行決定，哪些事務屬於法律專業人員特權或專業機密，且可能影響關於洗錢及資助恐怖份子的任何義務。同樣的，法律專業人員承擔責任、義務及職責的道德規範在各國的情形也不相同。法律專業人員的諮詢及顧問角色，通常不涉及現金處理功能，尤其是在日益增長的區域和全球市場。
- Both civil and common law countries have notaries, but the roles of civil and common law notaries differ. Common law mainly differs from civil law in that precedents can be drawn from case law, while in civil systems codified rules are applied by judges to the cases before them. In some common law countries, the common law notary public is a qualified, experienced practitioner, trained in the drafting and execution of legal documents. In other common law countries, the notary public is a public servant appointed by a governmental body to witness the signing of important documents (such as deeds and mortgages) and administer oaths. Known only in civil law jurisdictions, civil law notaries are both members of an autonomous legal profession – although regulated by the law – and qualified public officials, as they are appointed by the State through a selective public contest among law graduates. Civil law notaries, who are bound by an obligation of impartiality with respect to both parties, must be regarded, in matters of real property (conveyancing), family law,

inheritance and corporate legal services as practising non-contentious activities. They act as gatekeepers by drafting, ensuring the legality and certainty of the instruments and the authenticity of signatures presented to them; providing as well a public fiduciary function by performing the role of a trusted third party. Civil law notaries are obliged by law not to detach themselves from the core of the relationship, therefore making them responsible for all aspects of the deed. For this reason, civil law notaries are assigned functions of a public nature as part of their legal assignments. In civil law jurisdictions, notarial written documents are particular means of evidence, unlike in the common law systems, which are based on the free evidence of witnesses in court: special supreme State powers are devolved to civil law notaries and they can therefore assign “public authority” to each deed they perform. Thereby the civil law notary’s deed has a special effectiveness in a trial, whereby it is a means of peremptory binding evidence; furthermore, it is as judicially enforceable as a judgement; if it complies with the law, it can be registered on a public registry. Owing to these characteristics, civil law notaries play a different role in comparison to the services provided by other legal professionals. This Guidance does not cover those common law notaries who perform merely administrative acts such as witnessing or authenticating documents, as these acts are not specified activities.

- 大陸法系及英美法系國家都有公證人，但大陸法系及英美法系公證人角色並不相同。英美法系與大陸法系主要差異，在於英美法系是從前案找尋判例，而大陸法系的法官，則是將彙整好的規則，套用於他們審理的案件。在某些英美法系國家中，公證人是合格而有經驗的執業人員，受過適當訓練，可以起草及簽訂法律文件。而其他英美法系國家，公證人是政府委派的公職人員，負責見證重要文件（例如契約和抵押）簽署以及主持宣誓。只有在大陸法系司法管轄地，公證人既是自治法律職業的成員（受法律監管），也是合格的公務人員，透過國家公開招考，從法學院畢業生中遴選。大陸法系公證人應秉持交易雙方公平，在不動產（轉讓）、家庭法、繼承及企業法律服務方面，執行無爭議活動。他們透過起草文書、確保該文書的合法性及確定性，以及針對確認提示簽名的真實性，擔任守門員角色；他們也透過受信任的第三方角色，提供具社會公信的服務。大陸法系公證人依法不得脫離關係核心，必須對契據所有層面負責。因此，大陸法系公證人負有公共性質的職能，這是法律任務的一部分。在大陸法系司法管轄地，公證書是特定的證據方法，這與英美法系不同，英美法系以證人在法庭中的自由陳述證據為基礎；特殊的最高國家職權下放到大陸法系公證人，因此，他們可以將「公權力」分派到執行的每一項行為。所以，大陸法系公證人行為在審判中，具有特殊效力，是一種具有絕對拘束力的證據方法；同時，它也相當於司法上可執行的一種判決；如果符合法律規定，可以在公共登記處進行登記。由於這些特性，與其他法律專業人員提供的服務相較，大陸法系公證人扮演不同的角色。本指引範圍不包括英美法系公證人，因為他們所執行的只有行政行為，例如見證或證實文件，而這些行為並非本指引所指的特定活動。

12. Recommendation 12 mandates that the requirements for customer due diligence requirements (CDD), record-keeping, and paying attention to all complex, unusual large transactions set out in Recommendations 5, 6, and 8 to 11 apply to DNFBPs in certain circumstances. Recommendation 12 applies to legal professionals when they prepare for and carry out certain specified activities:

12. 第12項建議規定，詳列於第5項、第6項及第8項至第11項建議中的客戶審查要求(CDD)、紀錄保存以及注意所有複雜異常大額交易等要求，於特定狀況時，應適用於指定之非金融事業或人員。法律專業人員在準備及執行下列特定具體活動時，應適用第12項建議：

- Buying and selling of real estate.
- 買賣不動產。
- Managing of client money, securities or other assets.
- 管理委託人資金、證券或其他資產。

- Management of bank, savings or securities accounts.
- 管理銀行、儲蓄或證券帳戶。
- Organisation of contributions for the creation, operation or management of companies.
- 創建、營運或管理公司的營運資金。
- Creation, operation or management of legal persons or arrangements, and buying and selling of business entities.
- 創建、營運或管理法人或法律協議，以及買賣企業體。

This Guidance has been prepared to assist legal professionals in those situations. Unless legal advice and representation consists of preparing for or carrying out transactions relating to these specified activities, it is not subject to the FATF Recommendations. The Recommendations would thus not cover, for example, an initial meeting before any preparatory work is carried out, or the usual level of advice given at legal aid or other “walk up” clinics.

本指引的目的，在於協助上述情況的法律專業人員。其他情況，除非法律意見及聲明，包括準備或執行與這些特定情況相關之交易，否則不受防制洗錢金融行動工作組織建議規範。因此，防制洗錢金融行動工作組織的建議，不包括尚未執行任何籌備工作之前的初步會議，或法律援助，或其他簡易諮詢櫃檯所提供的建議。

13. It is possible that more than one legal professional will be preparing for or carrying out a transaction, in which case they will all need to observe the applicable CDD and record-keeping obligations. However, several legal professionals may be involved in a transaction for a specified activity but not all are preparing for or carrying out the overall transaction. In that situation, those legal professionals providing advice or services (*e.g.* a local law validity opinion) peripheral to the overall transaction who are not preparing for or carrying out the transaction may not be required to observe the applicable CDD and record-keeping obligations.

13. 可能會有一位以上的法律專業人員，準備或執行同一筆交易，此時，他們必須全部遵守相關客戶審查及紀錄保存義務。雖然可能會有多位法律專業人員，參與某項特定活動的交易，但並非全部都在準備或執行整個交易。此時，對整體交易提供週邊性質的建議或服務（例如當地法律有效程度意見），但未準備或執行交易的法律專業人員，無需遵守相關客戶審查及紀錄保存義務。

14. Recommendation 16 requires that FATF Recommendations 13 to 15 regarding reporting of suspicious transactions and AMLCFT controls, and Recommendation 21 regarding measures to be taken with respect to countries that do not or insufficiently comply with the FATF Recommendations, apply to DNFBPs subject to the certain qualifications. Specifically, Recommendation 16 applies to legal professionals when they engage in a financial transaction on behalf of a client, in relation to the activities referred to in Recommendation 12. Recommendation 16, however, provides that legal professionals are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege. The lawyer-client relationship is protected by law, regulations, and rules, and codes of conduct (such as legal professional privilege) in many countries, including in some countries by constitutional provisions. This is recognised by the Interpretative Note to Recommendation 16.

14. 第 16 項建議規定，特定條件之指定之非金融事業或人員，應適用防制洗錢金融行動工作組織第 13 項至第 15 項建議，有關報告可疑交易和防制洗錢/打擊資恐控制措施，以及第 21 項建議，對於不遵守或未充分遵守防制洗錢金融行動工作組織建議之國家採取的措施。具體來說，關於第 12 項建議所提及的活動，第 16 項建議適用於代表委託人從事金融交易的法律專業人員。但第 16 項建議規定，若取得相關資訊的狀況，受專業保密或法律專業人員特權規範，法律專業人員無需報告懷疑的內容。在許多國家，律師與委託人之間的關係受到法律、規定、條例及行為準則（例如法律專業人員特權）的保護，有些國家甚至受到憲法保障。這一點第 16 項建議註釋已予確認。

15. The wider audience for this Guidance includes countries, regulators, and self-regulatory organisations (SROs), which are considering how to apply AML/CFT measures to legal professionals.

Countries need to identify the most appropriate regime, tailored to address individual country risks, which takes into consideration the activities and professional and ethical codes of conduct of legal professionals in their countries. This regime should recognise the differences between the DNFBP sectors, as well as the differences between the DNFBPs (particularly legal professionals) and financial institutions. However, this Guidance does not override the purview of national authorities. The manner in which legal professionals, SROs, or other supervisory bodies approach their responsibilities under a risk-based CDD system must necessarily be informed by and conform with the existing legal and oversight framework within each country's jurisdiction.

15. 本指引可能適用的對象，包括正在考慮如何將防制洗錢/打擊資恐措施，應用於法律專業人員的國家、監管機關和自律團體（SROs）。各國必須確認最適合的體制，針對個別國家風險進行修改，並考慮法律專業人員的活動以及專業道德行為的準則。相關體制應承認指定之非金融事業或人員產業之間的差異，以及指定之非金融事業或人員（尤其是法律專業人員）與金融機構之間的差異。本指引並不凌駕各國家當局的權限。法律專業人員、自律團體或其他監督機構，履行風險為基礎之客戶審查系統相關職責的方法，必須根據並符合各國家司法管轄地現行法律及監理框架。

- To the extent a country has adopted a risk-based approach regime, the legal professionals practising in that country should refer to that country's guidance for that regime.
- 若某國家已採用風險基礎方法體制，則在該國執業的法律專業人員，即應參考該國針對相關體制的指引。
- This Guidance does not supplant specific professional guidance issued by designated competent authorities or SROs in a particular country, and does not constitute a legal interpretation of AML or CFT obligations of legal professionals, and should not be relied on by legal professionals or the judiciary in determining whether a legal professional has complied with his or her AML or CFT obligations.
- 本指引不能取代特定國家權責機關或自律團體頒布的特定專業指引，亦不構成法律專業人員，洗錢防制或打擊資恐相關義務的法定詮釋，且法律專業人員或法官不得據以判斷法律專業人員，是否遵循洗錢防制或打擊資恐義務。

16. The provisions in this Guidance are subject to applicable professional secrecy, legal professional privilege or rules of professional conduct, which are determined by each country.

16. 本指引的規定應受各國決定之相關專業保密、法律專業人員特權或專業行為準則規範。

Chapter Two: The Risk-Based Approach – Purpose, Benefits and Challenges

第二章：風險基礎方法—目的、利益與挑戰

The purpose of the Risk-Based Approach

風險基礎方法的目的

17. The FATF Recommendations contain language that permits countries to some degree to adopt a risk-based approach to combating money laundering and terrorist financing. That language also authorises countries to permit DNFBPs to use a risk-based approach in applying certain of their AML and CFT obligations.

17. 防制洗錢金融行動工作組織的建議事項，允許各國在打擊洗錢和資助恐怖份子時，適當程度地運用風險基礎方法。該建議事項亦認可各國可以允許指定之非金融事業或人員，於處理特定洗錢防制及打擊資恐義務時，利用風險基礎方法。

18. By adopting a risk-based approach, it is possible to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. This will allow resources to be allocated in the most efficient ways. The principle is that resources should be directed in accordance with priorities so that the greatest risks receive the highest attention. The alternative

approaches are that resources are either applied evenly, or that resources are targeted, but on the basis of factors other than risk. This can inadvertently lead to a ‘tick box’ approach with the focus on meeting regulatory requirements rather than on combating money laundering or terrorist financing efficiently and effectively.

18. 採取風險基礎方法，可以避免或減少與風險相稱的洗錢與資助恐怖份子的風險。此方法可確保以最有效率的方式分配資源。資源應按照優先順序的原則分配，確保最大的風險，得到最多的關注。其他方法包括平均分配資源，或在確定資源的分配對象時，考量風險以外的因素。這可能會不慎導入一種「勾選」法，只滿足注重監管要求，而忽略有效率及有效果的打擊洗錢或資助恐怖份子。

19. A number of the DNFBP sectors, including legal professionals, are already subject to regulatory or professional requirements (including as promulgated by SROs) that complement AML/CFT measures. For example, by virtue of their professional codes of conduct, many lawyers are already subject to an obligation to identify their clients (*e.g.* to check for conflict of interest) and the substance of the matter submitted to them by such clients, in order to appreciate the consequences that their advice may have. If a lawyer provides legal advice to a client that helps the client commit an offence, that lawyer may, depending on the lawyer’s state of knowledge, become an accomplice to the offence. This Guidance must be considered in the context of these professional and ethical codes of conduct. Where possible, it will be beneficial for legal professionals (and relevant authorities and SROs) to devise their AML/CFT policies and procedures in a way that harmonises with other regulatory or professional requirements. A risk-based AML/CFT regime should not impede free access to the services provided by legal professionals for legitimate purposes, but should create barriers to those who seek to misuse these services.

19. 許多指定之非金融事業或人員（包括法律專業人員），已經適用強化防制洗錢/打擊資恐措施的監管或專業要求（包括自律團體頒布者）。例如，透過專業行為準則，許多律師已盡義務辨識委託人（例如檢查利益衝突），以及委託人提交事務的本質，以便評估提供建議可能產生的後果。若律師對委託人提供的法律建議，係協助該委託人犯罪，則根據該律師是否知情而可能成為共犯。本指引必須在這些專業及道德行為準則的背景中予以考慮。如果可能，法律專業人員（及相關當局和自律團體）對於防制洗錢/打擊資恐政策及程序，提出建議的方式，最好能夠配合其他監管或專業要求。風險基礎防制洗錢/打擊資恐體制，不得妨礙任何人就合法目的取得法律專業人員提供服務的自由，但應設法阻撓企圖濫用的情形。

20. A risk analysis must be performed to determine where the money laundering and terrorist financing risks are the greatest. Countries will need to identify the main vulnerabilities and address them accordingly. Legal professionals will need this assistance and information to help them to identify higher risk clients and services, including delivery channels, and geographical locations. These are not static assessments. They will change over time, depending on how circumstances develop, and how threats evolve.

20. 為確定洗錢和資助恐怖份子風險最高的部分為何，應進行風險評估。各國須鑑別最大的弱點，並做相對應的處理。法律專業人員將此項支援及資訊，用於協助其辨識高風險委託人及服務，包括交付通路以及地理位置。這些並非靜態評估，而是會隨著時間改變的評估，端視環境的發展與威脅的變化而定。

21. The strategies to manage and mitigate money laundering and terrorist financing are typically aimed at preventing the activity from occurring through a mixture of deterrence (*e.g.* appropriate CDD measures), detection (*e.g.* monitoring and suspicious transaction reporting), and record-keeping so as to facilitate investigations.

21. 管理及降低洗錢和資助恐怖份子的策略，通常在於透過嚇阻（例如適當的客戶審查措施）、偵測（例如監控及疑似洗錢或資恐交易報告）以及紀錄保存來避免活動發生，並利於調查。

22. Proportionate procedures should be designed based on assessed risk. Higher risk areas should be subject to enhanced procedures; this would include measures such as enhanced CDD checks and enhanced

transaction monitoring. It also follows that in instances where risks are low, simplified, modified or reduced controls may be applied.

22. 訂定符合比例原則的程序，應根據評估的風險。風險較高的領域應適用強化程序；包括強化客戶審查以及強化交易監控等措施。以及，風險較低者，可以應用較簡化、修訂或刪減控制措施。

23. There are no universally accepted methodologies that prescribe the nature and extent of a risk-based approach. However, an effective risk-based approach does involve identifying and categorising money laundering and terrorist financing risks and establishing reasonable controls based on risks identified.

23. 尚無公認的通用方法，規範風險基礎方法的性質與程度。然而，有效的風險基礎方法，確實須對洗錢和資助恐怖份子風險進行鑑別與分類，並根據鑑別的風險，建立合理的控制。

24. An effective risk-based approach will allow legal professionals to exercise reasonable business and professional judgement with respect to clients. Application of a reasoned and well-articulated risk-based approach will justify the judgements made with regard to managing potential money laundering and terrorist financing risks. A risk-based approach should not be designed to prohibit or impede legal professionals from continuing with legitimate practice – especially given their role in society and the proper functioning of the justice system - or from finding innovative ways to diversify or expand their practices.

24. 有效的風險基礎方法，可以讓法律專業人員對委託人行使合理的商業及專業判斷。以合理且詳盡的風險基礎方法，就能導正對於潛在洗錢與資助恐怖份子風險的判斷。風險基礎方法目的不應該在於禁止或妨礙法律專業人員繼續合法執業 – 尤其是考慮到他們在社會中的角色以及司法體系的正常運作 – 或禁止、妨礙他們尋找創新的方法分散或擴大他們的業務。

25. Regardless of the strength and effectiveness of AML/CFT controls, criminals will continue to attempt to move illicit funds undetected and will, from time to time, succeed. Criminals are more likely to target the DNFBP sectors, including legal professionals, if other routes become more difficult. For this reason, DNFBPs may be more or less vulnerable depending on the effectiveness of the AML/CFT procedures applied in other sectors. A risk-based approach allows DNFBPs, including legal professionals, to more efficiently and effectively adjust and adapt as new money laundering and terrorist financing methods are identified.

25. 不論防制洗錢/打擊資恐控制的強度與效果如何，犯罪者仍然會繼續嘗試移動未被發現的非法資金，而且有的時候仍能成功達到目的。如果其他途徑愈來愈困難，犯罪者有更高的可能利用指定之非金融事業或人員，包括法律專業人員。因此，指定之非金融事業或人員，可能或多或少有其弱點，取決於在其他產業的防制洗錢/打擊資恐程序的有效程度。發現新的洗錢及資助恐怖份子方法時，風險基礎方法可以讓指定之非金融事業或人員（包括法律專業人員）更有效的調整及適應。

26. A reasonably designed and effectively implemented risk-based approach can provide an appropriate and effective control structure to manage identifiable money laundering and terrorist financing risks. However, it must be recognised that any reasonably applied controls, including controls implemented as a result of a reasonably designed and effectively implemented risk-based approach, will not identify and detect all instances of money laundering or terrorist financing. Therefore, designated competent authorities, SROs, law enforcement, and judicial authorities must take into account and give due consideration to a well reasoned risk-based approach. When there is a failure to implement an adequately designed risk-based approach or failure of a risk-based programme that was not adequate in its design, designated competent authorities, SROs, law enforcement or judicial authorities should take action as necessary and appropriate.

26. 合理設計並有效實施的風險基礎方法，可以提供適當而有效的控制結構，用以管理可辨識的洗錢及資助恐怖份子風險。然而，必須承認的是，任何合理的控制（包括因為合理規劃，且有效執行的風險基礎方法而得以執行的控制）都無法鑑別及偵測所有洗錢或資助恐怖份子情事。因此，指定權責機關、自律團體、執法機關和司法機關，都應考慮合理的風險基礎方法，並給予應有的重

視。如果未能實施適當設計的風險基礎方法，或設計不當的風險基礎方法，導致未能發揮功能，則指定權責機關、自律團體、執法或司法當局，應適當採取必要行動。

Potential Benefits and Challenges of the Risk-Based Approach

風險基礎方法的潛在利益與挑戰

Benefits

益處

27. The adoption of a risk-based approach to combating money laundering and terrorist financing can yield benefits for all parties, including the public. Applied effectively, the approach should allow a more efficient and effective use of resources and minimise burdens on clients. Focusing on higher risk threats should mean that beneficial outcomes can be achieved more effectively.

27. 採用風險基礎方法，打擊洗錢及資助恐怖份子，對所有人都有利，包括社會大眾。如果有效應用，這個方法可以更有效率及更有效果的利用資源，並降低委託人的負擔。著重於較高的風險威脅，表示應該更有效的得到有利的結果。

28. For legal professionals, the risk-based approach allows the flexibility to approach AML/CFT obligations using specialist skills and responsibilities. This requires legal professionals to take a wide and objective view of their activities and clients.

28. 對於法律專業人員而言，風險基礎方法，可以靈活運用專家技能和職責，滿足防制洗錢/打擊資恐義務。這需要法律專業人員廣泛而客觀的瞭解從事的活動以及相關委託人。

29. Efforts to combat money laundering and terrorist financing should also be flexible in order to adapt as risks evolve. As such, legal professionals should use their judgement, knowledge and expertise to develop an appropriate risk-based approach for their particular organisation, structure and practice activities.

