



**Financial Action Task Force**

**防制洗錢金融行動工作組織**

**RBA GUIDANCE FOR REAL ESTATE AGENTS**

**不動產經紀人風險基礎方法指引**

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**GUIDANCE ON THE RISK-BASED APPROACH TO COMBATING  
MONEY LAUNDERING AND TERRORIST FINANCING**

打擊洗錢與資恐風險基礎方法指引

**HIGH LEVEL PRINCIPLES AND PROCEDURES FOR  
REAL ESTATE AGENTS**

不動產經紀人高階原則與程序

**SECTION ONE: USING THE GUIDANCE -  
PURPOSE OF THE RISK-BASED APPROACH**

第一節：使用指引 — 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 月採取風險基礎方法之打擊洗錢與資恐指引：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顧問群（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 Evaluations and Implementation (WGEI) endorsed a proposal to convene a meeting of 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建議也提及一些指定之非金融事業或人員（DNFBP）。2007 年 6 月會議中，防制洗錢金融行動工作組織的評鑑及執行工作組（WGEI）簽署一份提案，用以召集指定之非金融事業或人員代表人會議，藉此評估為指定之非金融事業或人員各領域擬定風險基礎方法指引的可能性；該指引將使用與完成的金融機構指引相同的結構與形式。

3. This meeting was held in September 2007 and was attended by organisations which represent lawyers, notaries, accountants, trust and company service providers, 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. 此會議於 2007 年 9 月舉行，並由代表包括律師、公證人、會計師、信託與公司服務業者、賭場、房地產業者、貴金屬商和寶石商的組織參加。此私部門團體對於促成各領域執行防制洗錢金

融行動工作組織風險基礎方法指引表達關注。指定之非金融事業或人員的指引將遵循防制洗錢金融行動工作組織建立的風險基礎方法原則，並且特別強調指定之非金融事業或人員特有的風險因素，同時針對指定之非金融事業或人員的特殊活動與業務，建議適合的風險降低策略。防制洗錢金融行動工作組織另外成立 EAG 以推動此工作。

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了此次會議。另外還成立了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 real estate agents was presented to the WGEI. After further international consultation with both public and private sectors, the FATF adopted this guidance at its June 2008 Plenary. Guidance for each of the other DNFBP sectors is being published separately.

5. EAG 持續運作直到本(不動產經紀人)指引提交 WGEI 為止。經與公私部門進行深入的國際諮商後，防制洗錢金融行動工作組織於 2008 年 6 月召開的大會認可此指引。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

##### 指引的目的

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.
- 支持推動對風險基礎方法要素的普遍瞭解。
- Outline the high-level principles involved in applying the risk-based approach.
- 對適用風險基礎方法的高階原則提出概略說明。
- 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舉出成功的實例。

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. Countries will need to make their own determinations on whether to apply a risk-based approach, based on their specific ML/FT 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 and combating the financing of terrorism (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，是否採用風險基礎方法，並非強制要求。雖然正確執行風險基礎方法應能改善資源的使用成本效益，但即使如此也不表示能減輕負擔。某些國家可能較適合採用立法基礎系統。各國應根據其特有的洗錢／資恐（ML/FT）風險、指定之非金融事業或人員活動的規模與性質及其他相關資訊，自行決定是否使用風險基礎方法。對指定之非金融事業或人員已採用防制洗錢／打擊資恐（AML／CFT）措施的國家來說，時機問題可能很重要，但仍不清楚指定之非金融事業或人員是否有足夠經驗執行與採用有效的以風險為基礎處理。

## Target audience, status and content of the guidance

### 指引的適用對象、情況與內容

8. This guidance is presented in a way that is focused and relevant for real estate agents when they act for buyers or sellers. The roles and therefore risks of the different DNFBP sectors are usually separate. However, in some business areas, there are inter-relationships between different DNFBP sectors, and between the DNFBPs and financial institutions. For example, real estate transactions often involve financial institution lenders, as well as lawyers or notaries, and real estate agents.

8. 此指引以針對性的方式提交，且和扮演買賣雙方的不動產經紀人有關。不同指定之非金融事業或人員領域的角色與風險通常各不相同。然而，在某些商業領域，不同的指定之非金融事業或人員領域之間，以及指定之非金融事業或人員與金融機構之間存在著相互關係。例如不動產交易經常涉及金融機構放款者，以及律師或公證人、不動產經紀人。

9. DNFBPs provide a range of services and activities that vastly differ, *e.g.* in their methods of delivery, and in the depth and duration of the relationships formed with customers. This guidance is written at a high level to cater for the differing practices of real estate agents in different countries, and the different levels and forms of supervision or monitoring that may apply. Each country and its national authorities should aim to establish a partnership with its real estate agents and other DNFBP sectors that will be mutually beneficial to combating money laundering and terrorist financing.

9. 指定之非金融事業或人員提供的服務與活動範圍差異甚遠，例如交付方法、與客戶之間關係的深度與時間。本指引是以高階角度所撰寫，以納入不動產經紀人在不同國家、不同層級的不同實務，並構成可能適用之監督或監測。各國與其主管機關的目的，應為建立與不動產經紀人及其他指定之非金融事業或人員產業之間的合作關係，雙方都能受惠於防制洗錢和打擊資恐。

10. The primary target audience of this guidance is the real estate agents themselves, when they conduct activities that fall within the ambit of the FATF Recommendations, as described below. Other DNFBP sectors, such as lawyers and notaries, might also be involved in a real estate transaction. Separate guidance is being issued for those sectors, and they should therefore apply that guidance. However, all those engaged in real estate transactions may also wish to refer to this real estate guidance, as it is more specifically tailored to real estate agent services.