29. 打擊洗錢和資助恐怖份子應保持彈性，確保隨著風險的發展做好調適。因此，法律專業人員應運用其判斷力、知識和專業，為自己特定的組織、結構和實務活動，發展出適當的風險基礎方法。

Challenges

挑戰

30. The risk-based approach is not necessarily an easy option and is challenging to both public and private sector entities. Some challenges may be inherent to the use of the risk-based approach. Others may stem from the difficulties in making the transition to a risk-based system. A risk-based approach requires resources and expertise to gather and interpret information on risks, both at the country and institutional levels, to develop procedures and systems, and to train personnel. It further requires that sound and well-trained judgement be exercised in the design and implementation of procedures, and systems. It will certainly lead to a greater diversity in practice that should lead to innovations and improved compliance. However, it may also cause uncertainty regarding expectations, difficulty in applying uniform regulatory treatment, and lack of understanding by clients regarding information required.

30. 風險基礎方法不一定是一個輕鬆的選項，它對公部門和私部門都具有挑戰性。有些是使用風險基礎方面時產生的固有挑戰。其他可能是在過渡至風險基礎制度時遇到的困難。風險基礎方法，需要資源和專業，來蒐集並詮釋國家和機構層級的風險資訊，用以發展程序和系統，以及訓練工作人員。這進一步要求，在設計與執行程序與系統時，發揮穩當與受過訓練的判斷。這一定會帶來更多元的實務作法，進而帶來創新以及更好的遵循。但這也可能造成期望的不確定性、難以應用統一的監管待遇，以及委託人不瞭解所需要的資訊。

31. Implementing a risk-based approach requires that legal professionals have a sound understanding of the risks and are able to exercise sound judgement. This requires the building of expertise including for

example, through training, recruitment, taking professional advice and ‘learning by doing’. The process will always benefit from information sharing by designated competent authorities and SROs. The provision of good practice guidance is also valuable. Attempting to pursue a risk-based approach without sufficient expertise may lead to flawed judgements. Legal professionals may over-estimate risk, which could lead to wasteful use of resources, or they may under-estimate risk, thereby creating vulnerabilities. They, and (if applicable) their staff members, may be uncomfortable making risk-based judgements. This may lead to overly cautious decisions, or disproportionate time spent documenting the rationale behind a decision. This may also be true at various levels of management. However, in situations where management fails to recognise or underestimate the risks, a culture may develop that allows for inadequate resources to be devoted to compliance, leading to potentially significant compliance failures.

31. 實施風險基礎方法，需要法律專業人員充分瞭解風險，並做出正確的判斷。這需要累積經驗，包括透過訓練、徵才、接受專業建議以及「邊做邊學」。此過程可因指定權責機關與自律團體之間的資訊共享，獲得助益。提供優良實務指引是個好方法。沒有足夠專業能力，採用風險基礎方法，可能會導致判斷的瑕疵。法律專業人員可能高估風險，造成資源浪費，也可能低估風險，暴露弱點。所屬（可能部分的）工作同仁不想做風險基礎判斷。如此導致做出過度謹慎的決定，或者花費太多時間記錄決定背後的根本原因。各管理階層都有可能發生此類問題。若管理階層未能認清風險或低估風險，則所發展出來的企業文化，可能會對於法規遵循可能會投入不夠的資源，進而招致嚴重的潛在違規。

32. Designated competent authorities and SROs should place greater emphasis on whether legal professionals have an effective decision-making process with respect to risk management. Sample testing may be used or individual decisions reviewed as a means to test the effectiveness of a legal professional’s overall risk management. Designated competent authorities and SROs should recognise that even though appropriate risk management structures and procedures are regularly updated, and the relevant policies, procedures, and processes are followed, decisions may still be made that are incorrect in light of additional information that was not reasonably available at the time.

32. 指定權責機關及自律團體更應重視，法律專業人員是否具備有效的風險管理決策流程。可利用抽樣測試，或檢討個別決策，測試法律專業人員風險管理的整體效能。指定權責機關和自律團體應體認到，即使定期更新相關風險管理結構與程序，並遵守相關政策、程序與流程，仍可能因為當時未合理的提供額外資訊，而做出不正確的決策。

33. In implementing the risk-based approach, legal professionals should be given the opportunity to make reasonable judgements for their particular services and activities. This may mean that no two legal professionals and no two firms are likely to adopt the same detailed practices. Such potential diversity of practice will require that designated competent authorities and SROs make greater effort to identify and disseminate guidelines on sound practice, and may pose challenges for staff working to monitor compliance. The existence of good practice guidance, continuing legal education, and supervisory training, industry studies and other materials will assist the designated competent authority or an SRO in determining whether a legal professional has made sound risk-based judgements.

33. 在實施風險基礎方法時，應讓法律專業人員有機會就其特定服務及活動，做出合理判斷。這表示不太可能會有兩位法律專業人員或兩家事務所，採用相同的做法。這種可能的多元實務現象，導致指定權責機關和自律團體必須付出更多心力，根據實際運作，提出實務鑑別和宣導指引；對於負責監督遵循成效的人員，具有挑戰性。優良實務指引、持續法律教育、監督訓練、產業研究以及其他資料的存在，將有助於指定權責機關或自律團體，認定法律專業人員，是否進行正確的風險基礎判斷。

34. Recommendation 25 requires adequate feedback to be provided to the financial sector and DNFBPs. Such feedback helps institutions, firms and businesses to more accurately assess the money laundering and terrorist financing risks and to adjust their risk programmes accordingly. This in turn makes the detection of suspicious activity more likely and improves the quality of any required suspicious transaction reports. As well as being an essential input to any assessment of country or sector wide risks, the promptness and content of such feedback is relevant to implementing an effective risk-based approach.

34. 建議第 25 項要求對金融業和指定之非金融事業或人員，提供充分的回饋。此類回饋有助於機構、事務所及企業，更精確的評估洗錢及資助恐怖份子風險，並據以調整風險計畫。這樣才有較大可能偵測出可疑活動，並提高任何必要疑似洗錢或資恐交易報告的品質。回饋的即時性及內容，是評估國家或產業風險的必要輸入元素，對於執行有效風險基礎方法，也相當重要。

The potential benefits and potential challenges can be summarised as follows:

可能的優點與挑戰統整如下：

Potential Benefits:

可能的優點：

- Better management of risks and cost-benefits
- 更好的風險管理與成本效益。
- Focus on real and identified threats
- 著重於已鑑別的真实威脅。
- Flexibility to adapt to risks that change over time
- 配合隨時間變化的風險而彈性調整。

Potential Challenges:

可能的挑戰：

- Identifying appropriate information to conduct a sound risk analysis
- 須鑑別適合用於全面風險分析的資訊。
- Addressing short term transitional costs
- 須處理短期過渡成本。
- Greater need for more expert staff capable of making sound judgements. Regulatory response to potential diversity of practice.
- 對於能做出穩健判斷專業員工有更大需求。須針對潛在多元實務訂定監管對策。

Chapter Three: FATF and the Risk-Based Approach

第三章：防制洗錢金融行動工作組織與風險基礎方法

35. The varying degrees of risk of money laundering or terrorist financing for particular types of DNFBPs, including legal professionals, or for particular types of clients, or transactions is an important consideration underlying the FATF Recommendations. According to the Recommendations, with regard to DNFBPs there are specific Recommendations where the degree of risk is an issue that a country either must take into account (if there is higher risk), or may take into account (if there is lower risk).

35. 針對特定型態指定之非金融事業或人員(包括法律專業人員)以及特定型態委託人或交易，不同程度的洗錢或資助恐怖份子風險，是防制洗錢金融行動工作組織建議的重要考慮因素。根據建議，在指定之非金融事業或人員方面，有特定建議述及某些風險，是國家必須考慮（如風險較高）或可以考慮（如風險較低）的議題。

36. The risk-based approach is either incorporated into the Recommendations (and the Methodology) in specific and limited ways in a number of Recommendations, or it is inherently part of or linked to those Recommendations. For instance, for DNFBPs, including legal professionals risk is addressed in three principal areas (a) Customer/client Due Diligence (R.5, 6, 8 and 9); (b) legal professionals and/or firms' internal control systems (R.15); and (c) the approach of oversight/monitoring of DNFBPs, including legal professionals (R.24).

36. 許多建議條文（及評鑑方法論）本身已結合風險基礎方法，或者部分條文內容結合或與該方法有所關連。例如，針對指定之非金融事業或人員（包括法律專業人員），處理風險有三大主要領域：(a) 客戶／委託人客戶審查（第 5 項、第 6 項、第 8 項及第 9 項建議）；(b) 法律專業人員及／或事務所的內控系統（第 15 項建議）；以及 (c) 監理／監管指定之非金融事業或人員（包括法律專業人員）的方法（第 24 項建議）。

Client Due Diligence (R. 5, 6, 8 and 9)

委託人客戶審查（第5項、第6項、第8項及第9項建議）

37. Risk is referred to in several forms:

37. 風險以不同的形式提及：

- a) Higher risk – Under Recommendation 5, a country must require its DNFBPs, including legal professionals, to perform enhanced due diligence for higher-risk clients, business relationships or transactions. Recommendation 6 (politically exposed persons) is an example of this principle and is considered to be a higher risk scenario requiring enhanced due diligence.
- a) 高風險 – 根據第5項建議，國家必須要求指定之非金融事業或人員（包括法律專業人員）對高風險委託人、業務關係或交易進行強化客戶審查。第6項建議（重要政治性職務人士）就是這項原則的範例，被視為需要強化客戶審查的高風險情境。
- b) Lower risk – A country may also permit legal professionals to take lower risk into account in deciding the extent of the CDD measures they will take (see Methodology criteria 5.9). Legal professionals may thus reduce or simplify (but not avoid completely) the required measures.
- b) 低風險 – 國家亦可允許法律專業人員在決定採取之客戶審查措施的範圍時，可以考慮低風險（請參閱評鑑方法指標5.9）。因此，法律專業人員可減少或簡化（但不得完全避免）必要的措施。
- c) Risk arising from innovation – Under Recommendation 8, a country must require legal professionals to give special attention to the risks arising from new or developing technologies that might favour anonymity.
- c) 創新帶來的風險 – 根據第8項建議，國家必須要求法律專業人員，特別注意可能有利於匿名的新技術或發展中的新技術帶來的風險。
- d) Risk assessment mechanism – The FATF standards require that there be an adequate mechanism by which designated competent authorities or SROs assess or review the procedures adopted by legal professionals to determine the degree of risk and how they manage that risk, as well as to review the actual determinations themselves. This expectation applies to all areas where the risk-based approach applies. In addition, where the designated competent authorities or SROs have issued guidelines on a suitable approach to risk-based procedures, it will be important to establish that these have been followed. The Recommendations also recognise that country risk is a necessary component of any risk assessment mechanism (R.5 & R.9).
- d) 風險評估機制 – 防制洗錢金融行動工作組織準則期待有適當機制，由指定權責機關或自律團體評估或檢討法律專業人員採用的程序，以判斷風險的程度，以及管理風險的方法，同時自行檢討實際的決定。此期待適用於採取風險基礎方法的所有領域。此外，若指定權責機關或自律團體，就執行風險基礎程序的適切方法提出準則，即應確定法律專業人員遵守該準則。該項建議也承認，國家風險是任何風險評量機制的必要元素（第5項及第9項建議）。

Internal control systems (R.15)

內部控制制度（建議第15項）

38. Under Recommendation 15, the development of “appropriate” internal policies, training and audit systems will need to include a specific, and ongoing, consideration of the potential money laundering and terrorist financing risks associated with clients, products and services, geographic areas of operation and so forth. The Interpretative Note to Recommendation 15 makes it clear that a country may allow legal professionals to have regards to the money laundering and terrorist financing risks, and to the

size of the business, when determining the type and extent of measures required.

38. 根據第 15 項建議，發展「適當」內部政策、訓練及稽核系統時，必須具體並持續考慮委託人、產品與服務、營運地區等因素，所伴隨的潛在洗錢及資助恐怖份子風險。第 15 項建議解釋性說明澄清，國家允許法律專業人員，可以考量洗錢及資助恐怖份子風險，並考慮業務的規模，再決定所需措施之型態及範圍。

Regulation and oversight by designated competent authorities or SROs (R.24)

指定權責機關或自律團體的監管與監督（建議第 24 項）

39. Countries should ensure that legal professionals are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. In determining whether the system for monitoring and ensuring compliance is appropriate, regard may be had to the risk of money laundering or terrorist financing in a given business, *i.e.* if there is a low risk then reduced monitoring measures may be taken.

39. 各國應確保，法律專業人員根據有效的系統，監控並確保遵守防制洗錢/打擊資恐的要求。在判斷監控及確保遵循的系統是否適當時，可以考慮特定業務的洗錢或資助恐怖份子風險，亦即，若風險很低，可以採取簡化的監控措施。

Applicability of the risk-based approach to terrorist financing

風險基礎方法對資助恐怖份子的適用性

40. There are both similarities and differences in the application of a risk-based approach to terrorist financing and money laundering. They both require a process for identifying and assessing risk. However, the characteristics of terrorist financing make its detection difficult and the implementation of mitigation strategies may be challenging due to considerations such as the relatively low value of transactions involved in terrorist financing, or the fact that funds can be derived from legitimate as well as illicit sources.

40. 使用風險基礎方法，在資助恐怖主義和洗錢方面，有相同和相異之處。兩者都需要風險鑑別與評估流程。然而，資助恐怖份子因其特性難以偵查，且資助恐怖份子的交易價值相對較低，或資金可能同時來自合法及非法管道，導致相關改善的政策執行不易。

41. Funds that are used to finance terrorist activities may be derived either from criminal activity or may be from legal sources, and the nature of the funding sources may vary according to the type of terrorist organisation. Where funds are derived from criminal activity, then traditional monitoring mechanisms that are used to identify money laundering may also be appropriate for terrorist financing, though the activity, which may be indicative of suspicion, may not be identified as or connected to terrorist financing. It should be noted that transactions associated with the financing of terrorism may be conducted in very small amounts, which in applying a risk-based approach could be the very transactions that are frequently considered to be of minimal risk with regard to money laundering. Where funds are from legal sources then it is even more difficult to determine if they could be used for terrorist purposes. In addition, the actions of terrorists may be overt and outwardly innocent in appearance, such as the purchase of materials and services to further their goals, with the only covert fact being the intended use of such materials and services purchased. Therefore, while terrorist funds may be derived from criminal activity as well as from legitimate sources, transactions related to terrorist financing may not exhibit the same traits as conventional money laundering. In all cases, however, legal professionals are not responsible for determining the type of underlying criminal activity or intended terrorist purpose.

41. 用於資助恐怖份子活動的資金，可能來自於犯罪活動，或是合法來源，且資金來源的性質，可能因為恐怖組織種類而不同。若資金來自犯罪活動（即使該活動可能只是引起懷疑，而非鑑別為恐怖份子或關聯資金），傳統上用來鑑別洗錢的監控機制，可能適用於資助恐怖份子。應注意的是，涉及資助恐怖份子的交易金額可能非常小，在適用風險基礎方法時，這類交易在洗錢方面，很可能被視為風險極低的交易。若資金來自合法來源，更難判斷是否屬於恐怖份子關聯資金。此外，恐怖份子的活動，可能公開進行，而且表面難以察覺，例如為達到目的，而購買材料與服務，而唯一隱

瞞的是該材料與服務的預定用途。因此，雖然恐怖份子的資金，可能來自於犯罪活動與合法來源，且與資助恐怖份子有關的交易，可能不會展現出和傳統洗錢活動相同的特性。在所有狀況中，法律專業人員都沒有責任判斷實質犯罪活動或恐怖份子的意圖。

42. The ability of legal professionals to detect and identify potential terrorist financing transactions without guidance on terrorist financing typologies or unless acting on specific intelligence provided by the authorities is significantly more challenging than is the case for potential money laundering and other suspicious activity. Detection efforts, absent specific national guidance and typologies, are likely to be based on monitoring that focuses on transactions with countries or geographic areas where terrorists are known to operate or on the other limited typologies available (many of which are indicative of the same techniques as are used for money laundering).

42. 如果沒有資助恐怖份子型態指引，或權責單位提供的特定情報，法律專業人員偵測並辨識潛在資助恐怖份子交易的能力，要比偵測並辨識潛在洗錢及其他可疑活動的能力更具挑戰性。如此偵測能力，在缺乏特定國家指導與資恐態樣的情況下，可能會變成依據已知恐怖份子活動國家或地理區域，或其他有限的資恐態樣（許多皆透露與洗錢相同的技術），進行交易監控。

43. Specific individuals, organisations or countries may be the subject of terrorist financing sanctions, in a particular country. In such cases a listing of individuals, organisations or countries to which such sanctions apply and the obligations on legal professionals to comply with those sanctions are decided by individual countries and are not a function of risk. Legal professionals may commit a criminal offence if they undertake business with a listed individual, organisation or country, or its agent, in contravention of applicable sanctions.

43. 具體的個人、組織或國家都可能是特定國家資助恐怖份子制裁的對象。在此類狀況中，適用於該類制裁之個人、組織或國家的列表，以及法律專業人員遵守這些制裁的義務，將由個別國家決定，這些作為不具風險功能。若法律專業人員違反相關制裁，與表列個人、組織或國家進行交易，可能構成犯罪。

44. For these reasons, this Guidance has not comprehensively addressed the application of a risk-based process to terrorist financing. It is clearly preferable that a risk-based approach be applied where reasonably practicable, but further consultation with key stakeholders is required to identify a more comprehensive set of indicators of the methods and techniques used for terrorist financing, which can then be factored into strategies to assess terrorist financing risks and devise measures to mitigate them. DNFBPs, including legal professionals, would then have an additional basis upon 40-44 and such subsequent consultations when they occur.

44. 因此，此指引未就資助恐怖份子的風險基礎流程適用，提出廣泛說明。在合理的情況下，適用風險基礎方法，總比不適用的要好。此外，應與重要利害關係人進行深度諮詢，以發掘更具全面性且可用於資助恐怖份子的方法和技術指標，並將此納入資助恐怖份子風險的評估策略，與簡化措施的多元化策略。指定之非金融事業或人員（包括法律專業人員），根據 40-44 段說明及後續發生的諮詢，將有更多依循的基礎。

Limitations to the risk-based approach

風險基礎方法的限制

45. There are circumstances in which the application of a risk-based approach will not apply, or may be limited. There are also circumstances in which the application of a risk-based approach may not apply to the initial stages of a requirement or process, but then will apply to subsequent stages. The limitations to the risk-based approach are usually the result of legal or regulatory requirements that mandate certain actions to be taken.

45. 在某些情況下，可能無法適用風險基礎方法，或其適用受到限制。有些情況可能導致無法要求在流程的初始階段，就適用風險基礎方法，但可在後續階段使用。風險基礎方法的限制，通常是因為法律或監管規範要求，必須採取某些措施所導致。

46. Requirements to freeze assets of identified individuals or entities, in countries where such requirements exist, are independent of any risk assessment. The requirement to freeze is absolute and cannot be impacted by a risk-based process. Similarly, while the identification of potential suspicious transactions can be advanced by a risk-based approach, in countries where such obligations exist, the reporting of such suspicious transactions, once identified, is not risk-based. (See paragraph 119.)

46. 對特定個人或單位，實施凍結資產的國家，相關凍結要求並非取決於任何風險評估。此凍結規定絕對不可受到風險基礎流程的影響。同樣的，如果可以透過風險基礎方法，強化潛在可疑交易的辨識，則在有此類義務的國家中，報告此類業經辨識的可疑交易，便不再以風險為基礎。（請參閱第 120 段）

47. CDD comprises several components – Identification and verification of the identity of clients and of beneficial owners, obtaining information on the purposes and intended nature of the business relationships and conducting ongoing due diligence. Of these components, the identification and verification of identity of clients are requirements that must be completed regardless of the risk-based approach. However, in relation to all other CDD components, a reasonably implemented risk-based approach may allow for a determination of the extent and quantity of information required, and the mechanisms to be used to meet these minimum standards. Once this determination is made, the obligation to keep records and documents that have been obtained for due diligence purposes, as well as transaction records, is not dependent on risk levels.

47. 客戶審查包括多個元素 – 辨識及驗證委託人及實質受益人的身分，取得業務往來關係所需及合理預期的資訊，以及執行持續的客戶審查。在這些元素中，辨識並驗證委託人身分是必須完成的要求，不論是否採用風險基礎方法。然而，在所有其他客戶審查元素方面，合理執行的風險基礎方法，可以允許判斷所需資訊的範圍與數量，以及須使用何種機制，才能符合這些最低標準。完成相關判斷後，為客戶審查目的而取得的紀錄與文件，以及各項交易紀錄的保存義務，皆與風險程度無關。

48. Countries may allow legal professionals to apply reduced or simplified measures where the risk of money laundering or terrorist financing is lower. However, these reduced or simplified measures do not necessarily apply to all aspects of CDD. Where these exemptions are subject to certain conditions being met, it is necessary to verify that these conditions apply, and where the exemption applies under a certain threshold, measures should be in place to prevent transactions from being split artificially to avoid the threshold. Information beyond client identity, such as client location, may be needed to adequately assess risk. This will be an iterative process: the preliminary information obtained about a client should be sufficient to determine whether to go further, and in many cases client monitoring will provide additional information.

48. 若洗錢或資助恐怖份子風險較低，國家可以允許法律專業人員，應用簡化或簡易措施。但是，這些簡化或簡易的措施，不必然適用於客戶審查的所有層面。如果這些免除措施，需要滿足特定條件，則必須驗證這些條件的適用；如果免除措施，適用特定門檻，則應有適當對策，避免刻意分拆交易，規避門檻。可能需要委託人身分以外的資訊（例如委託人地點），方能適當評估風險。這是一個反覆的流程：取得關於委託人的初步資訊，足以判斷是否還需要更多資訊，很多時候委託人監控將提供額外的資訊。

49. Some form of monitoring is required in order to detect unusual and hence possibly suspicious transactions. Even in the case of lower risk clients, monitoring is needed to verify that transactions match the initial low risk profile and if not, trigger a process for appropriately revising the client's risk rating. Equally, risks for some clients may only become evident once a relationship with a client has begun. This makes appropriate and reasonable monitoring of client transactions an essential component of a properly designed risk-based approach; however, within this context it should be understood that not all transactions or clients will be monitored in exactly the same way. Moreover, where there is an actual suspicion of money laundering or terrorist financing, this could be regarded as a higher risk scenario, and enhanced due diligence should be applied regardless of any threshold or exemption. Given the relationship between a legal professional and his/her client, the most effective form of ongoing monitoring will often

be continued observance and awareness of a client's activities by the legal professional. This requires legal professionals to be alert to this basis of monitoring and for training of legal professionals to take this feature into account.

49. 必須採取一定形式的監控，以偵測不尋常的潛在可疑交易。即使是低風險委託人，仍需監控，以驗證交易是否符合原始的低風險背景，如果不符合，應啟動一定流程，以便適當修訂該委託人的風險評等。同樣的，部分委託人的風險，可能在與其他委託人的關係開始後才會顯現。適當合理監控委託人交易，成為設計合適風險基礎方法的重要元素；在這樣的背景中，應瞭解並非所有的交易或委託人，都會以完全相同的方式監控。若確實發生可疑的洗錢或資助恐怖份子情事，可將此懷疑視為風險較高案件，而且不論任何門檻或免除措施，都應加強客戶審查。鑑於法律專業人員及委託人之間的關係，持續監控最有效的形式，通常是由法律專業人員持續觀察並瞭解委託人的活動。這需要法律專業人員留意監控的本質，訓練法律專業人員時，亦應將此特點納入考量。

Distinguishing Risk-Based Monitoring and Risk-Based Policies and Processes 區分以風險為基礎的監理以及以風險為基礎的政策和流程

50. Risk-based policies and processes should be distinguished from risk-based monitoring by designated competent authorities or SROs. There is a general recognition within monitoring practice that resources should be allocated taking into account the risks posed by individual practices. The methodology adopted by the designated competent authorities or SROs to determine allocation of monitoring resources should cover the practice focus, the risk profile and the internal control environment, and should permit relevant comparisons between practices. Most fundamentally, such methodology needs to recognize that the relationship between the legal professional and the client is often an on-going one. The methodology used for determining the allocation of resources will need updating on an ongoing basis so as to reflect the nature, importance and scope of the risks to which individual practices are exposed. Consequently, this prioritisation should lead designated competent authorities or SROs to focus increased regulatory attention to legal professionals who engage in activities assessed to be of higher risk of money laundering or terrorist financing.

50. 指定權責機關或自律團體，應區分以風險為基礎的政策與流程，及以風險為基礎的監理。監理實務中的一般認知是，資源的分配應考慮個別實務帶來的風險。指定權責機關或自律團體，決定監理資源分配時，所採用的方法應包括實務重點、風險概況以及內控環境，並應允許各執業者之間存在差異。最基本的是，該方法必須承認，法律專業人員與該委託人之間的關係，通常是一種持續性的關係。決定資源分配的方法必須持續更新，以反映個別實務暴露風險的性質、重要性和範圍。因此，依據這樣的優先排序，指定權責機關或自律團體應將更多監理重點，放在特定法律專業人員，因為他們從事的活動，經評估存在較高洗錢或資助恐怖份子風險。

51. However, it should also be noted that the risk factors taken into account to prioritise the designated competent authorities or SROs' work will depend not only on the intrinsic risk associated with the activity undertaken, but also on the quality and effectiveness of the risk management systems put in place to address such risks.

51. 但是，指定權責機關或自律團體之工作排定優先順序時，應注意考慮的因素，不僅取決於所執行活動本身的風險，也取決於所採用之風險管理系統的品質和效能。

52. Since designated competent authorities or SROs should have already assessed the quality of risk management controls applied by legal professionals, it is reasonable that their assessments of these controls be used, at least in part, to inform money laundering and terrorist financing risk assessments conducted by individual firms or businesses.

52. 由於指定權責機關或自律團體，應該已經評估過法律專業人員採用之風險管理控制措施的品質，因此，很合理的是，他們對這些控制措施的評估，至少會有一部分，用於提醒個別公司或企業進行的洗錢及資助恐怖份子風險評估。

Summary box: A risk-based approach to countering money laundering and terrorist financing at the national level: key elements for success

摘要表：國家層級防制洗錢與資助恐怖份子風險基礎方法：成功關鍵因素

- Legal professionals, designated competent authorities and/or SROs should have access to reliable and actionable information about the threats.
- 法律專業人員、指定權責機關及／或自律團體可以取得關於這些威脅可靠而可操作的資訊。
- There must be emphasis on cooperative arrangements among the policy makers, law enforcement, regulators, and the private sector.
- 重視政策制定者、執法機關、監管機關與私部門之間合作。
- Authorities should publicly recognise that the risk-based approach will not eradicate all elements of risk.
- 有關單位應公開確認風險基礎方法，無法根除所有風險因素。
- Authorities have a responsibility to establish an atmosphere in which legal professionals need not be afraid of regulatory sanctions where they have acted responsibly and implemented adequate internal systems and controls.
- 有關單位有責任創造一個適當的氛圍，讓法律專業人員只要採取負責任的行動，並實施適當的內部系統和控制措施，不需要擔心監理制裁。
- Designated competent authorities' and/or SROs' supervisory staff must be well-trained in the risk-based approach, both as applied by designated competent authorities/SROs and by legal professionals.
- 指定權責機關及／或自律團體的監督人員必須受過良好訓練，充分瞭解指定權責機關／自律團體所應用的風險基礎方法。

SECTION TWO: GUIDANCE FOR PUBLIC AUTHORITIES

第二節：公部門指引

Chapter One: High-level principles for creating a risk-based approach

第一章：建立風險基礎方法的高階原則

53. The application of a risk-based approach to countering money laundering and the financing of terrorism will allow designated competent authorities or SROs and legal professionals to use their resources most effectively. This chapter sets out five high-level principles that should be considered by countries when designing a risk-based approach applicable to legal professionals. They could be considered as setting out a broad framework of good practice.

53. 用風險基礎方法打擊洗錢及資助恐怖份子，可以讓指定權責機關或自律團體及法律專業人員，以最有效的方式利用資源。本章提出五大高階原則，各國在設計適用於法律專業人員的風險基礎方法時，應加以考慮。這些原則可視為初步建立的優良實務概括架構。

54. The five principles set out in this Guidance are intended to assist countries in their efforts to improve their AML/CFT regimes. They are not intended to be prescriptive, and should be applied in a manner that is well-considered, is appropriate to the particular circumstances of the country in question and takes into account the way in which legal professionals are regulated in that country and the obligations they are required to observe.

54. 本指引中所列舉的五大原則，旨在協助各國改進防制洗錢/打擊資恐體制。這些原則不是硬性規定，應於深思熟慮後加以應用，尤其適合於國家尚未確定如何進行的特殊狀況，並考慮法律專業人員在該國受監管的方法，以及必須遵守的義務。

Principle One: Understanding and responding to the threats and vulnerabilities: a national risk assessment

原則一：瞭解並回應威脅與弱點：國家層級風險評估

55. Successful implementation of a risk-based approach to combating money-laundering and terrorist financing depends on a sound understanding of the threats and vulnerabilities. Where a country is seeking to introduce a risk-based approach at a national level, this will be greatly aided if there is a national understanding of the risks facing the country. This understanding can flow from a national risk assessment that can assist in identifying the risks.

55. 執行風險基礎方法，打擊洗錢和資助恐怖份子，是否成功，端看能否全盤瞭解威脅與弱點而定。各國在尋求國家層級上導入風險基礎方法時，若能先瞭解國家面對的全國性風險，將能提供很大的助益。國家風險評估，有助於增進這種辨識風險的瞭解。

56. National risk assessments should be tailored to the circumstances of each country. For a variety of reasons, including the structure of designated competent authorities or SROs and the nature of DNFBPs, including legal professionals, each country's judgements about the risks will be unique, as will their decisions about how to implement a national assessment in practice. A national assessment need not be a single formal process or document. The desired outcome is that decisions about allocating responsibilities and resources at the national level are based on a comprehensive and current understanding of the risks. Designated competent authorities and SROs, in consultation with the private sector, should consider how best to achieve this while also taking into account any jurisdictional limitations of applying the risk-based

approach to legal professionals, as well as any risk associated with providing information on money laundering and terrorist vulnerabilities.

56. 各國應針對自身環境，設計專屬的國家風險評估。因為指定權責機關或自律團體的結構，以及指定之非金融事業或人員（包括法律專業人員）的性質等各種原因，各國對於風險的判斷將不同，就實務面而言，如何實施國家風險評估的決定也會不同。國家風險評估，必須是單一正式流程或文件。預期的結果為：各國以其對風險的最新綜合瞭解為基礎，在國家層級上決定責任與資源的分配。在與私人部門諮商後，指定權責機關及自律團體，應考慮如何最完美的達成這個目標，同時考慮將風險基礎方法，應用於法律專業人員的可能司法管轄權的限制，以及伴隨於提供洗錢及恐怖份子弱點相關資訊的任何風險。

Principle Two: A legal/regulatory framework that supports the application of a risk-based approach **原則二：支援使用以風險為基礎方法的法律／法規架構**

57. Countries should consider whether their legislative and regulatory frameworks are conducive to the application of the risk-based approach. Where appropriate the obligations imposed should be informed by the outcomes of the national risk assessment.

57. 各國應考量立法與監理架構，是否有助於實施風險基礎方法。依據國家風險評估結果，應予採行適當的措施。

58. The risk-based approach does not mean the absence of a clear statement of what is required from the DNFBPs, including from legal professionals. However, under a risk-based approach, legal professionals should have a degree of flexibility to implement policies and procedures which respond appropriately to their own risk assessment. In effect, the standards implemented may be tailored and/or amended by additional measures as appropriate to the risks of an individual legal professional and/or practice. The fact that policies and procedures, in accordance to the risk levels, may be applied to different services, clients and locations does not mean that policies and procedures need not be clearly defined.

58. 風險基礎方法並不表示沒有清楚說明，對指定之非金融事業或人員（包括法律專業人員）的要求。根據風險基礎方法，法律專業人員應有一定程度的彈性，可以針對自身風險評估，進行適當回應的政策和程序。事實上，實施的準則可以透過量身訂做或額外措施進行修訂，配合個別法律專業人員或執業單位，進行調整。雖然政策及程序可根據風險水準，應用於不同服務、委託人及地點，但並不表示該政策及程序不需要清楚定義。

59. Basic minimum AML/CFT requirements can co-exist with a risk-based approach. Indeed, sensible minimum standards, coupled with scope for these to be enhanced when the risk justifies it, should be at the core of risk-based AML/CFT requirements. These standards should, however, be focused on the outcome (combating through deterrence, detection, and, when there is a requirement in a particular country, reporting of money laundering and terrorist financing), rather than applying legal and regulatory requirements in a purely mechanistic manner to every client. SROs may assist in the development of such standards for legal professionals.

59. 基本最低防制洗錢/打擊資恐要求，可與風險基礎方法並存。事實上，合理的最低標準以及根據風險而採取的合理加強措施及其範圍，應為風險基礎相關防制洗錢/打擊資恐要求的核心項目。這些標準應聚焦於結果（透過嚇阻、偵測及特定國家要求的報告，來打擊洗錢及資助恐怖份子），並非以純粹機械化的方式，將法律及監理要求應用於每一位委託人。自律團體可協助為法律專業人員發展此類標準。

Principle Three: Design of a monitoring framework to support the application of the risk-based approach

原則三：設計監理架構，支持風險基礎方法的應用

60. In certain countries, SROs play a critical role in the regulation of legal professionals, which may be based on fundamental constitutional principles. Some SROs have the ability to audit or investigate their own members, although in some countries these powers may be limited to reviewing policies and procedures as opposed to specific clients and matters. Depending on the powers of and responsibilities accepted by SROs, SROs may be able to facilitate or ensure compliance by legal professionals with the relevant legislation and/or develop guidance relating to money laundering. In some countries, the SROs may provide a greater level of scrutiny than that which can be afforded by a government or regulatory AML program. SROs should be encouraged to work closely with domestic AML/CFT regulators.

Countries should ensure that SROs have appropriate resources to discharge their AML/CFT responsibilities. In some cases, legal professionals may conduct activities falling within the scope of Recommendation 12 that under national law may also require supervision from appropriate authorities.

60. 在特定國家，自律團體在監管法律專業人員方面，扮演關鍵的角色，而且可能是根據基本的憲法原則。雖然有些自律團體有能力稽核或調查自己的成員，但在某些國家，這類權力可能僅限於檢討政策和程序，而非具體的委託人及事務。根據自律團體的權力和所接受的職責，自律團體可能可以促進或確保法律專業人員遵守相關立法及／或擬定洗錢相關指引。在某些國家，自律團體提供的審查，可能比政府或監理洗錢防制計畫，所能提供的水準更高。應鼓勵自律團體與國內防制洗錢/打擊資恐監管機構密切合作。各國應確保自律團體擁有適當資源，以履行其防制洗錢/打擊資恐職責。法律專業人員在執行第 12 項建議範圍內的活動，依據國家法律，可能也需要權責機關適當的監理措施。

61. Where appropriate, designated competent authorities and SROs should seek to adopt a risk-based approach to the monitoring of controls to combat money laundering and terrorist financing. This should be based on a thorough and comprehensive understanding of the types of activity carried out by legal professionals, and the money laundering and terrorist financing risks to which these are exposed. Designated competent authorities and SROs will probably need to prioritise resources based on their overall assessment of where the risks are in the legal professionals' practices.

61. 指定權責機關與自律團體在情況允許之下，應採用風險基礎方法，來監控打擊洗錢和資助恐怖份子的控制措施。這應該根據對法律專業人員執行之活動型態及所暴露的洗錢和資助恐怖份子風險，具備徹底的全面瞭解。指定權責機關及自律團體，可能需要根據其對法律專業人員實務的全面風險評估，來決定資源的優先順序。

62. Designated competent authorities and SROs with responsibilities other than those related to AML/CFT will need to consider these risks alongside other risk assessments arising from the designated competent authority's or SRO's wider duties.

62. 指定權責機關與自律團體，除防制洗錢/打擊資恐風險外，應一併考量自身所負所有權責風險。

63. Such risk assessments should help the designated competent authority or SRO choose where to apply resources in its monitoring programme, with a view to using limited resources to achieve the greatest effect. A risk assessment may also indicate that the designated competent authority or SRO does not have adequate resources to deal with the risks. In such circumstances, the designated competent authority or SRO may need to obtain, where possible, additional resources or adopt other strategies to manage or mitigate any unacceptable residual risks.

63. 此風險評估，應協助指定權責機關或自律團體，選擇將資源用於監控計算哪些項目，才能用有限的資源，產生最大的效果。風險評估可以指出指定權責機關與自律團體，缺少處理風險所需的充足資源。在這種情況下，指定權責機關或自律團體可能必須於可行時取得額外資源，或調整策略，管理或減低任何不可接受的殘餘風險。

64. The application of a risk-based approach to monitoring requires that designated competent authorities' and SROs' staff be able to make principle-based decisions in a fashion similar to what would be expected from the staff of a legal professional's practice. These decisions will cover the adequacy of the arrangements to combat money laundering and terrorist financing. As such, a designated competent authority or SRO may wish to consider how best to train its staff in the practical application of a risk-based approach to monitoring. This staff will need to be well-briefed as to the general principles of a risk-based approach, the possible methods of application, and what a risk-based approach looks like when successfully applied within the context of a national risk assessment.

64. 如果想要利用風險基礎方法進行監理，則指定權責機關及自律團體的人員必須要有能力，以法律專業實務從業人員所能預期的類似方式，做出以原則為基礎的決定。這些決定包含如何在充分的安排下，打擊洗錢與資助恐怖份子。為此，專責主管機關或自律團體，可能考量如何在風險基礎監理的實務應用方面，將其人員訓練至最優程度。這些工作人員必須相當瞭解風險基礎方法的一般原則、可能的應用方法、以及風險基礎方法，成功應用於國家風險評估時的狀況。

Principle Four: Identifying the main actors and ensuring consistency

原則四：找出主要執行人員和確保一致性

65. Countries should consider who the main stakeholders are when adopting a risk-based approach to combating money laundering and terrorist financing. These will differ from country to country. Thought should be given as to the most effective way to share responsibility between these parties, and how information may be shared to best effect. For example, consideration may be given to which body or bodies are best placed to provide guidance to legal professionals about how to implement a risk-based approach to AML/CFT.

65. 各國應考量在採取風險基礎方法打擊洗錢和資助恐怖份子時，誰是主要利害關係人。答案視國家而有所不同。應思考各利害關係人之間最有效的責任分擔方法，以及如何以最有效的方式分享資訊。例如，考慮哪些機構，最適合對法律專業人員，提供關於如何對防制洗錢/打擊資恐，實施風險基礎方法的指引。

66. A list of potential stakeholders may include the following:

66. 潛在利害關係人清單可能包括：

- Government – This may include legislature, executive, and judiciary.
- 政府－可能包括立法、行政、司法單位。
- Law enforcement agencies – This might include the police, customs and similar agencies.
- 執法機構－可能包括警察、海關及類似機構。
- The financial intelligence unit (FIU), security services, and other similar agencies.
- 金融情報中心（FIU）、證券服務、其他類似機關。
- Designated competent authorities/SROs (particularly bar associations and law societies).
- 指定權責機關／自律團體（尤其是律師協會和法律團體）。
- The private sector – This might include legal professionals and law firms and legal professional organisations and associations such as national, state, local, and specialty professional societies and bar associations.
- 私部門－可能包括法律專業人員及法律事務所及法律專業人員組織和協會，例如國家、州、地方和專業職業社團以及律師協會。
- The public – Arrangements designed to counter money laundering and terrorist financing are ultimately designed to protect the law-abiding public. However, these arrangements may also act to place burdens on clients of legal professionals.
- 社會大眾－所有防制洗錢與打擊資恐的規劃，最終目的是保護守法大眾。但這些規劃也可能對法律專業人員的委託人造成負擔。

- Others – Those who are in a position to contribute to the conceptual basis underpinning the risk-based approach, such stakeholders may include academia and the media.
- 其他－支持風險基礎方法之概念者，例如可能包括學界或媒體。

67. Clearly a government will be able to exert influence more effectively over some of these stakeholders than others. However, regardless of its capacity to influence, a government will be in a position to assess how all stakeholders can be encouraged to support efforts to combat money laundering and terrorist financing.

67. 政府對於某些利害關係人的有效影響能力，顯然高過對於其他利害關係人的影響。然而，政府不論有何影響力，都要評估如何鼓勵所有利害關係人，支持打擊洗錢和資助恐怖份子。

68. A further element is the role that governments have in seeking to gain recognition of the relevance of a risk-based approach from designated competent authorities. This may be assisted by relevant authorities making clear and consistent statements on the following issues:

68. 另一個因素是政府在尋求指定權責機關，對於風險基礎方法相關性認同時，所扮演的角色。相關機關可以對以下議題提出明確且一致的聲明，進而對政府的上述角色提供幫助：

- Legal professionals can be expected to have the flexibility to adjust their internal systems and controls taking into consideration lower and high risks, so long as such systems and controls are reasonable. However, there are also minimum legal and regulatory requirements and elements that apply irrespective of the risk level, such as minimum standards of CDD.
- 法律專業人員可以靈活調整其內部系統及控制措施，考慮較低及較高的風險，只要該系統和控制措施合理。不論風險水準如何，都有適用的最低法律和監管要求和元素，例如最低客戶審查標準。
- Acknowledging that a legal professional’s ability to detect and deter money laundering and terrorist financing may sometimes be necessarily limited and that information on risk factors is not always robust or freely available. There can therefore be reasonable policy and monitoring expectations about what a legal professional with good controls aimed at preventing money laundering and the financing of terrorism is able to achieve. A legal professional may have acted in good faith to take reasonable and considered steps to prevent money laundering, and documented the rationale for his/her decisions, and yet still be abused by a criminal.
- 認知法律專業人員偵測並防止洗錢和資助恐怖份子的能力，有時候必然會受到限制，且風險因素的相關資訊，不一定穩定或可以自由取得。因此，具備良好的防制洗錢及資助恐怖份子控制措施，法律專業人員即可以達成合理的政策和監理期望。法律專業人員雖已基於善意採取合理而審慎的避免洗錢步驟，並作成記錄，但仍可能被犯罪者濫用。
- Acknowledging that not all high-risk situations are identical and as a result will not always require the application of precisely the same type of enhanced due diligence.
- 認知並非所有高風險情況都相同，所以並非每次都要進行完全相同的加強客戶審查。

Principle Five: Information exchange between the public and private sector

原則五：公私部門間資訊交換

69. Effective information exchange between the public and private sector will form an integral part of a country’s strategy for combating money laundering and terrorist financing. In some cases, it will allow the private sector to provide designated competent authorities and SROs with information they identify as a result of previously provided government intelligence. In countries where SROs regulate and monitor legal professionals for AML compliance, such SROs may well acquire information that would be relevant to a country’s strategy for combating money laundering and terrorist financing. To the extent that

such information may be released in accordance with applicable laws, regulations, and rules, the results may be made available to the designated competent authorities.