10. 此一指引的主要目標對象，是不動產經紀人本身，使用時機是他們從事符合以下所述，防制洗錢金融行動工作組織建議中涵蓋範圍內的活動時。其他指定之非金融事業或人員，例如律師與公證人，也可能涉及不動產交易。這些領域已另外發行指引，故應運用各該相關指引。但是，所有參與不動產交易的人士，可能也希望參考這份不動產經紀人指引，因為這是特別針對不動產經紀人服務所編製的。

11. Recommendation 12 requires that the customer due diligence, record-keeping requirements, and transaction monitoring provisions set out in Recommendation 5, 6, and 8 to 11 apply to DNFBPs in certain circumstances. Specifically, Recommendation 12 applies to real estate agents when they are involved in transactions for their client concerning the buying and selling of real estate.

11. 第 12 條建議規定，在第 5、6、8 至 11 條中，所提及對於客戶審查、紀錄維護、注意所有不尋常複雜大型交易的規定，在特定狀況下也適用於指定之非金融事業或人員。明確來說，第 12 條建議，適用於不動產經紀人涉及為其客戶買賣不動產之交易時。

12. Recommendation 16 requires that FATF Recommendations 13 to 15 regarding reporting of suspicious transactions (see paragraphs 131-134) and internal AML/CFT 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 real estate agents in the circumstances set out in R.13.

12. 第 16 條建議規定，防制洗錢金融行動工作組織第 13-15 條建議中，關於通報可疑交易（見第 131-134 段），以及內部防制洗錢／打擊資恐，還有第 21 條建議關於就沒有遵循防制洗錢金融行

動工作組織建議或遵循不足的國家應採取之措施，適用於須擁有特定資格之指定之非金融事業或人員。明確而言，建議第 16 條適用於建議第 13 條所述及情況中的不動產經紀人。

13. The wider audience for this guidance includes countries, designated competent authorities and self regulatory organisations (SROs), which are considering how to apply AML/CFT measures to real estate agents. Countries need to identify the most appropriate regime, tailored to address individual country risks, which takes into consideration the idiosyncrasies and activities of real estate agents in their country. This regime should recognise the differences between the DNFBP sectors, as well as the differences between the DNFBPs and financial institutions. However, this guidance does not override the purview of national authorities.

13. 此一指引更大的對象，包括國家、指定權責機關、自律團體（SRO），他們會考慮如何將防制洗錢／打擊資恐措施應用在不動產經紀人身上。各國必須找出最適當的機制，量身訂做，以解決個別的國家風險，這要考慮到個別國家的狀況，以及該國不動產經紀人和其他指定之非金融事業或人員產業的活動。此制度應承認各指定之非金融事業或人員領域的差異以及各指定之非金融事業或人員與金融機構的不同。然此，此指引未取代國家機關的權限。

#### Observation on the particular activities carried out by real estate agents 觀察不動產經紀人進行之特定活動

14. The following general observation about real estate agents should help inform the approach. Consideration should also be given to the particular activities performed by real estate agents on a national basis.

14. 以下對不動產經紀人的一般觀察應該有助於瞭解此處理。亦應從國家的基礎上考慮到不動產經紀人執行的特定活動。

15. The worldwide real estate transaction business vastly differs. The residential, commercial, and agricultural real estate markets differ in terms of business practices, local regulations, cultural habits, and value and size of the market. Agents are no longer restricted to localised business. There is an increasing global market involving significant international investment, assisted by the development of technology, including international methods of communication, *e.g.* email.

15. 全球不動產交易業務彼此相去甚遠。住宅、商業、農業不動產市場從商業實務、當地法規、文化習慣、市場價值與規模來說有所差別。經紀人不再限制於本地化業務。在科技發展，包括國際通訊方法如電郵推波助瀾下，涉及重大國際投資的全球市場正在成長。

16. In some countries the use of the word “customer” is not consistent with the terminology used in this guidance. A customer is a client *i.e.* the individual, company, or organisation involved in a transaction of a real property with which the real estate agent has a contractual and/or fiduciary responsibility.

16. 某些國家使用「顧客」一詞的方式和本指引中的術語用法不同。顧客就是客戶，亦即涉及不動產交易，且與不動產經紀人有合約及／或信託責任的個人、公司、組織。

17. It is also important to note that besides real estate agents, other professionals and organisations often undertake real estate transaction activity including real estate developers, builders, financial institutions, property managers, and corporate in-house real estate officers. Real estate agents are real estate professionals or companies who by representing the seller and/or the buyer act in a purchase and/or sale of a real property in a real estate transaction capacity and/or are exercising professional transactional activity, thus facilitating real property transfer.

17. 亦須注意，除了不動產經紀人外，其他經常執行不動產交易活動的職業與組織包括不動產開發商、建商、金融機構、不動產管理人、企業內部不動產部門。不動產經紀人為不動產的專家或公司，藉由代表買賣雙方，在買賣不動產交易中，買賣不動產，並／或執行專業交易活動，從而協助不動產轉移。

18. Whilst the role of agents varies from country to country, the core functions may include:  
18. 雖然每個國家經紀人的角色都不相同，其核心功能包括：

- Traditional exclusive (and non-exclusive) seller representation.
- 傳統獨家（與非獨家）賣方代表。
- Traditional exclusive (and non-exclusive) buyer representation.
- 傳統獨家（與非獨家）買方代表。
- Representation of both buyer and seller in the same transaction.
- 在同一交易中同時代表買賣雙方。
- A number of agents representing sellers or buyers.
- 數名不動產經紀人代表買方或賣方。
- National and transnational referrals.
- 國內與跨國仲介。
- Amalgamation or interaction of functions of other professionals, e.g. notaries, lawyers, lenders, valuers.
- 其他專業人士，如公證人、律師、放款人、估價人之功能間的融合或互動。
- Auctions.
- 拍賣。

19. In some markets real estate agents may assume additional functions relative to the transaction, such as mortgage loan assessment, valuation/appraisal and conveyance of property. The risk associated with these functions should be considered with reference to specific applicable regulations and/or guidance.