69. 公部門和私部門之間有效的資訊交換，是一個國家打擊洗錢和資助恐怖份子策略必要的一環。許多案例顯示，私部門針對指定權責機關及自律團體提供的情報，可以提供後續相關辨識之資訊。在自律團體負責監理及監管法律專業人員洗錢防制遵循狀況的國家，該自律團體可以輕易取得打擊洗錢及資助恐怖份子之國家策略的相關資訊。在相關法律、條例及規定許可下，對外發布該類資訊，並將結果提供給指定權責機關。

70. Public authorities, whether law enforcement agencies, designated competent authorities or other bodies, have privileged access to information that may assist legal professionals to reach informed judgements when pursuing a risk-based approach to counter money laundering and terrorist financing. Likewise, legal professionals are able to understand their clients' legal needs reasonably well. It is desirable that public and private bodies work collaboratively to identify what information is valuable to help combat money laundering and terrorist financing, and to develop means by which this information might be shared in a timely and effective manner.

70. 在採取風險基礎方法打擊洗錢和資助恐怖份子時，政府當局（包括執法機構、指定權責機關或其他單位）有權取得可以協助法律專業人員做出明智判斷的資訊。同樣的，法律專業人員可以合理瞭解委託人的法律需求。期待公私部門機構相互合作，主動鑑別有價值的資訊，協助打擊洗錢和資助恐怖份子，並且建立方法，確保及時有效地分享資訊。

71. To be productive, information exchange between the public and private sector should be accompanied by appropriate exchanges among public authorities. FIUs, designated competent authorities and law enforcement agencies should be able to share information and feedback on results and identified vulnerabilities, so that consistent and meaningful inputs can be provided to the private sector. All parties should of course, consider what safeguards are needed to adequately protect sensitive information held by public bodies from being disseminated in contravention of applicable laws and regulations.

71. 為提高效益，公私部門之間的資訊交換，應該要伴隨公部門之間的適當交換。金融情報中心、指定權責機關和執法機關，應分享資訊與回饋結果，並鑑別弱點，以利提供私部門的相關資訊，前後一致且具有實益。當然，所有單位都應該考慮需要哪些保全措施，以免廣泛散播政府機關持有的敏感資訊。

72. Relevant stakeholders should seek to maintain a dialogue so that it is well understood what information has proved useful in combating money laundering and terrorist financing. For example, the types of information that might be usefully shared between the public and private sector would include, if available:

72. 相關利害關係人應持續溝通，充分瞭解何種打擊洗錢和資助恐怖份子的資訊，確實有用。例如，公私部門之間，可能有用的分享資訊種類，包括：

- Assessments of country risk.
- 國家風險評估。
- Typologies or assessments of how money launderers and terrorists have abused DNFBPs, especially legal professionals.
- 洗錢者及恐怖份子會如何濫用指定之非金融事業或人員（尤其是法律專業人員）之型態和評估。
- Feedback on suspicious transaction reports and other relevant reports.
- 可疑交易報告和其他相關報告的回饋。
- Targeted unclassified intelligence. In specific circumstances, and subject to appropriate safeguards and a country's legal and regulatory framework, it may also be appropriate for authorities to share targeted confidential information with legal professionals.
- 特定非機密情報。在特殊狀況下，且有適當保全措施和國家的法律和監管框架時，當

局也可與法律專業人員分享目標性機密資訊。

- Countries, persons or organisations whose assets or transactions should be frozen.
- 資產或交易應予凍結的國家、個人或組織。

73. When choosing what information can be properly and profitably shared, public authorities may wish to emphasise to legal professionals that information from public bodies should inform, but not be a substitute for legal professionals' own judgements. For example, countries may decide not to create what are perceived to be definitive country-approved lists of low risk client types. Instead, public authorities may prefer to share information on the basis that this will be one input into legal professionals' decision making processes, along with any other relevant information that is available to legal professionals.

73. 在選擇正確並有利地分享資訊時，政府當局應向法律專業人員強調，政府單位的資訊是有資訊價值的，但不能取代法律專業人員自己的判斷。例如，各國可能決定不認定國家認可的低風險委託人類型清單。相反的，政府當局可能希望所分享的資訊，與法律專業人員可取得之其他資訊一樣，成為法律專業人員決策流程的因素之一。

Chapter Two: Implementation of the Risk-Based Approach

第二章：執行風險基礎方法

Assessment of Risk to Inform National Priorities:

評估風險提供資訊，以利國家排定優先順序

74. A risk-based approach should be built on sound foundations: effort must first be made to ensure that the risks are well understood. As such, a risk-based approach should be based on an assessment of the threats. This is true whenever a risk-based approach is applied, at any level, whether by countries or individual legal professionals and/or firms. A country's approach should be informed by its efforts to develop an understanding of the risks in that country. This can be considered as a "national risk assessment".

74. 風險基礎方法應建立在穩固的基礎上：首先應確保全盤瞭解風險。嚴格地說，風險基礎方法應建立在威脅評估的基礎之上。這是事實，只要在任何層級上應用風險基礎方法，不論是針對國家，還是針對個別法律專業人員及／或事務所。各國若能對風險有充分的瞭解，將能為其風險基礎方法的執行提供資訊。此即為「國家風險評估」。

75. A national risk assessment should be regarded as a description of fundamental background information to assist designated competent authorities, law enforcement authorities, the FIU, financial institutions and DNFBPs to ensure that decisions about allocating responsibilities and resources at the national level are based on a practical, comprehensive and up-to-date understanding of the risks.

75. 國家風險評估，應該被視為基本背景資料的說明，以協助主管機關、執法機關、金融情報中心、金融機構、指定之非金融事業或人員，確保關於在國家層級分配責任與資源的決定，是根據對風險的實際且最新的綜合瞭解。

76. A national risk assessment should be tailored to the circumstances of the individual country, both in how it is executed, and its conclusions, though countries should be mindful that money laundering and terrorist financing can often have an international dimension, and that such information may also add value to the national risk assessment. Factors that may influence the risk of money laundering and terrorist financing in a country could include the following:

76. 無論是執行方式抑或結論，國家風險評估應該要針對自身國家狀況量身訂做；各國應切記，洗錢及資助恐怖份子通常具有國際性，且國際資訊也可增加國家風險評估的價值。可能對各國洗錢與資恐風險造成影響的因素包括：

- Political environment.
- 政治環境。
- Legal environment.
- 法律環境。
- A country's economic structure.
- 國家經濟結構。
- Cultural factors, and the nature of civil society.
- 文化因素與公民社會的性質。
- Sources, location and concentration of criminal activity.
- 犯罪活動的資源、地點與匯集。
- Size and composition of the financial services industry.
- 金融服務業規模與構成。
- Ownership structure of financial institutions and DNFBPs businesses.
- 金融機構與指定之非金融事業或人員企業的所有權結構。
- Size and nature of the activity carried out by DNFBPs, including legal professionals.
- 指定之非金融事業或人員（包括法律專業人員）執行之活動的規模和性質。
- Corporate governance arrangements in relation to financial institutions and DNFBPs and the wider economy.
- 涉及金融機構與指定之非金融事業或人員的公司治理安排與經濟發展。
- The nature of payment systems and the prevalence of cash-based transactions.
- 付款系統性質與現金交易普及率。
- Geographical spread of the financial industry's and DNFBPs' operations and clients.
- 金融業和指定之非金融事業或人員之營運和委託人的地理分佈。
- Types of products and services offered by the financial services industry and DNFBPs.
- 金融服務業和指定之非金融事業或人員提供之產品及服務型態。
- Types of customers/clients serviced by financial institutions and DNFBPs.
- 金融機構和指定之非金融事業或人員服務之客戶／委託人型態。
- Types of predicate offences.
- 前置犯罪的類型。
- Amounts of illicit money generated domestically.
- 國內產生的不法金錢數額。
- Amounts of illicit money generated abroad and laundered domestically.
- 國外產生，國內洗錢的不法金錢數額。
- Main channels or instruments used for laundering or financing terrorism.
- 洗錢或資助恐怖份子主要管道或工具。
- Sectors of the legal economy affected.
- 受影響的合法經濟領域。
- Underground/informal areas in the economy.
- 地下／非法經濟領域。

77. Countries should also consider how an understanding of the risks of money laundering and terrorist financing can be best achieved at the national level. Relevant questions could include: Which body or bodies will be responsible for contributing to this assessment? How formal should an assessment

be? Should the designated competent authority's or SRO's view be made public? These are all questions for the designated competent authority or SRO to consider.

77. 就國家層級而言，各國亦應考慮如何以最有效的方式，瞭解洗錢與資助恐怖份子風險。相關問題應該包括：那個組織有責任對此評估有所投入？評估應有多高的正式性？是否應公布指定權責機關或自律團體的觀點？這些是指定權責機關或自律團體應考量的所有問題。

78. The desired outcome is that decisions about allocating responsibilities and resources at the national level are based on a comprehensive and up-to-date understanding of the risks. To achieve the desired outcome, designated competent authorities and SROs should ensure that they identify and provide DNFBPs (including legal professionals) with the information needed to develop this understanding and to design and implement measures to mitigate the identified risks.

78. 預期的結果為根據對最新風險的全面瞭解，決定國家層級的責任與資源分配。為達成期望的結果，指定權責機關及自律團體，應確保辨識並提供指定之非金融事業或人員（包括法律專業人員）必要資訊，以建立相關洗錢與資助恐怖份子風險的瞭解，並設計及實施適當措施，降低所辨識的風險。

79. Developing and operating a risk-based approach involves forming judgements. It is important that these judgements are well informed. It follows that, to be effective, the risk-based approach should be information-based and include intelligence where appropriate. Effort should be made to ensure that risk assessments are based on fresh and accurate information. Governments utilising partnerships with law enforcement bodies, FIUs, designated competent authorities/SROs and legal professionals themselves, are well placed to bring their knowledge and expertise to bear in developing a risk-based approach that is appropriate for their particular country. Their assessments will not be static and will change over time, depending on how circumstances develop and how the threats evolve. As such, countries should facilitate the flow of information between different bodies, so that there are no institutional impediments to information dissemination.

79. 制定和執行風險基礎方法需要判斷。重要的是須在獲得充分資訊的條件下，進行判斷。因此，為確保有效，風險基礎方法應以資訊為基礎，並在可行時納入情報。應致力確保在最新取得的正確資訊基礎上，進行風險評估。各國政府，運用與執法當局、金融情報中心、指定權責機關／自律團體及法律專業人員本身之夥伴關係，可以就其知識和專業，發展適合的風險基礎方法。各國政府的評估，隨著時間改變，並非靜態，端視環境的發展與威脅的變化而定。因此，國家應協助不同單位間的資訊流通，這樣才不會對資訊傳播，造成體制性的阻礙。

80. Whatever form they take, a national assessment of the risks, along with measures to mitigate those risks, can inform how resources are applied to combat money laundering and terrorist financing, taking into account other relevant country policy goals. It can also inform how these resources are most effectively assigned to different public bodies and SROs, and how those bodies make use of those resources in an effective manner.

80. 不論採取何種形式，國家風險評估與風險減輕措施，都能透露如何分配資源以打擊洗錢與資助恐怖份子，並且考量其他相關國家的政策目標。此評估亦透露如何以最有效的方式，將資源分配給不同的公部門機關與自律團體，以及公部門機關如何有效利用這些資源。

81. As well as assisting designated competent authorities and SROs to decide how to allocate funds to combat money laundering and terrorist financing, a national risk assessment can also inform decision-makers on the best strategies for implementing a regulatory regime to address the risks identified. An over-zealous effort to counter the risks could be damaging and counter-productive, placing unreasonable burdens on legal professionals. Alternatively, less aggressive efforts may not be sufficient to protect society from the threats posed by criminals and terrorists. A sound understanding of the risks at the national level could help obviate these dangers.

81. 除協助指定權責機關及自律團體，決定如何分配資金，以打擊洗錢和資助恐怖份子之外，國家風險評估，亦可協助決策者擬定最佳策略，以實施監理體制，處理經辨識的風險。過分投入防制風險，可能產生破壞及反效，對法律專業人員造成不合理的負擔。相反的，不夠積極的投入，可

能也不足以免於犯罪者和恐怖份子的威脅。在國家層級上，對風險進行充分瞭解，有助於避開這些危險。

Effective systems for monitoring and ensuring compliance with AML/CFT requirements – General Principles

監控及確保符合防制洗錢/打擊資恐要求的有效制度 – 一般原則

82. FATF Recommendation 24 requires that legal professionals should be subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. In determining whether there is an effective system, regard may be had to the risk of money laundering or terrorist financing in the sector. There should be a designated competent authority or SRO responsible for monitoring and ensuring compliance by legal professionals; and the authority or SRO should have adequate powers and resources to perform its functions, including powers to monitor and sanction.

82. 防制洗錢金融行動工作組織第 24 項建議要求，法律專業人員應受有效系統規範，監理並確保遵循防制洗錢/打擊資恐之要求。在判斷是否具備有效系統時，可考慮該部門的洗錢或資助恐怖份子風險。應有一個指定權責機關或自律團體，負責監控並確保法律專業人員遵循；而該當局或自律團體應有適當權力及資源執行其職能，包括監理／監管的權力。

Defining the acceptable level of risk

定義可接受的風險水準

83. The level of AML/CFT risk will generally be affected by both internal and external risk factors. For example, risk levels may be increased by internal risk factors such as weak compliance resources, inadequate risk controls and insufficient senior management involvement. External level risks may rise due to factors such as the action of third parties and/or political and public developments.

83. 防制洗錢/打擊資恐風險的水準，通常會受到內外部風險因素的影響。例如，不足的遵循資源、不完善的風險控制以及高階管理階層不積極投入等，種種內部風險因素可能導致風險水準增加。外部風險水準可能因為第三方的活動及／或政策與公共發展而增加。

84. As described in Section One, all activity involves an element of risk. Designated competent authorities and SROs should not prohibit legal professionals from conducting business with high risk clients. However, legal professionals would be prudent to identify, with assistance from this or other Guidance, the risks associated with acting for high risk clients. When applicable law prohibits legal professionals from acting for a client, the risk-based approach does not apply.

84. 如第一節所述，所有活動都涉及風險因素。指定權責機關及自律團體，不應禁止法律專業人員與高風險委託人進行交易。但法律專業人員應在本指引或其他指引協助下，謹慎辨識代理高風險委託人的相關風險。若相關法律禁止法律專業人員從事代理行為，則不適用風險基礎方法。

85. However, this does not exclude the need to implement basic minimum requirements. For instance, FATF Recommendation 5 (that applies to legal professionals through the incorporation of R.5 into R.12) states that “where [the legal professional] is unable to comply with [CDD requirements], it should not open the account, commence business relations or perform the transaction; or should terminate the business relationship; and should consider making a suspicious transaction report in relation to the customer.” So the level of risk should strike an appropriate balance between the extremes of not accepting clients, and conducting business with unacceptable or unmitigated risk. As is recognised by the interpretative note to FATF Recommendation 16, however, in those countries where a reporting

requirement has been adopted the matters that would fall under legal professional privilege or professional secrecy are determined by each country.³

85. 然而，此處並不排除對執行最低基本要求的需求。例如，防制洗錢金融行動工作組織第 5 項建議（透過將第 5 項建議併入第 12 項建議，適用於法律專業人員）規定，「若法律專業人員無法遵循客戶審查要求，則不得開戶、開始業務關係或執行交易；或應終止該業務關係；並應考慮針對該委託人提出疑似洗錢或資恐交易報告。」因此，風險水準應在不接受委託以及接受不合理風險或完全未降低風險這兩者極端之間，取得適當的平衡。正如防制洗錢金融行動工作組織第 16 項建議解釋性說明所承認的，在已通過報告要求的國家中，屬於法律專業人員特權或專業保密範圍內的事務，應由各國自行決定。³

86. Where legal professionals implement a risk-based approach, designated competent authorities and SROs must expect legal professionals to put in place effective policies, programmes, procedures and systems to mitigate the risk and acknowledge that even with effective systems not every suspect transaction will necessarily be detected. They should also ensure that those policies, programmes, procedures and systems are applied effectively to prevent legal professionals from becoming conduits for illegal proceeds and ensure that they keep records and make reports (where obligated) that are of use to national authorities in combating money laundering and terrorist financing. Efficient policies and procedures will reduce the level of risks, but are unlikely to eliminate them completely. Assessing money laundering and terrorist financing risks requires judgement and is not an exact science. Monitoring aims at detecting unusual or suspicious transactions among an extremely large number of legitimate transactions; furthermore, the demarcation of what is unusual may not always be straightforward since what is “customary” may vary depending on the clients’ business. This is why developing an accurate client profile is important in managing a risk-based system. Moreover, although procedures and controls are frequently based on previous typologies, criminals will adapt their techniques, which may quickly limit the utility of such typologies.

86. 指定權責機關及自律團體，期待法律專業人員具備降低風險的有效政策、計畫、程序及系統，並承認即使具備有效系統，也不一定能偵測到所有可疑交易。他們也應確保，這些政策、計畫、程序及系統能有效應用，以避免法律專業人員成為非法收益的管道，並確保他們保存適當紀錄及提出適當報告（如有義務），以供國家當局打擊洗錢及資助恐怖份子。有效的政策與程序，能降低風險水準，但不可能完全根除風險。評估洗錢與資恐風險需要判斷，而且未必一定符合科學。監控旨在從大量合法交易中偵測異常或可疑交易；此外，區分異常交易並不一定容易，因為所謂的「正常」，可能因委託人的業務而異。這就是為什麼發展精確的委託人背景資料，對於管理風險基礎系統是如此的重要。再者，雖然程序和控制措施，通常係根據以往的態樣，但犯罪者會調整他們的技術，因而侷限這種方法的用處。

87. Additionally, not all high risk situations are identical, and therefore will not always require precisely the same level of enhanced due diligence. As a result, designated competent authorities/SROs will expect legal professionals to identify individual high risk categories and apply specific and appropriate mitigation measures. Further information on the identification of specific risk categories is provided in Section Three, “Guidance for Legal Professionals on Implementing a Risk-Based Approach.”

87. 此外，不是所有高風險狀況都一樣，無法精確規定相同的強化客戶審查標準。因此，指定權責機關／自律團體，應要求法律專業人員辨識個別高風險類別，並應用具體而適當的風險降低措施。辨識具體風險類別的其他資訊，請參閱第三節「法律專業人員實施風險基礎方法指引」。

³ See Annex 1 for a summary of decisions by judicial authorities on these issues.

³ 司法當局對這些問題的決定摘要請參閱附件 1。

Proportionate Supervisory/Monitoring Actions to support the Risk-Based Approach
按比例的監理／監管行動，以支持風險基礎方法

88. Designated competent authorities and SROs should seek to identify weaknesses through an effective programme of both on-site and off-site supervision, and through analysis of internal and other available information.

88. 指定權責機關與自律團體，應該致力於透過現場與非現場監理，與透過內部與其他可用資訊分析，找出弱點。

89. In the course of their examinations, designated competent authorities and SROs should review a legal professional's AML/CFT risk assessments, as well as its policies, procedures and control systems to arrive at an overall assessment of the risk profile of legal professionals' practices and the adequacy of their mitigation measures. Where available, assessments carried out by or for legal professionals may be a useful source of information. The designated competent authority/SRO assessment of management's ability and willingness to take necessary corrective action is also a critical determining factor. Designated competent authorities and SROs should use proportionate actions to ensure proper and timely correction of deficiencies, taking into account that identified weaknesses can have wider consequences. Generally, systemic breakdowns or inadequate controls will result in the most severe response.