19. 在某些市場中，不動產經紀人可能會賦予其他與交易相關的功能，例如房貸評估、估價／鑑價，轉移不動產。在參考適用的特定法規及／或指引時，應考慮到與這些功能有關的風險。

## **Chapter Two: The Risk-Based Approach – Purpose, benefits and challenges**

### **第二章：風險基礎方法 — 目的、益處、挑戰**

#### The purpose of the risk-based approach

#### 風險基礎方法的目的

20. 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/CFT obligations.

20. 防制洗錢金融行動工作組織建議以相關措詞允許各國在打擊洗錢和資恐時，將風險基礎方法運用至指定的程度。該措詞亦授權各國允許指定之非金融事業或人員在履行其特定防制洗錢／打擊資恐義務時使用風險基礎方法。

21. 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.

21. 採取風險基礎方法可確保為預防或減少洗錢和資恐而採取的措施與鑑別的風險相當。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。這種方法可能會在無意間變成「勾選方塊」方法，也就是著重於配合監管要求，而非以高效率、效能有效打擊洗錢或資恐為主要考量。

22. A number of the DNFBP sectors, including real estate agents, are already subject to regulatory or professional requirements which complement AML/CFT measures. Where possible, it will be beneficial for real estate agents 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 help ensure that the honest customers can access the services provided by real estate agents, but creates barriers to those who seek to misuse those services.

22. 多種指定之非金融事業或人員產業，包括在不動產經紀人屬於受管制專業的國家，都已經遵守補充防制洗錢／打擊資恐措施的法規或專業規定。有可能的話，不動產經紀人會因為想出能配合其他法規或專業規定的防制洗錢／打擊資恐政策而受惠。以風險為基礎的防制洗錢／打擊資恐機制，應該能幫助確保誠實的客戶，可以取得不動產經紀人提供的服務，但也會對想濫用這些服務的人構成阻礙。

23. 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. Real estate agents will need this assistance to help them to identify higher risk customers, products 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.

23. 應進行風險評估，確定洗錢和資恐風險最高的部分。各國須鑑別最大的弱點，並做對應處理。不動產經紀人將會需要這種協助，幫助他們找出風險更高的客戶、產品與服務，包括交付管道，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。

24. The strategies to manage and mitigate the identified money laundering and terrorist financing activities 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.

24. 對於鑑別的洗錢與資恐活動，相關管理與減少策略的目的主要在於透過對偵查有幫助的嚇阻（例如適切的客戶審查措施）、偵查（例如監控和疑似洗錢或資恐交易報告）及紀錄保存等綜合措施防止活動的發生。

25. 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 customer due diligence checks. It also follows that in instances where risks are low, simplified or reduced controls may be applied.

25. 應根據評估的風險制定符合比例性的程序。風險更高的領域應該要遵守強化程序；這包括強化客戶審查。據此，低風險個案適用簡易或較不嚴格的控制。

26. 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.

26. 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恐風險進行鑑別與分類，並根據鑑別的風險建立合理的控制。

27. An effective risk-based approach will allow real estate agents to exercise reasonable business and professional judgement with respect to customers. 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 real estate agents from continuing with legitimate business or from finding innovative ways to diversify their business.

27. 有效的以風險為基礎方法，會讓不動產經紀人能對客戶執行合理的商業與專業判斷。合理明確的風險基礎方法有助於正確判斷如何管理潛在的洗錢和資恐風險。以風險為基礎的方法，不應設計成禁止不動產經紀人繼續合法業務，或是找出分散業務的創新方式。

28. 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. They are more likely to target the DNFBP sectors if other routes become more difficult. For this reason, DNFBPs, including real estate agents, 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 real estate agents, to more efficiently and effectively adjust and adapt as new money laundering and terrorist financing techniques are identified.

28. 不論防制洗錢／打擊資恐控制的強度與效果如何，罪犯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。若是其他路徑變得更困難，他們更可能以指定之非金融事業或人員產業為目標。因此，包括不動產經紀人在內的指定之非金融事業或人員，可能或多或少有其弱點，取決於使用在其他產業的防制洗錢／打擊資恐程序有效程度上。以風險為基礎的方法，允許包括不動產經紀人在內的指定之非金融事業或人員，發現新的洗錢與資助恐怖份子方法時，更有效率和效益地調整與配合。

29. A reasonably designed and effectively implemented risk-based approach will 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. In cases where 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, regulators, SROs, law enforcement or judicial authorities should take action as necessary and appropriate.

29. 合理規劃且有效執行的風險基礎方法將提供適切有效的控制結構，用以管理可鑑別的洗錢和資恐風險。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）都無法鑑別及偵查所有洗錢或資恐事例。因此，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。若未執行規劃完善的風險基礎方法，或失敗的風險基礎方案，監管機關、自律團體、執法機關或司法機關應採取合乎比例性的必要措施。

### Potential benefits and challenges of the risk-based approach

#### 風險基礎方法的潛在利益與挑戰

#### *Benefits:*

#### *利益：*

30. 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 customers. Focusing on higher risk threats should mean that beneficial outcomes can be achieved more effectively.

30. 用風險基礎方法打擊洗錢和資恐會為所有當事人（包括民眾）帶來利益。若能有效執行，風險基礎方法應能確保以更有效率的方式有效使用資源，並將客戶的負擔減至最輕。著重於較高的

風險威脅應表示將會更有效地得到有利的結果。

31. For real estate agents, the risk-based approach allows the flexibility to approach AML/CFT obligations using specialist skills and responsibilities. This requires real estate agents to take a wide and objective view of their activities and customers.

31. 對不動產經紀人而言，以風險為基礎的方法，提供了使用專業技術與責任，負起防制洗錢／打擊資恐責任的彈性。這要求不動產經紀人用廣泛與客觀的觀點，去檢視其活動與客戶。

32. Efforts to combat money laundering and terrorist financing should also be flexible in order to adapt as risks evolve. As such, real estate agents will use their judgement, knowledge and expertise to develop an appropriate risk-based approach for their particular organisation, structure and business activities.

32. 打擊洗錢和資恐應保持彈性，確保隨著風險的變化做好調適。這樣一來，不動產經紀人會使用其判斷、知識、專業能力，為其特定組織、結構、業務活動，開發出適當的以風險為基礎方法。

#### *Challenges:*

##### *挑戰：*

33. A risk-based approach is not necessarily an easy option, and there may be challenges to overcome when implementing the necessary measures. 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 number of challenges, however, can also be seen as offering opportunities to implement a more effective system. The challenge of implementing a risk-based approach with respect to terrorist financing is discussed in more detail at paragraphs 45 to 49 below.

33. 風險基礎方法未必是容易的選項，在採取必要的措施時，可能會遇到需要克服的挑戰。有些是使用風險基礎方面時產生的固有挑戰。其他有些可能是因為過渡至風險基礎制度時遇到困難而產生的挑戰，然而，有些挑戰可視為提供實施更有效系統的機會。在資助恐怖份子方面，執行以風險為基礎方法的挑戰，將會在下面 45-49 段有更詳細的討論。

34. The risk-based approach is challenging to both public and private sector entities. Such an 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 which should lead to innovations and improved compliance. However, it may also cause uncertainty regarding expectations, difficulty in applying uniform regulatory treatment, and a lack of understanding by customers regarding information required.

34. 不論對公部門或私部門實體，風險基礎方法都是一項挑戰。此方法除了需要資源外，還必須具備在國家和組織層級蒐集與詮釋風險資訊所需的專業知識，如此才能制定程序與制度和訓練人員。這進一步要求，在設計與執执行程序與系統時，發揮穩妥與受過訓練的判斷。風險基礎方法必然導致更多元的實務應用，進而帶來創新，並且改善遵循性。但是，這也可能造成對期待的不確定、採用統一法規待遇的困難，以及客戶愈來愈不瞭解規定的資訊。

35. Implementing a risk-based approach requires that real estate agents 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 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. Real estate agents may over-estimate risk, which could lead to wasteful use of resources, or they may underestimate risk, thereby creating vulnerabilities.

35. 執行以風險為基礎的方法，需要不動產經紀人對於風險有全面瞭解，且能夠發揮穩健的判斷力。這需要培養專業知識，例如包括透過訓練、聘雇、採用專業建議，以及「從實踐中學習」。

此一過程全因為指定權責機關與自律團體的資訊分享而受惠。提供優良實務指引也是個好方法。若缺乏足夠的專業知識而實施風險基礎方法，可能導致錯誤判斷。不動產經紀人可能會高估風險，這會導致資源使用上的浪費，或是可能低估風險，因此弱點更嚴重。

36. Real estate agents may find that some staff members are 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 underestimates the risks, a culture may develop that allows for inadequate resources to be devoted to compliance, leading to potentially significant compliance failures.

36. 不動產經紀人可能會發現，某些員工對於做出以風險為基礎的判斷感到不舒服。這可能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合理性。各管理階層都可能發生此問題。然而，若管理階層不承認或低估風險，可能會發展出一種用於遵循的資源分配不足的文化，以致可能發生重大遵循問題。

37. Designated competent authorities and SROs should have measures in place to determine whether real estate agents have an effective decision-making process with respect to risk management, and sample testing could be used or individual decisions reviewed as a means to test the effectiveness of a real estate agent'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 not reasonably available at the time.

37. 指定權責機關與自律團體應該更為注重不動產經紀人在風險管理方面，是否具備有效的決策流程，並應使用簡單的測試或個別決策審查，作為測試不動產經紀人整體風險管理效益的方法。指定權責機關與自律團體應承認，即使定期更新相關風險管理結構與程序，並且遵守相關政策、程序與流程，仍可能因為當時未合理提供額外資訊而做出不正確的決策。

38. In implementing the risk-based approach, real estate agents should be given the opportunity to make reasonable judgements with respect to their particular situations. This may mean that no two real estate agents or no two businesses are likely to adopt the same detailed practice. 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 to staff working to monitor compliance. The existence of good practice guidance, training, industry studies and other available information and materials will assist the designated competent authority or an SRO in determining whether a real estate agent has made sound risk-based judgements.

38. 在執行以風險為基礎的方法上，應給予不動產經紀人機會，對於其特定狀況做出合理判斷。這表示沒有兩家不動產經紀人或兩家公司可能採取細節相同的實務。這種可能的多元實務現象要求專責主管機關和自律團體付出更多心力，根據實際運作的實務鑑別和宣導指引，而這將為負責監督遵循的員工帶來挑戰。良好實務指引的存在、訓練、業界研究與其他可用資訊和材料，會幫助指定權責機關與自律團體決定，不動產經紀人是否做出以風險為基礎的穩健判斷。

39. Recommendation 25 requires adequate feedback to be provided to the financial sector and DNFBPs. Such feedback helps institutions and businesses to more accurately assess the money laundering and terrorist financing risks and adjust their risk programmes accordingly. This in turn makes the detection of suspicious activity more likely and improves the quality of 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.