89. 在檢查過程中，指定權責機關及自律團體應檢討法律專業人員的防制洗錢/打擊資恐風險評估，以及政策、程序和控制系統，全面評估法律專業人員實務的風險概況，以及相關降低風險措施的適足性。可行的話，針對法律專業人員或由法律專業人員執行的評估，可能會是有用的資訊來源。指定權責機關/自律團體，對於採取必要控管行動的管理能力及意願的評估，也是重要的判斷因素。指定權責機關與自律團體，應使用合乎比例的行動，確保不足之處有適當、及時的處理，並考慮到已辨識的弱點，可能會產生更巨大的後果。一般而言，系統故障或控制措施不當，會造成最嚴重的監理／監管反應。

90. Nevertheless, it may happen that the lack of detection of an isolated high risk transaction, or of transactions of an isolated high risk client, will in itself be significant, for instance where the amounts are significant, or where the money laundering and terrorist financing typology is well known, or where a scheme has remained undetected for a long time. Such a case might indicate an accumulation of weak risk management practices or regulatory breaches regarding the identification of high risks, monitoring, staff training and internal controls, and therefore, might alone justify action to ensure compliance with the AML/CFT requirements.

90. 但可能發生的狀況是，對個別高風險交易或個別高風險委託人的交易，缺乏重要的偵測，例如金額龐大案件，或洗錢及資助恐怖份子的型態眾所周知案件，或久未偵測出問題之案件。這種狀況可能會顯示出，在辨識高風險、監測、員工訓練與內部控管方面，有著日積月累的風險管理不振或違反法規問題，因此必須採取合理行動，以確保遵循防制洗錢/打擊資恐規定。

91. Designated competent authorities and SROs can and should use their knowledge of the risks associated with services, clients and geographic locations to help them evaluate legal professionals' money laundering and terrorist financing risk assessments, with the understanding, however, that they may possess information that has not been made available to legal professionals and, therefore, legal professionals would not have been able to take such information into account when developing and implementing a risk-based approach. Designated competent authorities and SROs (and other relevant stakeholders) are encouraged to use that knowledge to issue guidelines to assist legal professionals in managing their risks. Where legal professionals are permitted to determine the extent of the CDD measures on a risk sensitive basis, this should be consistent with guidelines issued by their designated competent authorities and SROs⁴. Guidance specifically designed for legal professionals is likely to be the

⁴ FATF Recommendations 5 and 25, Methodology Essential Criteria 25.1 and 5.12.

⁴ 防制洗錢金融行動工作組織建議第 5 項與第 25 項，方法論基本準則 25.1 與 5.12。

most effective. An assessment of the risk-based approach will, for instance, help identify cases where legal professionals use excessively narrow risk categories that do not capture all existing risks, or adopt criteria that lead to the identification of a large number of higher risk relationships, but without providing for adequate additional CDD measures.

91. 指定權責機關及自律團體，可以也應該利用其對服務、委託人及地理位置相關風險的瞭解，協助評估法律專業人員的洗錢及資助恐怖份子風險；但是，他們擁有的資訊，可能沒有提供給法律專業人員，因此，法律專業人員在研擬及實施風險基礎方法時，無法將這些資訊納入考慮。指定權責機關及自律團體（以及其他利害關係人）最好能利用這些知識發行指引，以協助法律專業人員管理風險。若允許法律專業人員，以風險敏感為基礎，決定客戶審查措施的範圍，則應符合指定權責機關及自律團體發行的指引⁴。專為法律專業人員設計的指引可能最為有效。舉例來說，風險基礎方法的評量將有助於辨識一些狀況，例如法律專業人員利用過於狹隘的風險類別，無法掌握所有既存風險，或者採用的標準雖可大量辨識高風險關係，卻無法進行適當的額外客戶審查措施。

92. In the context of the risk-based approach, the primary focus for designated competent authorities and SROs should be to determine whether or not the legal professional's AML/CFT compliance and risk management programme is adequate to: (a) meet the minimum regulatory requirements, and (b) appropriately and effectively mitigate the risks. The monitoring goal is not to prohibit high risk activity, but rather to be confident that legal professionals have adequately and effectively implemented appropriate risk mitigation strategies. Appropriate authorities should, when considering taking action (including applying penalties and sanctions), take into account and give due consideration to the reasoned judgements of legal professionals who are implementing and/or operating an appropriate risk-based approach, which judgements, in hindsight, may ultimately be determined to have been incorrect. In some countries and situations, judicial authorities alone will determine whether the legal professional has complied with the obligation to exercise reasonable judgement.

92. 在風險基礎方法的背景中，指定權責機關及自律團體的主要焦點，應該是判斷法律專業人員的防制洗錢/打擊資恐遵循及風險管理計畫，是否：(a) 符合最低監管要求，且 (b) 能適當並有效降低風險。監控目的並非禁止高風險活動，而是確認法律專業人員能夠並有效實施適當風險降低策略。考慮採取行動時（包括實施懲罰及制裁），適宜機關應考慮並理解，實施及/或操作適當風險基礎方法之法律專業人員的合理判斷，最後可能會被認為不正確。在某些國家及情況中，司法當局將單獨裁定法律專業人員，是否已遵守做合理判斷的義務。

93. Under FATF Recommendation 24, designated competent authorities and SROs should have adequate powers to perform their monitoring functions, including the power to impose adequate sanctions for failure to comply with statutory and regulatory requirements to combat money laundering and terrorist financing. Fines and/or penalties are not appropriate in all regulatory actions, nor will they be permissible in all jurisdictions, to correct or remedy AML/CFT deficiencies. However, subject to the requirements of this paragraph, competent authorities, judicial authorities and SROs must have the authority and willingness to apply appropriate sanctions in cases where substantial deficiencies exist. Often, action will take the form of a remedial programme through the normal monitoring processes.

93. 根據防制洗錢金融行動工作組織第 24 項建議，指定權責機關及自律團體應有執行其監理職能的足夠職權，包括有權對未遵守法定有關打擊洗錢及資助恐怖份子要求，給予適當的制裁。罰款及/或懲罰不一定適用於所有監管行動，也並非所有司法管轄區都允許用修正或補救措施，處理防制洗錢/打擊資恐瑕疵。但根據本條要求，權責機關、司法當局及自律團體必須擁有適當職權及意願，在有實質瑕疵時，予以適當制裁。通常可透過正常監理流程，進行補救計畫。

94. In considering the above factors it is clear that proportionate monitoring will be supported by two central features:

94. 在考慮到上述因素後，很明顯的，合乎比例的監測會具備兩大主要特徵：

a) Regulatory Transparency

a) 法規透明度

95. In the implementation of proportionate actions, regulatory transparency will be of paramount importance. Designated competent authorities and SROs are aware that legal professionals, while looking for professional freedom to make their own risk judgements, will also seek guidance on regulatory obligations. As such, the designated competent authority/SRO with AML/CFT supervisory/monitoring responsibilities should seek to be transparent in setting out what it expects, and will need to consider appropriate mechanisms of communicating these messages. For instance, this may be in the form of high-level requirements, based on desired outcomes, rather than detailed processes. If SROs responsible for the regulation of the relevant legal professionals (including regulation of AML risks) carry out regular AML compliance reviews of their members or otherwise take measures to supervise compliance, the form of an SRO monitoring programme should be determined by each SRO's rules and regulations.

95. 在執行合乎比例的行動時，法規透明度會是最重要的事情。指定權責機關及自律團體應瞭解，法律專業人員在尋求專業自由，做風險判斷的同時，也會尋求監管義務的指引。因此，有防制洗錢／打擊資恐監管或監測之責的指定主管機關/自律團體，應該盡力對其設定的期待保持透明，且必須考慮適當的機制，傳達這些訊息。例如，可能會根據希望得到的結果，有高階層級的規定，而非詳盡的流程。若負責監管相關法律專業人員（包括監管洗錢防制風險）之自律團體對成員定期進行洗錢防制遵循檢討，或採取其他監督遵循措施，相關自律團體監控計畫，應取決於各該自律團體的規則及規定。

96. No matter what individual procedure is adopted, the guiding principle will be that there is an awareness of legal responsibilities and regulatory expectations. In the absence of this transparency there is the danger that monitoring actions may be perceived as either disproportionate or unpredictable, which may undermine even the most effective application of the risk-based approach by legal professionals.

96. 不管採取何種個別程序，指引原則就是要知道法律責任和法規期待。如果沒有這種透明性，監理行動將顯得不適當或不可預測，甚至可能妨礙法律專業人員最有效的應用風險基礎方法。

b) General Education, Staff Training of Designated Competent Authorities, SROs, and Enforcement Staff

b) 一般教育、指定權責機關、自律團體及執法人員的訓練

97. SROs or other bodies that have a supervisory or educational role for legal professionals and legal professional organisations all have a stake in an effective risk-based system. This includes making available to legal professionals educational materials, further guidance and increasing awareness of money laundering concerns and risks. Central to the ability of legal professionals to seek to train and guard against money laundering effectively in a risk-based approach, is the provision of realistic typologies, particularly those where there is unwitting involvement.

97. 針對法律專業人員及法律專業人員組織，有監督或教育角色的自律團體或其他機構，對於有效的風險基礎系統，負有責任。這包括對法律專業人員提供教育資料、進一步的指引以及增加瞭解洗錢疑慮和風險。實際的態樣，尤其是不知情涉案的案例，對於法律專業人員，以風險基礎方法，追求有效洗錢防制訓練和警戒的能力，扮演重要角色。

98. In the context of the risk-based approach, it is not possible to specify precisely what a legal professional has to do, in all cases, to meet its regulatory obligations. Thus, a prevailing consideration will be how best to ensure the consistent implementation of predictable and proportionate monitoring actions. The effectiveness of monitoring training will therefore be important to the successful delivery of proportionate supervisory/monitoring actions.

98. 在風險基礎方法的背景中，不可能精確規範法律專業人員在各種狀況中應該做什麼，才能滿足監理義務。因此，要如何盡可能確保可預期、合乎比例的監理行動，貫徹執行，最好有通盤考量。是以，監理訓練的有效性，對於成功傳達合乎比例的監理／監管行動，是非常重要的。

99. Training should aim to allow designated competent authorities/SRO staff to form sound comparative judgements about AML/CFT systems and controls. It is important in conducting assessments that designated competent authorities and SROs have the ability to make judgements regarding management controls in light of the risks assumed by firms and considering available industry practices. Designated competent authorities and SROs might also find it useful to undertake comparative assessments so as to form judgements as to the relative strengths and weaknesses of different legal professional organisations' arrangements.

99. 訓練之目標，在於指定權責機關／自律團體員工，對於防制洗錢/打擊資恐系統與控管有徹底的綜合判斷。在進行評量的時候，指定權責機關及自律團體必須要有能力，根據各事務所承擔的風險，判斷管理控制措施，並考慮可行的產業實務。指定權責機關及自律團體可能會發現，執行比較評估，將有助於判斷不同法律專業人員組織之各項安排的相對優缺點。

100. The training should include instructing designated competent authorities and SROs about how to evaluate whether senior management has implemented adequate risk management measures, and determine if the necessary procedures and controls are in place. The training should also include reference to specific guidance, where available. Designated competent authorities and SROs also should be satisfied that sufficient resources are in place to ensure the implementation of effective risk management.

100. 訓練應包括指示指定權責機關與自律團體，如何評估資深管理階層，是否執行適當風險管理措施，並判斷是否已經有必要的程序與控管。若有特定指引，訓練也應該包括對相關指引的參照。指定權責機關與自律團體應確保擁有足夠資源，執行有效的風險管理。

101. To fulfil these responsibilities, training should enable designated competent authorities and SROs monitoring staff to adequately assess:

101. 為履行這些職責，訓練應可讓指定權責機關及自律團體監理人員有能力充分評量下列事項：

i. The quality of internal procedures, including ongoing employee training programmes and internal audit, compliance and risk management functions.

i. 內部程序的品質，包括員工持續訓練計畫與內部稽核、遵循與風險管理功能。

ii. Whether or not the risk management policies and processes are appropriate in light of legal professionals' risk profile, and are periodically adjusted in light of changing risk profiles.

ii. 根據法律專業人員的風險狀況，確認風險管理政策與流程是否妥當，且根據風險狀況變化定期調整。

iii. The participation of senior management to confirm that they have undertaken adequate risk management, and that the necessary procedures and controls are in place.

iii. 高階管理階層的參與，確認採用妥當的風險管理，且具備必要的程序與控制。

102. Educating legal professionals on AML/CFT issues and the risk-based approach is a key element of an effective risk-based approach. Designated competent authorities should thus consider, in discussion with SROs and legal professionals and other appropriate organisations, ways of encouraging educational bodies (such as universities and law schools) to include within the education and training of legal professionals at all levels appropriate references to AML/CFT laws and the appropriate role that legal professionals can play in combating money laundering and terrorist financing.

102. 對法律專業人員，進行防制洗錢/打擊資恐議題，以及風險基礎方法方面的教育，是有效的風險基礎方法的關鍵元素。因此，指定權責機關，應與自律團體、法律專業人員及其他相關組織討論，考慮如何鼓勵教育機構（例如大學及法律學院）在法律專業人員各級教育和訓練中，適當介紹防制洗錢/打擊資恐的法律，以及法律專業人員在防制洗錢/打擊資恐中可以扮演的適當角色。

**SECTION THREE: GUIDANCE FOR LEGAL PROFESSIONALS ON
IMPLEMENTING A RISK-BASED APPROACH**
第三節：法律專業人員實施風險基礎方法指引

Chapter One: Risk Categories
第一章：風險種類

103. Potential money laundering and terrorist financing risks faced by legal professionals will vary according to many factors including the activities undertaken by the legal professional, the type and identity of client, and the nature of the client relationship and its origin. Legal professionals should identify the criteria that enable them to best assess the potential money laundering and where feasible terrorist financing risks their practices give rise to and should then implement a reasonable risk based approach based on those criteria. These criteria are not exhaustive and are not intended to be prescriptive, and should be applied in a manner that is well-considered, is appropriate to the particular circumstances of the country and takes into account the way in which legal professionals are regulated in that country and the obligations they are required to observe.

103. 法律專業人員面臨的潛在洗錢及資助恐怖份子風險，將依許多因素而異，包括法律專業人員從事之活動、委託人的型態和身分、以及委託人關係的性質和相關來源。法律專業人員應找出適當的指標，有效評估實務帶來的潛在洗錢和可能的資助恐怖份子風險，進而根據這些指標，實施合理的風險基礎方法。這些並不是全部的指標，也不是硬性規定，應於深思熟慮後加以應用，務必切合相關國家的特殊狀況，並考慮法律專業人員於該國受監管的方法，以及必須遵守的義務。

104. Identification of the money laundering risks and terrorist financing risks associated with certain clients or categories of clients, and certain types of work will allow legal professionals to determine and implement reasonable and proportionate measures and controls to mitigate these risks. Although a risk assessment should normally be performed at the inception of a client relationship, for a legal professional, the ongoing nature of the advice and services the legal professional often provides means that automated transaction monitoring systems of the type used by financial institutions will be inappropriate for many legal professionals. The individual legal professionals working with the client are better positioned to identify and detect changes in the type of work or the nature of the client's activities, this is because the lawyer's knowledge of the client and its business will develop throughout the duration of what is expected to be a longer term relationship. Legal professionals will need to pay attention to the nature of the risks presented by isolated, small and short-term client relationships that, depending upon the circumstances, may be low risk (e.g. advice provided to walk-ups in a legal aid clinic).

104. 辨識特定委託人或委託人類別，以及特定工作型態相關洗錢風險和資助恐怖份子風險，可以讓法律專業人員，判斷及實施合理且相稱的措施和控制方法，以降低這些風險。雖然風險評估，通常應該在委託人關係開始的時候執行，但對於法律專業人員而言，提供之建議與服務具有持續性，顯示金融機構使用的自動化交易監控系統，不適用於許多法律專業人員。與委託人共事的個別法律專業人員，最有機會辨識及偵測工作型態或委託人活動性質的改變，這是因為，律師對於委託人及其業務的瞭解，將於預期的長期關係期間持續發展。法律專業人員必須注意獨立、小型及短期委託人關係所代表的風險性質，根據情況，這些可能是低風險（例如簡易諮詢櫃檯提供的建議）。

105. The amount and degree of monitoring will depend on the nature and frequency of the relationship. A legal professional may also have to adjust his or her risk assessment of a particular client based upon information received from a designated competent authority, SRO, or other credible sources.

105. 監控的數量和程度，取決於往來關係的性質和頻率。法律專業人員可能必須根據指定權責機關、自律團體或其他可靠來源取得之資訊，調整對特定委託人的風險評估。

106. Money laundering and terrorist financing risks may be measured using various categories. Application of risk categories provides a strategy for managing potential risks by enabling legal professionals, where required, to subject each client to reasonable and proportionate risk assessment. The most commonly used risk criteria are: country or geographic risk; client risk; and risk associated with the particular service offered. The weight given to these risk categories (individually or in combination) in assessing the overall risk of potential money laundering or terrorist financing may vary from one legal professional and/or firm to another, particularly given the size, sophistication, nature and scope of services offered by the legal professional and/or firm. These criteria, however, should not be considered in isolation. Legal professionals, in light of their individual practices and based on their reasonable judgements, will need to assess independently the weight to be given to each risk factor.

106. 洗錢和資助恐怖份子風險，可以利用不同的類別進行評估。風險類別的應用，為管理潛在風險提供對策，讓法律專業人員於必要時，可以對各委託人進行合理而相稱的風險評估。最常用的風險指標是：國家或地理風險；委託人風險；以及提供特定服務相關的風險。評估潛在洗錢或資助恐怖份子整體風險時，給予這些風險類別（個別或合併）的權重，可能隨法律專業人員及／或事務所而異，尤其是各法律專業人員及／或事務所提供服務的規模、複雜程度、性質及範圍各不相同。這些指標不應獨立考慮。考慮個別實務並依據合理判斷，法律專業人員必須獨立評估各風險因素應給予的權重。

107. Although there is no universally accepted set of risk categories, the examples provided in this Guidance are the most commonly identified risk categories. There is no single methodology to apply these risk categories, and the application of these risk categories is merely intended to provide a suggested framework for approaching the management of potential risks.

107. 雖然沒有全面被接受的風險類別，但本指引中提供的範例，是最普遍受到認同的風險類別。運用這些風險類別的方法理論不只一種，而且這些風險類別的應用目的，也只是為管理潛在風險提供一個建議框架。

Country/Geographic Risk

國家／地理風險

108. There is no universally agreed definition by either designated competent authorities, SROs, or legal professionals that prescribes whether a particular country or geographic area (including the country within which the legal professional practices) represents a higher risk. Country risk, in conjunction with other risk factors, provides useful information as to potential money laundering and terrorist financing risks. Money laundering and terrorist financing risks have the potential to arise from almost any source, such as the domicile of the client, the location of the transaction and the source of the funding. Countries that pose a higher risk include:

108. 沒有世界通用的定義，供指定權責機關、自律團體或法律專業人員，認定特定國家或地區（包括法律專業人員執業之國家）有較高的風險。國家風險配合其他風險因素，對潛在的洗錢與資助恐風險，可能提供有用的資訊。洗錢及資助恐怖份子風險，可能出自任何來源，例如委託人的居住地、交易地點以及資金來源等。較高風險的國家包括：

- Countries subject to sanctions, embargoes or similar measures issued by, for example, the United Nations (UN). In addition, in some circumstances, countries subject to sanctions or measures similar to those issued by bodies such as the UN, but that may not be universally recognised, may be taken into account by a legal professional because of the standing of the issuer of the sanctions and the nature of the measures.

- 例如聯合國所公布的制裁、禁運，或類似措施國家。此外，在某些狀況下，對於受聯合國等機構發布，但並未獲得全面認同之制裁或類似措施的國家，法律專業人員可能會因為發佈機構的立場，以及該措施的性質，列入考慮。
- Countries identified by credible sources⁵ as generally lacking appropriate AML/CFT laws, regulations and other measures.
- 經可靠來源⁵ 認定，缺乏適當防制洗錢/打擊資恐法律、規定及其他措施之國家。
- Countries identified by credible sources as being a location from which funds or support are provided to terrorist organizations.
- 經可靠來源認定，提供恐怖份子組織資金或援助之國家。
- Countries identified by credible sources as having significant levels of corruption or other criminal activity.
- 經可靠來源認定，腐敗或其他犯罪活動情況嚴重之國家。

Client Risk

委託人風險

109. Determining the potential money laundering or terrorist financing risks posed by a client, or category of clients, is critical to the development and implementation of an overall risk-based framework. Based on its own criteria, a legal professional should seek to determine whether a particular client poses a higher risk and the potential impact of any mitigating factors on that assessment. Application of risk variables may mitigate or exacerbate the risk assessment. Categories of clients whose activities may indicate a higher risk include:

109. 判斷委託人或委託人類別，帶來的潛在洗錢或資助恐怖份子風險，對於擬定及實施整體風險基礎框架非常重要。根據自己的評估，法律專業人員應嘗試判斷，特定委託人是否有較高的風險，以及任何風險降低因素，對該項評量的潛在影響。透過風險變數的應用，減低或提高評估的風險。可能顯示有較高風險的委託人類別活動包括：

- PEPs are considered as higher risk clients – If a legal professional is advising a client that is a PEP, or where a PEP is the beneficial owner of the client, with respect to the activities specified in Recommendation 12, then a legal professional will need to carry out appropriate enhanced CDD, as required by Recommendation 6. Relevant factors that will influence the extent and nature of CDD include the particular circumstances of a PEP, the PEP’s home country, the type of work the PEP is instructing the legal professional to perform or carry out, and the scrutiny to which the PEP is under in the PEP’s home country.
- 重要政治性職務人士，視為風險較高的委託人–若法律專業人員就第 12 項建議中規範之活動，對委託人提供諮詢，而該委託人為重要政治性職務人士，或重要政治性職務

⁵ “Credible sources” refers to information that is produced by well-known bodies that generally are regarded as reputable and that make such information publicly and widely available. In addition to the FATF and FATF-style regional bodies, such sources may include, but are not limited to, supra-national or international bodies such as the International Monetary Fund, the World Bank, and the Egmont Group of Financial Intelligence Units, as well as relevant national government bodies and non-governmental organisations. The information provided by these credible sources does not have the effect of law or regulation and should not be viewed as an automatic determination that something is of higher risk

⁵ 「可靠來源」表示資訊產生自知名團體，這些團體普遍被視為聲名卓著，公開、廣泛地提供這種資訊。除防制洗錢金融行動工作組織及其相關區域組織外，此類來源包括但不限於跨國機構或國際機構，例如國際貨幣基金、世界銀行及艾格蒙組織、金融情報單位以及相關國家政府機構和非政府組織。這些提供的資訊並沒有法律或規定的效力，且不應視為自動認定某事項有較高風險。

人士為該委託人的實質受益人，則法律專業人員應依第 6 項建議之要求，執行適當的強化客戶審查。影響客戶審查範圍及性質的相關因素，包括重要政治性職務人士的特定狀況、該重要政治性職務人士的國籍、該重要政治性職務人士指示法律專業人員執行或完成之工作的類型、以及該重要政治性職務人士在其母國受到的審查情況。

- If a PEP is otherwise involved in a client (other than in the circumstances of Recommendation 6), then the nature of the risk should be considered in light of all relevant circumstances, such as:
- 若重要政治性職務人士，以其他方式（第 6 項建議以外之狀況）與委託人有關，則應根據相關狀況考慮該風險，例如：
 - The nature of the relationship between the client and the PEP. Even if the PEP does not have a controlling interest or a dominant position on the board or in management and therefore does not qualify as a beneficial owner, the PEP may nonetheless affect the risk assessment.
 - 委託人與該重要政治性職務人士之間關係的性質。即使該重要政治性職務人士，對董事會或管理階層沒有控制利益或主導地位，不符合實質受益人的資格，但該重要政治性職務人士仍將影響到風險評量。
 - The nature of the client (*e.g.* is it a public listed company).
 - 委託人的性質（例如，是否為上市公司）。
 - The nature of the services sought. For example, lower risks may exist where a PEP is not the client but a director of a client that is a public listed company and the client is purchasing real property for adequate consideration.
 - 要求服務的性質。例如，若重要政治性職務人士不是委託人，而是公開上市公司之委託人的董事，且該委託人基於適當考量購買不動產，此類風險相對較低。
- Clients conducting their business relationship or requesting services in unusual or unconventional circumstances (as evaluated in all the circumstances of the representation).
- 委託人以不尋常或非傳統方式（如代理之所有狀況中所做的評估）進行業務關係，或要求服務。
- Clients where the structure or nature of the entity or relationship makes it difficult to identify in a timely fashion the true beneficial owner or controlling interests, such as the unexplained use of legal persons or legal arrangements, nominee shares or bearer shares.
- 因為委託人企業或關係的結構或性質，難以即時辨識其實際實質受益人，或控制利益之委託人，例如未經解釋的運用人、法律協議、借名股份或無記名股份。
- Clients that are cash (and cash equivalent) intensive businesses including:
- 現金（及約當現金）密集型企業之委託人包括：
 - Money services businesses (*e.g.* remittance houses, currency exchange houses, casas de cambio, centros cambiarios, remisores de fondos, bureaux de change, money transfer agents and bank note traders or other businesses offering money transfer facilities).
 - 貨幣服務企業（例如匯款機構、外幣兌換機構或店鋪【casas de cambio; centros cambiarios; remisores de fondos; bureaux de change】、匯款代理人以及銀行票據交易商和其他提供匯款設施的企業）。
 - Casinos, betting and other gambling related activities.
 - 賭場、博奕或其他涉賭的相關活動。
 - Businesses that while not normally cash intensive, generate substantial amounts of cash.
 - 非現金密集但產生大量現金的企業。

- Where clients that are cash intensive businesses are themselves subject to and regulated for a full range of AML/CFT requirements consistent with the FATF Recommendations this may mitigate the risks.
- 屬於現金密集型企業的委託人，如自願接受（並受監管）與防制洗錢金融行動工作組織建議一致的防制洗錢/打擊資恐的要求，應可降低相關風險。
- Charities and other “not for profit” organisations (NPOs) that are not subject to monitoring or supervision (especially those operating on a “cross-border” basis) by designated competent authorities⁶ or SROs.
- 不受指定權責機關⁶ 或自律團體監理或監管之慈善團體，和其他「非營利」組織(NPOs)（尤其是「跨國」性組織）。
- Clients using financial intermediaries, financial institutions or legal professionals that are not subject to adequate AML/CFT laws and measures and that are not adequately supervised by competent authorities or SROs.
- 委託人利用權責機關或自律團體未適當監理的金融中介機構、金融機構或法律專業人員，且相關機構或專業人士，未受適當之防制洗錢/打擊資恐及措施規範。
- Clients having convictions for proceeds generating crimes who instruct the legal professional (who has actual knowledge of such convictions) to undertake specified activities on their behalf.
- 涉及犯罪所得定罪的委託人，指示法律執業者（在明知其定罪情形下）從事特定活動。
- Clients who have no address, or multiple addresses without legitimate reasons.
- 委託人無正當理由而未留地址，或同時擁有多個地址。
- Clients who change their settlement or execution instructions without appropriate explanation.
- 委託人變更投資部位或處分的指示，無法提出適當解釋。
- The use of legal persons and arrangements without any apparent legal or legitimate tax, business, economic or other reason.
- 顯然缺乏合法或合理稅務、商業、經濟或其他緣由，運用法人及法律協議。

Service Risk

服務風險

110. An overall risk assessment should also include determining the potential risks presented by the services offered by a legal professional, noting that the various legal professionals provide a broad and diverse range of services. The context of the services being offered or delivered is always fundamental to a risk-based approach. Any one of the factors discussed in this Guidance alone may not itself constitute a high risk circumstance. High risk circumstances can be determined only by the careful evaluation of a range of factors that cumulatively and after taking into account any mitigating circumstances would warrant increased risk assessment. When determining the risks associated with provision of services related to specified activities, consideration should be given to such factors as:

110. 評估整體風險時，切不可把法律專業人員的服務因素遺漏在外；法律專業人員，提供的服務可謂林林總總，不一而足。提供或交付服務的來龍去脈，對於風險基礎方法而言，可謂基本要求。單論本指引所討論的任何一項風險因素，可能無法構成高風險情況。判斷是否屬於高風險情況時，

⁶ See Special Recommendation VIII.

⁶ 參見特別建議 8。

應該把所有可能因素都納入評估，同時把確實有助於降低風險的條件也納入考量。下列情形，應考量決定提供特定活動相關的服務風險：

- Services where legal professionals, acting as financial intermediaries, actually handle the receipt and transmission of funds through accounts they actually control in the act of closing a business transaction.
- 法律專業人員提供金融中介服務，利用實際掌控的帳戶，為別人收付款項，完成交易。
- Services to conceal improperly beneficial ownership from competent authorities.
- 協助包裝不當之受益所有權，不讓權責機關曉得。
- Services requested by the client for which the legal professional does not have expertise excepting where the legal professional is referring the request to an appropriately trained professional for advice.
- 法律專業人員為委託人從事非屬其專業領域的服務；但法律專業人員向受過適當訓練之專業人士尋求協助，不在此限。
- Transfer of real estate between parties in a time period that is unusually short for similar transactions with no apparent legal, tax, business, economic or other legitimate reason.⁷
- 用很短的時間完成買賣雙方的不動產過戶（就同類型交易而言極短），而且顯然缺乏合法及稅務、商業、經濟或其他合理的理由⁷。
- Payments received from un-associated or unknown third parties and payments for fees in cash where this would not be a typical method of payment.
- 自無關聯或不認識的第三方收取現金，及委託人以現金支付服務費用；此類交易通常不以現金方式支付。
- Transactions where it is readily apparent to the legal professional that there is inadequate consideration, such as when the client does not identify legitimate reasons for the amount of the consideration.
- 法律專業人員明知相關交易決定，顯然不當，委託人未就相關交易決定，提供合理的說詞。
- Administrative arrangements concerning estates where the deceased was known to the legal professional as being a person who had been convicted of proceeds generating crimes.
- 法律專業人員，明知死者生前曾因犯罪致生不法所得，因而判刑有罪，卻依然協助辦理遺產等各方面程序安排。
- Clients who offer to pay extraordinary fees for services which would not ordinarily warrant such a premium. However, bona fide and appropriate contingency fee arrangements, where a legal professional may receive a significant premium for a successful representation, should not be considered a risk factor.
- 委託人針對普通服務，給付高額酬勞。若事出緊急，成功代理獲致高額報酬，於一切符合善意原則時，得無需視為風險因素。

⁷ See the FATF Typologies report *Money Laundering and Terrorist Financing through the Real Estate Sector* at <http://www.fatf-gafi.org/dataoecd/45/31/40705101.pdf>.

⁷ 參見防制洗錢金融行動工作組織類型論報告 *透過不動產交易進行洗錢及恐怖金融活動*，網址：<http://www.fatf-gafi.org/dataoecd/45/31/40705101.pdf>.

- The source of funds and the source of wealth – The source of funds is the activity that generates the funds for a client, while the source of wealth describes the activities that have generated the total net worth of a client.
- 資金來源及財富來源– 資金來源是指委託人藉以產生資金的活動；財富來源是指委託人藉以累積其手上總財富淨額的活動。
- Unusually high levels of assets or unusually large transactions compared to what might reasonably be expected of clients with a similar profile may indicate that a client not otherwise seen as higher risk should be treated as such. Conversely, low levels of assets or low value transactions involving a client that would otherwise appear to be higher risk might allow for a legal professional to treat the client as lower risk.
- 與同業水準相較，委託人握有異常高水準的財富，或從事不尋常的鉅額交易，就必須特別注意，背後是否潛藏著某些高風險。反之，委託人從事小額交易，或資產水準一直處在低水位，除非具備高風險情事，可以將其列為低風險委託人。
- Shell companies, companies with ownership through nominee shareholding and control through nominee and corporate directors⁸.
- 空殼公司，透過人頭（代名人）股東持有所有權的公司，或透過人頭或法人董事取得控制的公司⁸。
- Situations where it is difficult to identify the beneficiaries of trusts; this might include a discretionary trust that gives the trustee discretionary power to name the beneficiary within a class of beneficiaries and distribute accordingly the assets held in trust, and when a trust is set up for the purpose of managing shares in a company that can make it more difficult to determine the beneficiaries of assets managed by the trust⁹;
- 在某些狀況下，有時不太容易辨別信託的真正受益人，這類狀況譬如受益人未確定的信託，受託人有權在一群受益人中，選定個別受益人，接受信託資產之分配；又如專為管理公司股份之目的所設立的信託，很難分辨信託所管理資產的受益人。⁹
- Services that deliberately have provided or purposely depend upon more anonymity in the client identity or participants than is normal under the circumstances and experience of the legal professional.
- 法律專業人員根據自身經驗及實務狀況判斷，對方尋求服務時，很刻意的要求以匿名方式進行，不將委託人或參加者的身份資料外露。
- Legal persons that, as a separate business, offer TCSP services should have regard to the TCSP Guidance, even if such legal persons are owned or operated by legal professionals. Legal professionals, however, who offer TCSP services should have regard to this Guidance, and should consider customer or service risks related to TCSPs such as the following:
- 法人以獨立企業地位，對外提供信託及公司服務業者相關服務時，務必注意遵守信託及公司服務業者之指引，縱然該法人是法律專業人員的投資事業或經營事業，亦同。法律專業人員，對外提供信託及公司服務業者服務時，必須注意遵守本指引之規範，同時注意信託及公司服務業者相關的顧客或服務風險，例如下述：

⁸ See also the FATF typologies report “The Misuse of Corporate Vehicles, including Trust and Company Service Providers” published 13 October 2006.

⁸ 亦參見防制洗錢金融行動工作組織類型論報告 2006 年 10 月 13 日所出刊的“法人工具之濫用，包括信託及公司服務業者”。

⁹ See also the FATF typologies report “The Misuse of Corporate Vehicles, including Trust and Company Service Providers” Annex 2 on trusts, for a more detailed description of “potential for misuse” of trusts.

⁹ 亦參見防制洗錢金融行動工作組織類型論報告“法人工具之濫用，包括信託及公司服務業者”，附錄 2 關於信託；欲知更詳盡說明請參見信託之“濫用之虞”。

- Unexplained use of express trusts.
- 無合理解釋使用意定信託。
- Unexplained delegation of authority by the client through the use of powers of attorney, mixed boards and representative offices.
- 無合理解釋執意透過使用委任書、混合董事會及代表辦公室的方式，進行權力下授。
- In the case of express trusts, an unexplained relationship between a settlor and beneficiaries with a vested right, other beneficiaries and persons who are the object of a power.
- 在意定信託的情況下，委託人及具有一定權利之受益人之間，或其他受益人及可被選為受益人的個人方面，有著無法解釋的關係。
- In the case of an express trust, an unexplained (where explanation is warranted) nature of classes of beneficiaries and classes within an expression of wishes.
- 在意定信託方面，應說明但未說明受益人範圍的性質和表明設定受益人範圍之理由。

Variables that May Impact Risk

可能影響風險的變數

111. Due regard must be accorded to the vast and profound differences in practices, size, scale and expertise, amongst legal professionals. As a result, consideration must be given to these factors when creating a reasonable risk-based approach and the resources that can be reasonably allocated to implement and manage it. For example, a sole practitioner would not be expected to devote an equivalent level of resources as a large law firm; rather, the sole practitioner would be expected to develop appropriate systems and controls and a risk-based approach proportionate to the scope and nature of the practitioner's practice.

111. 每位法律專業人員的實務經驗、大小、規模、和專業領域，無論深度和廣度都各不相同。因此，開始建立合理的風險基礎方法，和合理配置資源以管理和執行這套方法時，務必將這些因素都納入考量。以獨立執業者為例，不可能像大型律師事務所動用大量資源；只能根據自身的執業範圍及特點，建立適當的系統和管控機制，進而推動風險基礎方法。

112. A significant factor to consider is whether the client and proposed work would be unusual, risky or suspicious for the particular legal professional. This factor must always be considered in the context of the legal professional's practice. A legal professional's risk-based approach methodology may thus take into account risk variables specific to a particular client or type of work. Consistent with the risk-based approach and the concept of proportionality, the presence of one or more of these variables may cause a legal professional to conclude that either enhanced due diligence and monitoring is warranted, or conversely that normal CDD and monitoring can be reduced, modified or simplified. These variables may increase or decrease the perceived risk posed by a particular client or type of work and may include:

112. 委託人和所委託的事務，是否異常、風險偏高或可疑，是重要考量因素。這是法律專業人員必須參酌自身執業背景，善加考量的因素。法律專業人員的風險基礎方法，須將特定委託人和工作型態所有的風險變數考量周全。配合風險基礎方法和符合比例原則的概念，法律專業人員只要看到有下述一種或多種變數出現，就應該要加強客戶審查和監控；或相反的將客戶審查及監控稍作簡化、修正和減量。風險隨委託人及工作型態之不同而增減起伏的因素有：

- The nature of the client relationship and the client's need for the legal professional to provide specified activities.
- 委託人與法律專業人員往來關係的特性，及該委託人要求法律專業人員從事的活動。
- The level of regulation or other oversight or governance regime to which a client is subject. For example, a client that is a financial institution or legal professional regulated in a

country with a satisfactory AML/CFT regime poses less risk of money laundering than a client in an industry that has money laundering risks and yet is unregulated for money laundering purposes.

- 委託人所受管理或監督，或所屬的監理體制。例如委託人是位在防制洗錢/打擊資恐相關法規制度完善國家的金融機構或法律專業人員，或委託人是位在洗錢防制法規鬆散國家的一般公司行號，二者相較，後者發生洗錢活動的風險，自然比前者高。
- The reputation and publicly available information about a client. Legal persons that are transparent and well known in the public domain and have operated for a number of years without being convicted of proceeds generating crimes may have low susceptibility to money laundering.
- 委託人的外在名聲和公開資訊如何；在公開領域知名度高，從事業務經營已有多年，且訊息透明度亦高的法人，只要過去不曾有因金錢犯罪而判決有罪的記錄，則未來發生洗錢活動的可能性也就不大。
- The regularity or duration of the relationship.
- 往來的頻率與時間長短。
- The familiarity of the legal professional with a country, including knowledge of local laws, regulations and rules, as well as the structure and extent of regulatory oversight, as the result of a legal professional's own activities within the country.
- 法律專業人員對相關國家的熟悉程度，包括熟知當地各項法律規章、監管機制的結構與層次，法律專業人員是否有在該國從事法律活動的經驗等。
- The proportionality between the magnitude or volume and longevity of the client's business and its legal requirements, including the nature of professional services sought.
- 委託人的業務規模或業務量，及業務、法律需求相關期間長短（包括所尋求專業服務之性質）二者間，是否成比例。
- Subject to other factors (including the nature of the services and the source and nature of the client relationship), providing limited legal services in the capacity of a local or special counsel may be considered a low risk factor. This may also, in any event, mean that the legal professional is not "preparing for" or "carrying out" a transaction for a regulated activity specified in Recommendation 12.
- 在其他因素侷限（包括服務性質和委託人往來關係性質及來源）的前提下，以本地律師或專業律師之身份提供有限度的合法服務，應可視為是低風險活動；無論如何，這可能表示，這位法律專業人員並沒有“準備要”或“正在”從事第 12 項建議所規範活動的交易。
- Significant and unexplained geographic distance between the legal professional organisation and the location of the client where there is no nexus to the type of work being undertaken.
- 委託人無端從遠處前來法律專業人員處尋求服務，而且就所尋求的服務內容來看，確實無此必要性。
- Where a prospective client has instructed the legal professional to undertake a single transaction-based service (as opposed to an ongoing advisory relationship) and one or more other risk factors are present.
- 按照潛在委託人所指示予法律專業人員的要求來看，擺明雙方只作一回生意（一般客人通常不會如此），而且明顯牽涉一項甚至多項風險。
- Risks that may arise from the use of new or developing technologies that permit non-face to face relationships and could favour anonymity. However, due to the prevalence of electronic communication between legal professionals and clients in the delivery of legal services, non-face to face interaction between legal professionals and clients should not, standing

alone, be considered a high risk factor. For example, non-face to face, cross-border work for an existing client is not necessarily high risk work for certain organisations (such as regional, national or international law firms or other firms regardless of size that practice in that type of work) nor would customary services rendered by a sole practitioner on a local basis to a client in the local community who does not otherwise present increased risks.