39. 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。此等回饋有助於機構與公司更正確地評估洗錢與資助恐怖份子風險，以據此調整風險計畫。這些作為增加可疑活動的偵查可能性，且能改善可疑交易報告的品質。回饋除了是評估國家或產業風險的必要輸入元素外，其即時性與內容對於執行有效風險基礎方法也非常重要。

***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  
● 更好的風險管理。
- Efficient use and allocation of resources  
● 有效率的資源利用與分配。
- 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  
● 彈性配合隨時間變化的風險而調整。

**Potential Challenges:**

可能的挑戰：

- Identifying appropriate information to conduct a sound risk analysis  
● 鑑別適合用於全面風險分析的資訊。
- Addressing short term transitional costs  
● 處理短期過渡成本。
- Greater need for more expert staff capable of making sound judgements.  
● 為了做出穩健的判斷而需要更多更專業的人才。
- Developing appropriate regulatory response to potential diversity of practice.  
● 針對潛在多元實務擬定適切的監管政策。

### **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**

40. The varying degrees of risk of money laundering or terrorist financing for particular types of DNFBPs, including real estate agents, or for particular types of customers 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).

40. 對於不動產經紀人在內的特定種類指定之非金融事業或人員，或是特定種類的客戶，或交易，洗錢或資助恐怖份子的風險程度差異，是防制洗錢金融行動工作組織建議背後的重要考量。根據建議，在指定之非金融事業或人員方面，特定建議認為風險程度是各國必須考慮（若風險較高）或可考慮（若風險較低）的議題。

41. 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 the real estate agents, risk is addressed in three principal areas (a) Customer Due Diligence (R.5, 6, 8 and 9); (b) businesses' internal control systems (R.15); and (c) the approach of oversight/monitoring of DNFBPs, including real estate agents (R.24).

41. 風險基礎方法或者以明確且受限的方式納入某些建議（及方法論），或者為建議的固有部分或與其有關聯。舉例來說，就指定之非金融事業或人員而言，包括不動產經紀人在內，有三個主要領域處理風險：(a) 客戶審查（建議第5、6、8、9條）；(b) 公司的內部控管系統（第15條）；(c) 監督／監測不動產經紀人在內的指定之非金融事業或人員之方法（第24條）。

*Customer Due Diligence (R. 5, 6, 8 and 9)*  
客戶審查（建議第 5、6、8 及 9 項）

42. Risk is referred to in several forms:  
42. 風險以不同的形式提及：

- a) Higher risk – Under Recommendation 5, a country must require its DNFBPs, including real estate agents, to perform enhanced due diligence for higher-risk customers, 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 CDD.
- a) 較高風險－根據建議第 5 條，國家必須規定不動產經紀人在內的指定之非金融事業或人員，對於風險較高的客戶、業務關係或交易，進行客戶審查。建議第 6 項（重要政治性職務人士）為此原則的範例，被視為較高風險情境而需執行加強客戶審查。
- b) Lower risk – A country may also permit its DNFBPs, including real estate agents, to take lower risk into account in deciding the extent of the CDD measures they will take (see Methodology criteria 5.9). Real estate agents may thus reduce or simplify (but not avoid completely) the required measures.
- b) 較低風險－國家必須也允許不動產經紀人在內的指定之非金融事業或人員，在判斷要採取的客戶審查措施範圍時，將較低風險列入考量（見方法標準 5.9）。不動產經紀人因此可能會減少或簡化（但不能完全避免）必要的措施。
- c) Risk arising from innovation – Under Recommendation 8, a country must require its DNFBPs, including real estate agents, to give special attention to the risks arising from new or developing technologies that might favour anonymity.
- c) 來自於革新的風險－根據建議第 8 條，國家必須要求不動產經紀人在內的指定之非金融事業或人員，對於可能有力於匿名的全新或開發中科技，所帶來的風險特別加以注意。
- d) Risk assessment mechanism – The FATF standards expect that there will be an adequate mechanism by which designated competent authorities or SROs assess or review the procedures adopted by the real estate agents 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 is applied. 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 & 9).
- d) 風險評估機制－防制洗錢金融行動工作組織標準期待，會有妥當的機制，讓權責機關與自律團體評估或審查不動產經紀人用以判斷風險程度，以及如何管理該風險，以及自行審查實際決定的程序。此期待適用於採取風險基礎方法的所有領域。此外，若權責機關與自律團體就執行風險基礎程序的適切方法提出準則，即應確定已遵守該準則。防制洗錢金融行動工作組織建議亦承認國家風險是任何風險評估機制的必要元素（建議第 5 及 9 項）。

*Internal control systems (R.15)*  
內部控制制度（建議第 15 項）

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

may allow DNFBPs, including real estate agents, to have regard to the money laundering and terrorist financing risks, and to the size of the business, when determining the type and extent of measures required.

43. 根據建議第 15 條，開發「適當的」內部政策、訓練與稽核系統，必須對客戶、產品與服務、營業地理區域等相關之潛在洗錢與資助恐怖份子風險，有明確且持續的考量。建議第 15 條的解釋註解，清楚表示，國家得允許不動產經紀人在內的指定之非金融事業或人員，在判斷必要措施的種類與範圍時，考慮到洗錢與資助恐怖份子風險與業務規模。

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

##### *指定權責機關與自律團體的管理與監督（建議第 24 項）*

44. Countries should ensure that real estate agents 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 proven low risk then lesser monitoring measures may be taken.

44. 國家應確保不動產經紀人是監測的有效系統對象，並確保遵循防制洗錢／打擊資恐規定。在判斷監控與確保遵循制度是否適切時，得考量特定企業的洗錢或資恐風險；也就是說，若證實為低風險，則可採取較低的監控措施。

#### Applicability of the risk-based approach to terrorist financing

##### 風險基礎方法對資恐的適用性

45. 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 and the implementation of mitigation strategies 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.