- 運用無需面對面的（發展中）新科技產品時，當事人利於隱匿身份，可能產生風險；但由於法律專業人員，利用電子通訊設備提供委託人法律服務，已屬普及，所以單就法律專業人員與委託人作非面對面互動而言，尚不足以構成高風險因素。例如，以非面對面的方式為既有的跨國委託人執行工作，就某些組織而言，應該不致構成所謂的高風險要件（如區域性、全國性、國際性法律事務所、或任何以此為專業，不論規模大小的服務提供者）；地方性獨立執業者，為本地委託人提供一般性服務，無需視為風險升高警訊。
- The nature of the referral or origination of the client. A prospective client may contact a legal professional in an unsolicited manner or without common or customary methods of introduction or referrals, which may increase risk. By contrast, where a prospective client has been referred from another trusted source subject to an AML/CFT regime that is in line with the FATF standards, the referral may be considered a mitigating risk factor.
- 委託人的介紹來源及組織型態。一位潛在委託人，如非透過業務招攬，亦非經由一般或當地習慣方式引薦，易生較高風險；相反的，透過值得信賴的來源（該來源係由符合防制洗錢金融行動工作組織標準之防制洗錢/打擊資恐制度所監管），所推薦的潛在委託人，可以列為降低風險的因素。
- The structure of a client or transaction. Structures with no apparent legal, tax, business, economic or other legitimate reason may increase risk. Legal professionals often design structures (even if complex) for legitimate legal, tax, business, economic or other legitimate reasons, in which case the risk of money laundering could be reduced.
- 委託人或交易的結構型態。就結構而言，著實缺乏明確的法律、稅務、商業、經濟或其他合理理由時，應該構成風險升高的警訊；法律專業人員所規劃的結構（無論簡單或複雜），通常具有明確的法律、稅務、商業、經濟或其他理由時，相關案件風險應可降低。
- Trusts that are pensions may be considered lower risk.
- 專為退休金所建立的信託，應可視為低風險因素。

Controls for Higher Risk Situations

控管較高風險情況

113. Legal professionals should implement appropriate measures and controls to mitigate the potential money laundering and terrorist financing risks with respect to those clients that, as the result of the legal professional or firm risk-based approach, are determined to be higher risk. Paramount among these measures is the requirement to train legal professionals and appropriate staff to identify and detect changes in activity by reference to risk-based criteria. These measures and controls may include:

113. 法律專業人員根據自身或所屬事務所，以風險基礎方法分析，認定屬於高風險的委託人，必須採行適當措施及管控，以減少可能的洗錢及資恐風險。這類措施最重要的，莫過於對法律專業人員及相關職員提供所需訓練，善用風險基礎方法，以辨識及偵測活動變化所透露的警訊。這些措施及控制方法可能包括：

- General training on money laundering methods and risks relevant to legal professionals.
- 一般性訓練，讓法律專業人員知道各種洗錢手法及相關風險。

- Targeted training for increased awareness by the legal professionals providing specified activities to higher risk clients or to legal professionals undertaking higher risk work.
- 針對性訓練，為高風險委託人或從事高風險工作的法律專業人員，進行特定活動，提高法律專業人員相關的意識水準。
- Increased levels of CDD or enhanced due diligence for higher risk situations.
- 較高風險情況，客戶審查水準提高或加強客戶審查。
- Escalation or additional review and/or consultation by the legal professional or within a firm at the establishment of a relationship.
- 無論個別法律專業人員或整個法律事務所，在處理建立往來關係的事務時，務必加強審核和多作查詢。
- Periodic review of the services offered by the legal professional and/or firm to determine whether the risk of money laundering and terrorist financing occurring has increased.
- 定期檢查個別法律專業人員及/或整個法律事務所的對外服務案件，觀察所經手的案件涉及洗錢或資恐的風險，是否正逐漸升高。
- Reviewing client relationships from time to time to determine whether the risk of money laundering and terrorist financing occurring has increased.
- 定期審視與委託人的往來關係，判斷遭遇洗錢或資恐的風險是否正在提高。
- The same measures and controls may often address more than one of the risk criteria identified, and it is not necessarily expected that a legal professional establish specific controls targeting each risk criterion.
- 相同措施或控制方法，可能針對一項以上風險標準而設，無需每道風險標準都建立一項管控機制。

Chapter Two: Application of a Risk-Based Approach

第二章：風險基礎方法之應用

Customer Due Diligence/Know Your Customer

客戶審查/了解你的客戶

114. Client Due Diligence/Know Your Client is intended to enable a legal professional to form a reasonable belief that it has appropriate awareness of the true identity of each client. The legal professional's procedures should apply in circumstances where a legal and professional is preparing for or carrying out¹⁰ the activities listed in Recommendation 12 and include procedures to:

114. 客戶審查/瞭解你的客戶的目的，是讓法律專業人員合理確信，自己對於每位委託人的真實身份，都能夠明確掌握。在法律專業人員準備從事或正在從事¹⁰ 第 12 項建議所列活動狀況下，除法律專業人員本身的程序外，還必須增加適用下列程序：

- a) Identify and appropriately verify the identity of each client on a timely basis.
- a) 適時確認委託人身份，確實核對無誤。

¹⁰ See paragraphs 12-13 regarding when a legal professional would or would not be engaged in "preparing for" or "carrying out" transactions for clients, and hence the requirements of Recommendation 12 would apply.

¹⁰ 參見第 12-13 段，有關法律執業者打算或不打算為委託人"準備"或"進行"交易，並因而需要適用第 12 項建議相關要求事項時的規定。

b) Identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner such that the legal professional is reasonably satisfied that it knows who the beneficial owner is. The general rule is that clients should be subject to the full range of CDD measures, including the requirement to identify the beneficial owner in accordance with this paragraph. The purpose of identifying beneficial ownership is to ascertain those natural persons who exercise effective control over a client, whether by means of ownership, voting rights or otherwise. Legal professionals should have regard to this purpose when identifying the beneficial owner. They may use a risk-based approach when determining the extent to which they are required to identify the beneficial owner, depending on the type of client, business relationship and transaction and other appropriate factors in accordance with Recommendation 5 and its Interpretative Note, § 9-12¹¹.

b) 確定實質受益人身份，採取合理措施查證所確定的身份資料無誤，以便法律專業人員在合理範圍內，確知實質受益人。原則上，無論任何委託人，都必須徹底完整執行委託人審查措施，包括如本段所要求的，確知實質受益人究竟是誰。查明實質受益人身份的目的是要確定，究竟有哪幾位自然人對這家委託人發揮有效控制力，包括經由所有權、表決權或其他途徑。法律專業人員在確認實質受益人身份的過程中，必須時時將此目的銘記在心。參考第 5 項建議及其註釋§ 9-12¹¹，法律專業人員可根據委託人型態、業務往來關係、交易及其他有關因素的不同，運用風險基礎方法來界定，對實質受益人的身份究竟需掌握到何種程度。

c) Obtain appropriate information to understand the client's circumstances and business depending on the nature, scope and timing of the services to be provided. This information may be obtained from clients during the normal course of their instructions to legal professionals.

c) 根據服務之性質、範圍及時間，收集需要的資訊，以瞭解委託人的情況及業務；法律專業人員可隨著委託人指示一般流程的進行，一併收集這方面資訊。

115. The starting point is for a legal professional to assess the risks that the client may pose taking into consideration any appropriate risk variables (and any mitigating factors) before making a final determination. The legal professional's assessment of risk will then inform the overall approach to CDD requirements and appropriate verification. Legal professionals will reasonably determine the CDD requirements appropriate to each client given the legal professional's familiarity with the client, which may include:

115. 法律專業人員應由審酌相關風險變數(包括風險減降因素)開始，對委託人進行風險評估，方可作成最終認定。法律專業人員所作的風險評估，可供整體客戶審查要求事項及適當之驗證參考。法律專業人員應依據對委託人的瞭解情形，合理判定各位委託人需適用何等客戶審查要求，包括：

- A standard level of CDD, generally to be applied to all clients.
- 標準程度之客戶審查，適用於所有委託人。
- The standard level being reduced after consideration of appropriate risk variables, and in recognised lower risk scenarios, such as:
- 但若考量適當風險變數，並確認風險狀況確屬較低時，可酌量調低審查標準，譬如：
 - Publicly listed companies (and their majority owned subsidiaries).

¹¹ Legal professionals should have regard to the Interpretative Notes to Recommendation 5 and the AML/CFT 2004 Methodology Essential Criteria 5.5 and 5.8-5.12, which, among other things, provide more details on the measures that need to be taken to identify beneficial owners, and the impact of higher or lower risk on the required measures.

¹¹ 法律執業者可參見第 5 項建議的註釋和 2004 年版防制洗錢/打擊資助恐怖主義方法的第 5.5 及 5.8-5.12 號基本標準；這些規定對於業者該採取哪些措施以查明實質受益人身份，和措施執行之寬嚴度如何隨風險之高低而作調整，有著更詳盡的規定。

- 公開發行公司及其持股過半數之子公司。
 - Financial institutions (domestic or foreign) subject to an AML/CFT regime consistent with the FATF Recommendations.
 - 符合防制洗錢金融行動工作組織建議的防制洗錢/打擊資恐法規的（國內或國外）金融機構。
 - Government authorities and state run enterprises (other than those from sanctioned countries).
 - 政府當局及公營事業（受制裁國家除外）。
- An increased level of CDD in respect of those clients that are reasonably determined by the legal professional to be of higher risk. This may be the result of the client’s business activity, ownership structure, particular service offered including work involving higher risk countries or defined by applicable law or regulation as posing higher risk, such as the risks outlined in paragraphs 108-109.
 - 法律專業人員對其合理判定屬於風險偏高的委託人，必須提高客戶審查；至於委託人風險何以偏高，原因可能來自其所從事的業務活動或股權結構，或特定服務，包含牽涉高風險國家或相關法律規章所界定的高風險工作（如 108、109 兩段所列的風險）等服務。

Monitoring of Clients and Specified Activities

對委託人及特定活動保持監控

116. The degree and nature of monitoring by a legal professional will depend on the type of legal professional, and if it is a firm, the size and geographic ‘footprint’ of the firm, the AML/CFT risks that the firm has identified and the nature of the regulated activity provided. Given the nature of the advisory relationship legal professionals have with their clients and that an element of that advisory relationship will usually involve frequent client contact, monitoring is typically best achieved by trained individuals having contact with the client (either face to face or by other means of communication). For purposes of paragraphs 116 to 118 (and related paragraphs), “monitoring” does not oblige the legal professional to function as, or assume the role of, a law enforcement or investigative authority vis-a-vis his or her client. It rather refers to maintaining awareness throughout the course of work for a client to money laundering or terrorist financing activity and/or changing risk factors.

116. 法律專業人員該保持何種態樣的監控，以及監控深度如何，一切依法律專業人員的型態而定；若是法律事務所，還得再參酌事務所的規模、地理“足跡”，可能的防制洗錢/打擊資恐風險，和所經營受規範活動來決定。基於法律專業人員與委託人間具備諮詢關係，且諮詢關係通常包含經常性接觸的常理，監控工作要做得好，與委託人接觸的人員，需要受過適當訓練才行（包括面對面接觸，與透過通訊媒體進行接觸）。此處第 116 至 118 段（連同相關條文）所說的“監控”，並不是要法律專業人員，對委託人執行或擔任執法及調查機關的角色及任務，而是在為委託人從事交辦工作的過程中，隨時注意是否有哪些地方與洗錢或資恐有所關連，和這些風險的可能變化。

117. Monitoring of these advisory relationships cannot be achieved solely by reliance on automated systems and whether any such systems would be appropriate will depend in part on the nature of a legal professional’s practice and resources reasonably available to the legal professional. For example, a sole practitioner would not be expected to devote an equivalent level of resources as a large law firm; rather, the sole practitioner would be expected to develop appropriate monitoring systems and a risk-based approach proportionate to the scope and nature of the practitioner’s practice. A legal professional’s advisory relationships are best monitored by the individuals having direct client contact being appropriately trained to identify and detect changes in the risk profile of a client. Where appropriate this should be supported by systems, controls and records within a framework of support by the firm (e.g. tailored training programs appropriate to the level of staff responsibility).

117. 想要做好諮詢關係的監控工作，單靠自動化系統是不夠的，再者，使用的系統能否適當，

端看法律專業人員的執業情形和可用的資源。舉例，獨立執業者不可能像大型律師事務所般運用大量資源；只能根據自身的執業範圍及特點，建立適當的監控系統及風險基礎方法。法律專業人員之諮詢關係相關監控工作要做得好，與委託人直接接觸的人員，一定要受過適當訓練，否則不易即時辨識或偵測委託人風險的變化。適當情形之下，可在事務所的支援架構之內（例如針對不同職務而作特別設計的訓練計畫），給予所需的系統、管控及記錄支援。

118. Legal professionals should also assess the adequacy of any systems, controls and processes on a periodic basis. Monitoring programs can fall within the system and control framework developed to manage the risk of the firm. The results of the monitoring may also be documented.

118. 法律專業人員應定期評估所有系統、控制及流程機制的適切狀況。事務所可將監控工作納入系統及控制機制架構內，以強化風險管理品質；監控結果必須用正式文件作成記錄。

119. The civil law notary does not represent parties to a contract and therefore must maintain a fair position with regard to any duty to both parties.

119. 大陸法系公證人不得為契約的任一方當事人擔任代表，必須秉持公正立場，看待雙方當事人之職責。

Suspicious Transaction Reporting

疑似洗錢或資恐交易報告

120. This Guidance does not address FATF Recommendations relating to suspicious transaction reporting (STR) and the proscription against “tipping off” those who are the subject of such reports. Different countries have undertaken different approaches to these Recommendations of the FATF. Where a legal or regulatory requirement mandates the reporting of suspicious activity once a suspicion has been formed, a report must be made and, therefore, a risk-based approach for the reporting of the suspicious activity under these circumstances is not applicable. STRs are not part of risk assessment, but rather reflect a response mechanism – typically to an SRO or government enforcement authority – once a suspicion of money laundering has been identified. For those reasons, this Guidance does not address those elements of the FATF Recommendations.

120. 防制洗錢金融行動工作組織，對於疑似洗錢或資恐交易報告有關的建議，以及對於報告人員有關法律保護的規定，不屬於本指引強調的範圍。對於防制洗錢金融行動工作組織的建議，各國採用不盡相同的方式處理。只要法規要求，犯罪嫌疑一旦確認，就必須將可疑活動往上通報；在此情況下，就可疑活動報告而言，風險基礎方法並不適用。疑似洗錢或資恐交易報告，不涉及風險評估問題，純粹是確認洗錢嫌疑時，向自律團體或政府執法當局反映的機制；基於上述理由，本指引不強調防制洗錢金融行動工作組織的建議事項要素。

Education, Training and Awareness

教育、訓練與觀念建立

121. Recommendation 15 requires that legal professionals provide their staff with AML/CFT training, and it is important that legal professional staff receive appropriate and proportional training with regard to money laundering. For legal professionals, and those in smaller firms in particular, such training may assist with monitoring obligations. A legal professional’s commitment to having appropriate controls relies fundamentally on both training and awareness. This requires a firm-wide effort to provide all relevant legal professionals with at least general information on AML/CFT laws, regulations and internal policies. To satisfy a risk-based approach, particular attention should be given to risk factors or circumstances occurring in the legal professional’s own practice. In addition, governments, SROs and other representative bodies for both common and civil law notaries and bar associations should work with educational institutions to see that both legal professionals, and students taking courses to train for or become legal professionals, are educated on money laundering and terrorist financing risks. For example,

bar societies and associations should be encouraged to produce continuing legal education programs on AML/CFT and the risk-based approach.

121. 第 15 項建議，要求法律專業人員必須為所屬人員，提供與防制洗錢/打擊資恐有關的訓練；讓所屬人員接受適當且符合比例的防制洗錢訓練，亦屬重要。對法律專業人員而言，尤其是小規模的法律事務所，這類訓練最有助於恪盡上述監控之義務。法律專業人員能否做到適當的控制，基本上全看訓練和觀念建立是否得宜。這必須是整體性的努力，為所有法律專業人員，提供有關防制洗錢/打擊資恐的法律、規定及內部政策等一般資訊。滿足風險基礎方法方面，重點應該放在法律專業人員執業實務，可能遭遇的風險因素及狀況。此外，政府、自律團體、英美法系及大陸法系的公證人代表團體，和律師公會，應與教育機構共同研商，針對法律專業人員和學生，就其（預計成為）法律專業人員身分，進行有關於洗錢及資恐風險的訓練課程。例如，支持律師公會及團體，持續性進行有關防制洗錢/打擊資恐、風險基礎方法的法律教育計畫。

122. Applying a risk-based approach to the various methods available for training, however, gives each legal professional flexibility regarding the frequency, delivery mechanisms and focus of such training. Legal professionals should review their own staff and available resources and implement training programs that provide appropriate AML/CFT information that is:

122. 法律專業人員若能將風險基礎方法，應用到多種訓練方法上，可在訓練頻率、講授方式和課程重點，擁有更大的彈性空間。法律專業人員應該審視所有人員及可用資源，然後針對適宜防制洗錢/打擊資恐資訊執行訓練計畫，亦即：

- Tailored to the relevant staff responsibility (e.g. client contact or administration).
- 配合所屬人員的職務（例如：客服人員、行政人員等）。
- At the appropriate level of detail (e.g. considering the nature of services provided by the legal professional).
- 課程內容詳盡程度要拿捏得宜（例如：考慮法律專業人員提供的服務屬性）。
- At a frequency suitable to the risk level of the type of work undertaken by the legal professional.
- 頻率配合法律專業人員處理案件的風險高低。
- Used to test to assess staff knowledge of the information provided.
- 測試評估學員對所提供的訊息究竟瞭解多少。

Chapter Three: Internal Controls

第三章：內部控管

123. Many DNFBPs differ significantly from financial institutions in terms of size. By contrast to most financial institutions, a significant number of DNFBPs have only a few staff. This limits the resources that small businesses and professions can dedicate to the fight against money laundering and terrorist financing. For a number of DNFBPs, a single person may be responsible for the functions of front office, back office, money laundering reporting, and senior management. This particularity of DNFBPs, including legal professionals, should be taken into account in designing a risk-based framework for internal controls systems. The Interpretative Note to Recommendation 15, dealing with internal controls, specifies that the type and extent of measures to be taken for each of its requirements should be appropriate having regard to the size of the business.

123. 許多指定之非金融事業或人員在規模上和金融機構相去甚遠。相對於大部分金融機構，大部分的指定之非金融事業或人員，只有少數員工。如此情形侷限小型企業和執業人士，可以用於打擊洗錢和資恐的資源。對多數指定之非金融事業或人員來說，一個人可能就要負責前後端辦公室、洗錢通報、高階管理等功能。包括法律專業人員在內，這種指定之非金融事業或人員的特性，在設

計以風險為基礎的架構，供內部控管系統使用時，必須加以考慮。關於處理內部控制，在建議第 15 項的說明註解，於考慮業務規模後，對每項要求採取適當類型和範圍的措施。

124. To enable legal professionals to have effective risk-based approaches, the risk-based process must be a part of the internal controls of the legal professional or firm. Legal professionals operate within a wide range of differing business structures, from sole practitioners to large partnerships. These structures often mean that legal professionals' businesses have a flat management structure and that most or all of the principals (or partners) of the firm hold ultimate management responsibility. In other organisations, legal professionals employ corporate style organisational structures with tiered management responsibility. In both cases the principals or the managers are ultimately responsible for ensuring that the organisation maintains an effective internal control structure. Engagement by the principals and managers in AML/CFT is an important aspect of the application of the risk-based approach since such engagement reinforces a culture of compliance, ensuring that staff adheres to the legal professional's policies, procedures and processes designed to limit and control money laundering risks.

124. 法律專業人員想要有一套能行之有效的風險基礎方法，就必須將風險基礎之流程，納入法律專業人員或整個事務所的內部控制系統之中。法律專業人員的商業結構不同，範圍極廣，小如個人執業，大如合夥組織。這種結構意味法律專業人員的經營管理大多是屬於扁平式的，亦即大多數或全部主要執業者（或合夥人）掌握最終的經營管理權責。法律專業人員亦有採用公司型態的組織結構，也就是分層管理的模式。但無論是主要執業者或經理人，總之就是必須為確保組織內控機制的有效發揮功能，負擔最高責任。主要執業者及經理人戮力參與防制洗錢/打擊資恐，是風險基礎方法能否貫徹應用的成敗關鍵，如此方可強化遵法的企業文化，確保員工遵從法律專業人員，相關限縮及管控洗錢風險的相關政策、程序及流程。

125. The nature and extent of the AML/CFT controls, as well as meeting national requirements, need to be proportionate to the risk involved in the services being offered. In addition to other compliance internal controls, the nature and extent of AML/CFT controls will depend upon a number of factors, such as:

125. 防制洗錢/打擊資恐管控的本質與範圍，及符合國家法令規定要求，應與提供服務所涉風險，存在一定比例的關聯性。防制洗錢/打擊資恐管控在本質與範圍上，除需顧及其他應遵循之內控機制外，取決於其他影響因素，例如：

- The nature, scale and complexity of a legal professional's business.
- 法律專業人員業務的特性、規模和複雜度。
- The diversity of a legal professional's operations, including geographical diversity.
- 法律專業人員經營的分散程度，包括地域分散程度。
- The legal professional's client, service and activity profile.
- 法律專業人員的委託人、服務及活動概況。
- The degree of risk associated with each area of the legal professional's operations.
- 法律專業人員各領域業務的風險高低。
- The services being offered and the frequency of client contact (either in person or by other means of communication).
- 提供的服務及與委託人接觸的頻率（包括當面接觸和透過其他溝通方式）。

126. Subject to the size and scope of the legal professional's organisation, the framework of risk-based internal controls should:

126. 受限於法律專業人員所屬組織之大小及範圍，風險基礎的內部控制架構應該：

- Have appropriate risk management systems to determine whether a client, potential client, or beneficial owner is a PEP.
- 要有適當的風險管理系統，以利判斷委託人、潛在委託人或實質受益人是否是重要政

治性職務人士。

- Provide increased focus on a legal professional's operations (e.g. services, clients and geographic locations) that are more vulnerable to abuse by money launderers.
- 對於容易吸引洗錢份子濫用的業務（服務、客群和地理區域），賦予更多的關注。
- Provide for periodic review of the risk assessment and management processes, taking into account the environment within which the legal professional operates and the activity in its marketplace.
- 定期檢討風險評估及管理流程，將法律專業人員經營環境的變數和市場上所發生的活動，一併納入考量。
- Designate personnel at an appropriate level who are responsible for managing AML/CFT compliance.
- 指派適當層級的人員，負責管理防制洗錢/打擊資恐法遵事務。
- Provide for an AML/CFT compliance function and review programme if appropriate given the scale of the organisation and the nature of the legal professional's practice.
- 在所屬組織規模大小及執業性質一定的前提下，法律專業人員應建立適當防制洗錢/打擊資恐法遵功能及檢討機制。
- Inform the principals of compliance initiatives, identified compliance deficiencies and corrective action taken.
- 主動告知法遵主管，辨認缺失並加以修正。
- Provide for programme continuity despite changes in management or employee composition or structure.
- 無論管理階層或員工組成或結構有何變化，計畫都能持續。
- Focus on meeting all regulatory record keeping or other requirements, as well as promulgated measures for AML/CFT compliance and provide for timely updates in response to changes in regulations.
- 注意遵守法律所規定的資料保留期限及相關要求，和公告的防制洗錢/打擊資恐法遵措施；針對法規變動可以及時更新。
- Implement risk-based CDD policies, procedures and processes.
- 實施風險基礎之客戶審查政策、程序及流程。
- Provide for adequate controls for higher risk clients and services as necessary, such as review with or approvals from others.
- 對風險程度偏高的委託人及服務，應視狀況作適當管控，例如案件採取多人審查或另經他人批准方式辦理。
- Provide for adequate supervision and support for staff activity that forms part of the organisation's AML/CFT programme.
- 針對任何構成防制洗錢/打擊資恐機制一環的職員活動，提供適當之支援和監督。
- Incorporate AML/CFT compliance into job descriptions and performance evaluations of relevant personnel.
- 將防制洗錢/打擊資恐法遵事務，納入相關人事的工作職責和績效考評項目。
- Provide for appropriate training to be given to all relevant staff.
- 對所有相關員工提供適當的訓練。
- For groups, to the extent possible, provide a common control framework.
- 在可行範圍內，集團內適用相同的管控架構。

ANNEXES 附錄

ANNEX 1 附錄 1

SOURCES OF FURTHER INFORMATION 更多資訊來源

Various sources of information exist that may help governments and legal professionals in their development of a risk-based approach. Although not an exhaustive list, this Annex 1 highlights a number of useful web-links that governments and legal professionals may wish to draw upon. They provide additional sources of information, and further assistance might also be obtained from other information sources such as AML/CFT assessments.