45. 風險基礎方法對資恐和洗錢的適用性具有相似性，但也有不同之處。兩者都需要風險鑑別與評估流程。但是，資助恐怖份子的特性，使得偵測更為困難，且執行緩解策略也很有挑戰性，因為有涉及資助恐怖份子的交易價值相對較低等考量，或是資金可能來自於合法與非法來源的事實。

46. 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, 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 legitimately sourced funds, transactions related to terrorist financing may not exhibit the same traits as conventional money laundering. However, in all cases, it is not the responsibility of real estate agents to determine the type of underlying criminal activity, or intended terrorist purpose; rather, the real estate agent's role is to identify and report the suspicious activity. The FIU and law enforcement authorities will then examine the matter further and determine if there is a link to terrorist financing.

46. 資助恐怖活動的資金可能來自犯罪活動或合法管道，而資助來源的性質也可能因為恐怖組織的類型而有所不同。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資恐或與該資助有所關聯，傳統上用來鑑別洗錢的監控機制可能也適合用於資恐。應注意的是，涉及資恐的交

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。若資金來自合法管道，將更難判斷該資金是否用於資恐。此外，恐怖分子的活動可能公開進行而且表面上難以察覺，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，恐怖分子的資金可能來自犯罪活動與合法管道，而與資恐有關的交易可能也未顯露如傳統洗錢般的線索。但是在所有狀況下，判斷潛在犯罪活動，或是恐怖主義意圖，並非不動產經紀人的責任，不動產經紀人的角色是辨識與通報可疑活動。金融情報中心和執法機關接著將深入調查此事，並確定是否與資恐有關。

47. The ability of real estate agents 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).

47. 不動產經紀人偵測與辨識潛在資助恐怖份子交易的能力，要是沒有對資助恐怖份子類型的指引，或是除非是根據當局提供的明確情報進行，會比偵測、辨識潛在洗錢或其他可疑活動，受到更嚴重的挑戰。在缺乏明確的全國性指導與態樣的情況下，對已知恐怖分子活動國家或地理區域進行的交易監控，或其他有限的態樣（其中許多皆透露與洗錢相同的技術），很可能會變成偵查的依據。

48. Particular 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 sanctions apply and the obligations on real estate agents to comply with those sanctions are decided by individual countries and are not a function of risk. Real estate agents may commit a criminal offence if they undertake business with a listed individual, organisation or country or its agent, in contravention of applicable sanctions.

48. 特定個人、組織或國家可能成為資恐的制裁對象，任何特定國家都有可能。在這種狀況下，會有適用於制裁的個人、組織、國家清單，不動產經紀人遵守這些制裁的責任是由個別國家決定，也不是風險功能。不動產經紀人若是和清單中的個人、組織、國家，其經紀人有業務往來，可能會因為違反適用制裁而犯下刑事罪行。

49. 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 real estate agents, would then have an additional basis upon which to more fully develop and implement a risk-based process for terrorist financing.

49. 因此，此指引未就資恐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要好。然而，應與重要利害關係人進行深入諮詢，以發掘更具全面性且可用於資恐的方法和技術指標，並將此納入資恐風險的評估策略與設計減輕措施。包括不動產經紀人在內的指定之非金融事業或人員，皆可以有更多根據，針對資助恐怖份子，更完整地開發與執行以風險為基礎的流程。

#### Limitations to the risk-based approach

##### 風險基礎方法的限制

50. 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.

50. 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。也有些情況可能導致無法在要求或流程的初始階段適用風險基礎方法，但可在後續階段適用。風險基礎方法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。

51. 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, the reporting of suspicious transactions, once identified, is not risk-based. See paragraphs 131 to 134.

51. 鑑別個人或實體後，在實施凍結該個人或實體資產的國家，此凍結要求並非取決於任何風險評估。此凍結要求具有絕對性，不受風險基礎流程的影響。同樣的，風險基礎方法對潛在可疑交易的鑑別可能有所幫助，但可疑交易一旦鑑別後，其報告便不再以風險為基礎。見 131-134 段。

52. There are several components to customer due diligence – identification and verification of the identity of customers and 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 customers are requirements which 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.

52. 客戶審查有幾項元素：客戶與實質受益人身份辨識與驗證，就其目的與業務關係希望的性質所取得資訊，並進行持續的審查。在這些元素中，客戶與身份辨識與驗證是不管有無風險為基礎方法，都一定要完成的規定。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。完成此判斷後，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。

53. Countries may allow real estate agents 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 customer due diligence. Moreover, 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. In addition, information beyond customer identity, such as customer location, may be needed to adequately assess risk. This will be an iterative process: the preliminary information obtained about a customer should be sufficient to determine whether to go further, and in many cases customer monitoring will provide additional information.

53. 若洗錢或恐怖份子融資較低，國家可能會允許不動產經紀人採用減少或簡化的措施。然而，這些減少或簡化的措施未必適用於客戶審查的所有面向。若這些豁免係以滿足某些條件為前提，則應驗證已符合這些條件；若豁免係以特定門檻為前提，則應採取措施，避免刻意分割交易以避開門檻。還有，可能需要在客戶身份以外的資訊，例如客戶地點，以妥善評估風險。這將會是一個反覆的流程：所取得關於客戶的初步資訊將足以判斷是否還需要更多資訊，而很多時候客戶監控將提供額外資訊。

54. Some form of monitoring is required in order to detect unusual and hence possibly suspicious transactions. Even in the case of lower risk customers, monitoring is needed to verify that transactions match the initial low risk profile and if not, trigger a process for appropriately revising the customer's risk rating. Equally, risks for some customers may only become evident once a relationship with a customer has begun. This makes appropriate and reasonable monitoring of customer transactions an essential component of a properly designed risk-based approach; however, within this context it should be understood that not all transactions, accounts or customers 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.

54. 須採取某些形式的監控，以偵查不尋常的潛在可疑交易。即使在客戶風險較低的個案，也需要透過監控證明交易符合初步低風險概況，否則將啟動流程，以適切改變客戶的風險評比。同樣的，部分客戶的風險可能在與其他客戶的關係開始後才會顯現。這使得適當合理監控客戶交易成為適當設計之風險基礎方法的重要元素；但在這樣的背景中，應瞭解到，並非所有的交易、帳戶、客戶或會計師都會以完全相同的方式監控。若確實發生可疑的洗錢或恐怖分子融資，可將此懷疑視為風險較高案件，而且不論任何門檻或豁免，都應執行加強客戶審查。

#### Distinguishing risk-based monitoring and risk-based policies and processes 風險基礎監控和風險基礎政策與流程的區別

55. Risk-based policies and processes should be distinguished from risk-based monitoring by designated competent authorities or SROs. There is a general recognition within supervisory/monitoring practice that resources should be allocated taking into account the risks posed by individual businesses. The methodology adopted by the designated competent authorities or SROs to determine allocation of monitoring resources should cover the business focus, the risk profile and the internal control environment, and should permit relevant comparisons between businesses. 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 businesses are exposed. Consequently, this prioritisation should lead designated competent authorities or SROs to focus increased regulatory attention on businesses that engage in activities assessed to present a higher risk of money laundering or terrorist financing.

55. 指定權責機關與自律團體應區分風險基礎政策與流程和風險基礎監控。監管/監控實務上有一普遍認知，即分配資源時，應考量個別公司的風險。指定權責機關與自律團體用來確定如何分配監控資源的方法應涵蓋主要業務、風險概況與內部控制環境，並應允許業務之間進行相關比較。須持續更新用來確定資源分配的方法，以反映個別公司面對的風險性質、重要性與範圍。因此，若公司或業務涉及經評估認為具有較高洗錢或資恐的活動，此優先順序排列應促使指定權責機關與自律團體更重視對這類公司的監管。

56. 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.

56. 但是，也要注意，為指定權責機關與自律團體工作排列優先順序時，要考量的風險因素，取決於不只是和執行活動相關的內在風險，還有處理此等風險之現有風險管理系統的品質和有效性。

57. Since designated competent authorities or SROs should have already assessed the quality of risk management controls throughout the real estate industry, 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 real estate agents or firms.

57. 由於指定權責機關與自律團體應該已經評估過風險管理的品質，因此他們對這些控管的評估，至少有一部份用在通知個別不動產經紀人或公司進行的洗錢與恐怖份子融資風險評估上，是很合理的。

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

**摘要表：國家層級以風險為基礎之防制洗錢與打擊資恐方法：成功關鍵因素**

- Real estate agents, designated competent authorities or SROs should have access to reliable and actionable information about the threats.
- 不動產經紀人，指定權責機關與自律團體，應該有管道取得關於威脅的可靠且可行性的資訊。
- There must be emphasis on cooperative arrangements among the policy makers, law enforcement, regulators, and the private sector.
- 合作協議應著重在政策制定者、執法機關、監管機關與私部門。
- Authorities should publicly recognise that the risk-based approach will not eradicate all elements of risk.
- 機關應公開承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 real estate agents need not be afraid of regulatory sanctions where they have acted responsibly and implemented adequate internal systems and controls.
- 當局有責任建立如不動產經紀人盡責行事，執行適當的內部系統與控管，不會遭到法規制裁的氛圍。
- Designated competent authorities' or SROs' supervisory staff must be well-trained in the risk-based approach, both as applied by designated competent authorities/SROs and by the real estate agents.
- 指定權責機關與自律團體對員工之監督，必須受過風險基礎方法的妥善訓練，無論是由指定權責機關與自律團體或是由不動產經紀人實行。

## 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

58. The application of a risk-based approach to countering money laundering and the financing of terrorism will allow designated competent authorities or SROs and real estate agents 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. They could be considered as setting out a broad framework of good practice.

58. 使用以風險為基礎的方法，來防制洗錢與資助恐怖主義，會讓指定權責機關與自律團體、不動產經紀人，最有效地利用其資源。本章提出五個高階原則，各國在設計風險基礎方法時應考慮這些原則。這些原則可視為初步建立的優良實務概括架構。

59. The five principles set out in this paper 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 and is appropriate to the particular circumstances of the country in question.

59. 列出的五個原則旨在協助各國改善其防制洗錢／打擊資恐制度。這些原則不具規範性，應在全盤考量後實施，特別適合用於相關國家發生的特定情況。

#### 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：全國性風險評估

60. 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.

60. 能否成功執行風險基礎方法以打擊洗錢和資恐，須視是否全盤瞭解威脅與弱點而定。各國尋求在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。此瞭解可從全國性的風險評估開始。

61. 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 real estate agents, 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 risk associated with providing information on vulnerabilities in their financial and non-financial systems to money launderers, terrorist financiers, and other criminals.

61. 應針對各國環境設計專屬的全國性風險評估。由於各種理由，包括指定權責機關與自律團體結構與不動產經紀人在內指定之非金融事業或人員的性質，每個國家對於風險的判斷都是獨一無二的，他們對於實務上如何執行國家性評估也不一樣。全國性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。權責

機關與自律團體應在諮詢私部門後，考量如何最有效地達到此期望，並應考量在提供其金融與非金融制度的洗錢、資恐及其他犯罪的弱點資訊時面對的任何風險。

**Principle two: a legal/regulatory framework that supports the application of a risk-based approach**

**原則二：對風險基礎方法的應用具有支持作用的法律／監管架構**

62. 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.

62. 各國應考量其立法與監管架構是否有助於實施風險基礎方法。若可行，全國性風險評估結果應顯示應履行的義務。

63. The risk-based approach does not mean the absence of a clear statement of what is required from the DNFBPs, including from real estate agents. However, under a risk-based approach, real estate agents 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 business. The fact that policies and procedures, in accordance to the risk levels, may be applied flexibly to different products, services, customers and locations does not mean that policies and procedures need not be clearly defined.