許多資訊來源，可以協助政府及法律專業人員研訂其風險基礎方法。本附錄在此提供與部份這些來源網站相連的超連結，謹供政府及法律專業人員視需要參考使用。這些連結提供額外的資訊來源，例如防制洗錢／打擊資恐評估報告，可以提供更多的協助。

A. Financial Action Task Force Documents **A. 防制洗錢金融行動工作組織文件**

The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. Key resources include the 40 Recommendations on Money Laundering and 9 Special Recommendations on Terrorist Financing, the Methodology for Assessing Compliance with the FATF Recommendations, the Handbook for Countries and Assessors, methods and trends (typologies) reports and mutual evaluation reports.

防制洗錢金融行動工作組織（FATF）是跨政府組織，其目的是發展與促進國家與國際反制洗錢與資恐之政策。重要資源包括對洗錢的 40 條建議，對恐怖份子融資的 9 條特別建議，評估遵循防制洗錢金融行動工作組織建議之方法、國家與評鑑機構手冊、方法與趨勢（類型學）報告，以及共同評估報告。

www.fatf-gafi.org

B. Legislation/and Court Decisions **B. 立法與判例**

The rulings by the ECJ of June 26th 2007 by the Belgium Constitution Court of January 23rd 2008 and the French Conseil d'État of April 10th, 2008 have confirmed that anti-money laundering regulation cannot require or permit the breach the lawyer's duty of professional secrecy when performing the essential activities of the profession. In addition, the Court of First Instance in the Joined Cases T-125/03 & T-253/03 Akzo Nobel Chemicals Ltd and Akros Chemicals Ltd v Commission of the European

Communities has recently restated the ruling in the AM&S case that professional secrecy “meets the need to ensure that every person must be able, without constraint, to consult a lawyer whose profession entails the giving of independent legal advice to all those in need of it (AM&S, paragraph 18). That principle is thus closely linked to the concept of the lawyer’s role as collaborating in the administration of justice by the courts (AM&S, paragraph 24).

歐洲法院於 2007 年 6 月 26 日、比利時憲法法院於 2008 年 1 月 23 日、及法國大法官會議於 2008 年 4 月 10 日先後作出裁定，確認反洗錢法規不得要求或允許律師以執行重要專業活動為由，違背其守密之執業責任。此外不久前，初審法院對所合併審理的 Akzo Nobel Chemicals Ltd 告歐盟委員會第 T-125/03 號案及 Akros Chemicals Ltd 告歐盟委員會第 T-253/03 號案作出裁定，再次確認 AM&S 案的判決結果，也就是執業守密責任必須 “要能確保每個人都能夠無所上限的求助於律師，而律師則根據其執業責任，必須要能秉持獨立超然立場，向所有前來求助的人提供法律意見(AM&S 判決書第 18 段)。法院判決結果讓這項原則與律師的下列角色產生緊密連結，也就是在各法院的司法行政間發揮合作協調的功能(AM&S 判決書第 24 段)。

C. Links to Information on the Supervisory Program in Certain Countries
C. 與某些國家監理制度有關之資訊的超連結

Switzerland

1. See articles 18 to 21 of the lawyers and notaries' SRO regulations (SRO SAV/SNV):
www.sro-sav-snv.ch/fr/02_beitritt/01_regelwerke.htm/02_Reglement.pdf
1. 參見律師及公證人自律團體管理規則 (SRO SAV/SNV) 第 18 至 21 條：
www.sro-sav-snv.ch/fr/02_beitritt/01_regelwerke.htm/02_Reglement.pdf
2. See articles 38 and 45 to 47 of the lawyers and notaries' SRO statutes (SRO SAV/SNV):
www.oad-fsa-fsn.ch/fr/02_beitritt/01_regelwerke.htm/01_Statuten.pdf
2. 參見律師及公證人自律團體法(SRO SAV/SNV)第 38 條及 45 至 47 條：
www.oad-fsa-fsn.ch/fr/02_beitritt/01_regelwerke.htm/01_Statuten.pdf

D. Guidance on the Risk-based Approach
D. 風險基礎方法指引

1. Law Society of Ireland: www.lawsociety.ie.
1. 愛爾蘭法律協會：www.lawsociety.ie.
2. Law Society of England and Wales: www.lawsociety.org.uk
2. 英格蘭暨威爾斯法律協會：www.lawsociety.org.uk
3. Law Society of Hong Kong: www.hklawsoc.org.hk
3. 香港法律協會：www.hklawsoc.org.hk
4. Organisme d'autoréglementation de la fédération suisse des avocats et de la fédération suisse des notaires (SRO SAV/SNV): home page:
www.sro-sav-snv.ch/www.sro-sav-snv.ch/fr/02_beitritt/01_regelwerke.htm/02_Reglement.pdf
(art. 41 to 46)
4. 瑞士律師公會及公證人公會聯合自律團體(SRO SAV/SNV)：首頁：
www.sro-sav-snv.ch/www.sro-sav-snv.ch/fr/02_beitritt/01_regelwerke.htm/02_Reglement.pdf
(art. 41 to 46)
5. The Netherlands Bar Association: www.advocatenorde.nl
5. 荷蘭律師公會：www.advocatenorde.nl

6. The Royal Dutch Notarial Society: www.notaris.nl
6. 荷蘭皇家公證人公會：www.notaris.nl

E. Other sources of information to help assist countries' and legal professionals' risk assessment of countries and cross-border activities

E. 其他可協助各國當局及法律專業人員從事國家及跨國活動風險評估的有用資訊來源。

In determining the levels of risks associated with particular country or cross border activity, legal professionals and governments may draw on a range of publicly available information sources, these may include reports that detail observance of international standards and codes, specific risk ratings associated with illicit activity, corruption surveys and levels of international cooperation. Although not an exhaustive list the following are commonly utilised:

法律專業人員及政府當局為確定特定國家或特定跨境活動的風險層級而有需要時，有多個公開資訊來源皆可提供使用，這些報告有些提供有關於各類國際標準及準則之觀察資料，各類違法活動的各種風險評級、貪污活動調查及國際合作水準。雖然並非詳盡清單，但通常可利用以下來源：

- IMF and World Bank Reports on observance of international standards and codes (Financial Sector Assessment Programme)
- 國際貨幣基金 (IMF) 與世界銀行對於國際標準與守則之觀察報告 (金融業評估計畫)
 - World Bank reports: www1.worldbank.org/finance/html/cntrynew2.html
 - 世界銀行報告書：www1.worldbank.org/finance/html/cntrynew2.html
 - International Monetary Fund:
www.imf.org/external/np/rosc/rosc.asp?sort=topic#RR
 - 國際貨幣基金會：
www.imf.org/external/np/rosc/rosc.asp?sort=topic#RR
 - Offshore Financial Centres (OFCs) IMF staff assessments
www.imf.org/external/np/ofca/ofca.asp
 - 有關各個境外金融中心(OFC) 的 IMF 幕僚評估報告：
www.imf.org/external/np/ofca/ofca.asp
- Mutual evaluation reports issued by FATF Style Regional Bodies:
- 防制洗錢金融行動工作組織相關區域組織所發佈的相互評鑑報告：
 1. Asia/Pacific Group on Money Laundering (APG)
1. 亞太防制洗錢組織 (APG)
www.apgml.org/documents/default.aspx?DocumentCategoryID=8
 2. Caribbean Financial Action Task Force (CFATF)
2. 加勒比海防制洗錢金融行動工作組織 (CFATF)
www.cfatf.org/profiles/profiles.asp
 3. The Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL)
3. 歐洲議會反洗錢及打擊資助恐怖份子評估專家委員會(MONEYVAL)
www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/5_money_laundering/Evaluations/Reports_summaries3.asp#TopOfPage
 4. Eurasian Group (EAG)
4. 歐亞防制洗錢及打擊資助恐怖份子組織 (EAG)
www.eurasiangroup.org/index-7.htm

5. GAFISUD
5. 南美防制洗錢金融行動工作組織(GAFISUD)
www.gafisud.org/miembros.htm
6. Middle East and North Africa FATF (MENAFATF)
6. 中東及北非防制洗錢金融行動工作組織(MENAFATF)
www.menafatf.org/TopicList.asp?cType=train
7. The Eastern and South African Anti Money Laundering Group (ESAAMLG)
7. 東南非反洗錢組織 (ESAAMLG)
www.esaamlg.org/
8. Groupe Inter-gouvernemental d'Action contre le Blanchiment d'Argent (GIABA)
8. 非洲政府間反洗錢行動組織 (GIABA)
www.giabasn.org/?lang=en&sid
- OECD Sub Group of Country Risk Classification (a list of country of risk classifications published after each meeting)
 - OECD 國家風險等級評定小組（每次開會結束後所發佈國家風險評級表）
www.oecd.org/document/49/0,2340,en_2649_34171_1901105_1_1_1_1,00.html
 - International Narcotics Control Strategy Report (published annually by the US State Department)
 - 國際毒品控管策略報告（由美國國務院每年發行一次）
www.state.gov/p/inl/rls/nrcrpt/
 - Egmont Group membership - Coalition of financial intelligence units that participate in regular information exchange and the sharing of good practice, acceptance as a member of the Egmont Group is based a formal procedure that countries must go through in order to be acknowledged as meeting the Egmont definition of an FIU.
 - Egmont 集團會員 – 是金融情報中心的聯合組織，可參與正常情報交換及良好法則分享活動，申請加入 Egmont 集團為會員之國家需通過一系列正式程序，只有獲得承認符合 Egmont 之金融情報中心定義者，方可獲准加入。
www.egmontgroup.org/
 - Signatory to the United Nations Convention against Transnational Organized Crime
 - 聯合國反跨國組織犯罪公約之簽字國
www.unodc.org/unodc/crime_cicp_signatures_convention.html
 - The Office of Foreign Assets Control (“OFAC”) of the US Department of the Treasury economic and trade, Sanctions Programmes
 - 美國財政部經濟、貿易及智財計劃所屬國外資產管控辦公室 (“OFAC”)
www.ustreas.gov/offices/enforcement/ofac/programs/index.shtml
 - Consolidated list of persons, groups and entities subject to EU Financial Sanctions
 - 歐盟金融制裁涉案人士、團體及機構聯合名單
http://ec.europa.eu/comm/external_relations/cfsp/sanctions/list/consol-list.htm
 - UN Security Council Sanctions Committee - Country Status:
 - 聯合國安全理事會制裁委員會—國家狀態：
www.un.org/sc/committees/

ANNEX 2
附錄 2

GLOSSARY OF TERMINOLOGY
術語詞彙表

Beneficial Owner
實質受益人

Beneficial owner refers to the natural person(s) who ultimately owns or controls a client and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.

實質受益人係指握有委託人經營權或所有權的最終自然人，或交易最終係為其所進行之自然人；亦包含對法人或約定有最終有效控制權的人。

Competent authorities
權責機關

Competent authorities refers to all administrative and law enforcement authorities concerned with combating money laundering and terrorist financing, including the FIU and supervisors.

權責機關意指所有和防制洗錢及打擊資恐有關的行政與執法機關，包括金融情報中心和監理機關。

Designated Non-Financial Businesses and Professions (DNFBPs)
指定之非金融事業或人員 (DNFBPs)

- a. Casinos (which also includes internet casinos).
- a. 賭場（也包括網路賭場）。
- b. Real estate agents.
- b. 不動產經紀人。
- c. Dealers in precious metals.
- c. 貴金屬交易商。
- d. Dealers in precious stones.
- d. 寶石交易商。
- e. Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to ‘internal’ professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering.
- e. 律師、公證人、其他獨立法律專業人士及會計師－這包括獨立執業人士、合夥人，或受雇於專業公司之專業人士但不包括受雇於其他類型公司之「內部」專業人士，或是為政府機關工作之專業人士，他們可能已經受到洗錢防制措施規範。

- f. Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under the Recommendations, and which as a business, provide any of the following services to third parties:
- f. 信託及公司服務業者係指以為第三方提供下列服務為常業的事業體，但本建議除此處外，未另外加以規範者：
- Acting as a formation agent of legal persons.
 - 擔任法人登記或成立的名義人。
 - Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons.
 - 擔任（或安排他人擔任）公司之董事或秘書、合夥關係之合夥人，或與其他法人組織的類似職位。
 - Providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement.
 - 提供公司、合夥或其他法人或法律協議經註冊之辦公室、營業地址、居所、通訊或管理地址。
 - Acting as (or arranging for another person to act as) a trustee of an express trust.
 - 擔任（或安排他人擔任）意定信託之受託人。
 - Acting as (or arranging for another person to act as) a nominee shareholder for another person.
 - 擔任（或安排他人擔任）代名人股東。

Express Trust 意定信託

Express trust refers to a trust clearly created by the settlor, usually in the form of a document *e.g.* a written deed of trust. They are to be contrasted with trusts which come into being through the operation of the law and which do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangements (*e.g.* constructive trust).

意定信託係指明確由委託人有（通常以書面寫成）信託契約之信託。與之相較，不同的是法定信託，欠缺委託人決定建立信託或類似法律協議（例如推定信託）之意思表示，做為成立之依據。

FATF Recommendations 防制洗錢金融行動工作組織建議

Refers to the FATF Forty Recommendations and the FATF Nine Special Recommendations on Terrorist Financing.

參考防制洗錢金融行動工作組織 40 項建議，以及指定之非金融事業或人員針對資恐之 9 項特殊建議。

Legal Person 法人

Legal person refers to bodies corporate, foundations, anstalt, partnerships, or associations, or any similar bodies that can establish a permanent client relationship with a legal professional or otherwise own property.

法人係指可與法律專業人員建立永久委託人往來關係，或擁有財產的公司、基金會、公司與基金會

混合體 (anstalt)、合夥事業、公會組織及其他類似機構體。

Legal Professional

法律專業人員

In this Guidance, the term “*Legal professional*” refers to lawyers, civil law notaries, common law notaries, and other independent legal professionals.

就本規程而言，所謂“法律專業人員”包含律師、大陸法系公證人、英美法系公證人、及其他獨力執業的專業人員。

Politically Exposed Persons (PEPs)

重要政治性職務人士 (PEP)

Individuals who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories.

在外國被交付顯著公共職能之個人，例如國家或政府領袖、高階政治人士、高階政府、司法、軍事官員、國營事業高階管理階層、重要政黨高層。與重要政治性職務人士家族成員或親近往來的業務關係，涉及和重要政治性職務人士本人類似的聲譽風險。此處定義並未涵蓋上述類別中階或更低階的個人。

Self-regulatory organisation (SRO)

自律組織 (SRO)

A body that represents a profession (*e.g.* lawyers, notaries, other independent legal professionals or accountants), and which is made up of member professionals or a majority thereof, has a role (either exclusive or in conjunction with other entities) in regulating the persons that are qualified to enter and who practise in the profession, and also performs certain supervisory or monitoring type functions. For example, it would be normal for this body to enforce rules to ensure that high ethical and moral standards are maintained by those practising the profession.

是專門職業人員（律師、公證人、其他獨力執業的專業人士、會計師等）的代表機構，機構本身所擔綱的角色（自行擔任或與其他機構體共同擔任），則是對有資格進入和已經進入該行業執業的人員加以規範，有時甚至可執行監理或監督事務。該等自律組織應執行規範，以確保該等專業人員具備高職業倫理與道德水準。

ANNEX 3
附錄 3

MEMBERS OF THE ELECTRONIC ADVISORY GROUP
電子諮詢分組成員

FATF and FSRB members and observers

防制洗錢金融行動工作組織與 FSRB 成員與觀察員

Argentina; Asia Pacific Group (APG); Australia; Belgium; Azerbaijan; Canada; Chinese Taipei, China; European Commission (EC); Nigeria; France; Hong Kong, China; Italy; Japan; Luxembourg; MONEYVAL; Netherlands; New Zealand; Offshore Group of Banking Supervisors (OGBS); Portugal; Romania; Spain; South Africa; Switzerland; United Kingdom; United States.

阿根廷；亞太防制洗錢組織（APG）；澳洲；比利時；亞賽拜然；加拿大；中華台北；歐盟執委會（EC）；奈及利亞；法國；香港；義大利；日本；盧森堡；歐洲議會反洗錢及打擊資助恐怖份子評估專家委員會（MONEYVAL）；荷蘭；紐西蘭；離岸銀行監理機關（OGBS）；土耳其、羅馬尼亞；西班牙；南非；瑞士；英國；美國。

Dealers in precious metals and dealers in precious stones industries

貴金屬與寶石交易商

Antwerp World Diamond Centre, International Precious Metals Institute, World Jewellery Confederation, Royal Canadian Mint, Jewellers Vigilance Committee, World Federation of Diamond Bourses, Canadian Jewellers Association.

安特衛普世界鑽石中心、國際貴金屬公會、世界珠寶聯盟、皇家加拿大造幣廠；珠寶商警覺委員會；世界鑽石交易所聯盟；加拿大珠寶商協會。

Real estate industry

不動產行業

International Consortium of Real Estate Agents, National Association of Estate Agents (UK), the Association of Swedish Real Estate Agents.

國際不動產代理人聯盟、國家不動產代理人協會（英國）、瑞典不動產代理人協會。

Trust and company service providers industry

信託與公司服務供應商行業

The Society of Trust and Estate Practitioners (STEP), the Law Debenture Trust Corporation.

信託與遺產職業人社團（STEP）、洛德信託公司（Law Debenture Trust Corporation）。

Accountants

會計師

American Institute of Certified Public Accountants, Canadian Institute of Chartered Accountants, European Federation of Accountants, German Institute of Auditors, Hong Kong Institute of Public Accountants, Institute of Chartered Accountants of England & Wales.

美國認證公共會計師公會、加拿大特許會計師公會、歐洲會計師聯盟、德國稽核師公會、香港公共會計師公會、英格蘭與威爾斯特許會計師公會。

Casino industry

博弈產業

European Casino Association (ECA), Gibraltar Regulatory Authority, Kyte Consultants (Malta), MGM Grand Hotel & Casino, Unibet, William Hill plc.

歐洲賭場協會 (ECA)、直布羅陀監管局、凱特顧問 (Kyte Consultants) (馬爾他)、米高梅大飯店與旅館、網路博弈業者 (Unibet)、威廉希爾 (William Hill plc)。

Lawyers and notaries

律師與公證人

Allens Arthur Robinson, American Bar Association (ABA), American College of Trust and Estate Council, Consejo General del Notariado (Spain), Council of the Notariats of the European Union, Council of Bars and Law Societies of Europe (CCBE), International Bar Association (IBA), Law Society of England & Wales, Law Society of Upper Canada.

澳洲律師業者 (Allens Arthur Robinson)、美國律師公會 (ABA)、美國信託及遺產學會、西班牙公證人理事會總會、歐盟公證人理事會、歐洲律師及法律事務所理事會 (CCBE)、國際律師協會 (IBA)、英格蘭暨威爾斯法律協會、上加拿大法律協會。