63. 採用風險基礎方法並不表示沒有清楚說明對 DNFBP（包括不動產經紀人）的要求。但是，根據以風險為基礎的方法，不動產經紀人應該已經有一定程度的彈性，執行妥善回應自身風險評估的政策與程序。事實上，若針對個別業務風險而採取適切的額外措施，則可根據這些措施制定及／或修改執行的標準。根據風險水準，政策與程序可能有彈性地適用於不同產品、服務、客戶、地點的事實，不表示政策與程序不用清楚定義。

64. Basic minimum AML 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 reporting of money laundering and terrorist financing), rather than applying legal and regulatory requirements in a purely mechanistic manner to every customer.

64. 對防制洗錢的最低基本要求可與風險基礎方法並存。事實上，切合實際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，應為風險基礎防制洗錢／打擊資恐要求的核心項目。然而，應重視的是這些標準的成果（透過威嚇、偵查和回報洗錢與資恐），而非機械式地將法律與監管要求套用於所有客戶。

**Principle three: design of a monitoring framework to support the application of the risk-based approach**

**原則三：設計監控架構，支持風險基礎方法的應用**

65. Where designated competent authorities or SROs have been assigned responsibility for overseeing AML/CFT controls, countries may wish to consider whether such authorities and SROs are given the necessary authority to implement a risk-based approach to monitoring. Barriers to this may include inappropriate reliance on detailed and prescriptive requirements in the designated competent authorities' or SROs' rules. These requirements may, in turn, stem from the laws under which the designated competent authority or SRO exercises its powers.

65. 若權責機關與自律團體已經被指派監督防制洗錢／打擊資恐控制的責任，國家可能會希望考慮此等主管機關或自律團體是否取得必要的權力，以執行以風險為基礎的監測做法。為此，遇到的障礙包括不當仰賴專責主管機關和自律團體規則中具有規範性的細節要求。這些要求可能會反過來，來自於指定權責機關與自律團體執行權力所據之法律。

66. 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 real estate

agents, 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 in the real estate agent's business are.

66. 若可行，專責主管機關與自律團體應尋求採用風險基礎方法來監控用以打擊洗錢和恐怖份子融資的控制措施。這應該要以對不動產經紀人所從事行動之種類，以及其所暴露的洗錢與恐怖份子融資風險，徹底的綜合性瞭解為基礎。指定主管機關與自律團體也許必須根據他們對不動產經紀人業務中有風險之處，做出整體評估後，再據以排出優先順序。

67. 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 competent authority's or SRO's wider duties.

67. 指定主管機關與自律團體如肩負非防制洗錢／打擊資恐相關職責，必須考慮這些風險，和主管機關或自律團體更大權責所產生之其他風險。

68. 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 additional resources or adopt other strategies to manage or mitigate any unacceptable residual risks.

68. 此風險評估應協助指定權責機關與自律團體選擇應將資源用於其監控計算的哪些項目，才能用有限的資源產生最大效果。風險評估還可指出指定主管機關與自律團體缺少處理風險所需的充足資源。在這種狀況下，指定權責機關與自律團體可能必須取得更多資源，或是採用其他策略來管理或緩解任何不可接受的殘存風險。

69. 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 similar fashion to what would be expected from a real estate agent or the staff of a real estate agent's business. 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 the national risk assessment.

69. 採用風險為基礎的監測做法，需要指定權責機關與自律團體員工能夠以類似不動產經紀人或不動產經紀人業務之員工應該有的方式，做出按照原則的決定。此決策應涵蓋在充分的安排下打擊洗錢與資恐。為此，專責主管機關或自律團體可能會想考量，在風險基礎監控方法的實務應用方面，如何將其人員訓練至最優程度。針對風險為基礎方法一般原則、可能使用方法、若是在國家風險評估的脈絡中，風險為基礎方法成功使用後會有怎樣狀況，應妥善向這批員工簡報。

#### Principle four: identifying the main actors and ensuring consistency

##### 原則四：鑑別主要參與者及確保一致性

70. 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 real estate agents about how to implement a risk-based approach to AML/CFT.

70. 各國應考量在採取以風險為基礎方法打擊洗錢和資恐時，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，可能要考慮哪些組織最有資格，向不動產經紀人提供關於如何對防制洗錢／打擊資恐執行風險基礎方法的指引。

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

71. 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、執行、司法。
- Law enforcement agencies – This might include the police, customs, and similar agencies.
- 執法機關－這可能包括警察、海關，其他類似機關。
- The financial intelligence unit (FIU), security services, other similar agencies.
- 金融情報中心（FIU）、安全機關、其他類似機關。
- Internal revenue/tax services.
- 國稅局／稅捐處。
- Designated competent authorities/SROs.
- 指定權責機關/自律團體。
- The private sector – This might include real estate agents and their firms, national and international trade bodies and associations, etc.
- 私部門－可能包括不動產經紀人與其公司，全國或國際業界團體與協會等。
- 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 customers of real estate agents' businesses.
- 社會大眾－反制洗錢與資助恐怖份子的指定安排，是最終被指派保護守法大眾的單位。但是這些安排可能也會對不動產經紀人的客戶造成負擔。
- 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－能夠對支持風險為基礎方法之概念基礎者，例如可能包括學界或媒體的風險關係人。

72. 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.

72. 政府對某些利害關係人的有效影響能力顯然高於對其他利害關係人的影響。然而，政府不論有何影響力，都能評估如何鼓勵所有利害關係人支持打擊洗錢和資恐的努力。

73. 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 and SROs. This may be assisted by relevant authorities making clear and consistent statements on the following issues:

73. 另外一項元素，是政府在追求取指定權責機關與自律團體對風險為基礎方法相關之事上的認可時，扮演的角色。相關機關可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：

- Real estate agents can be expected to have 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, for example suspicious transaction reporting and minimum standards of customer due diligence.
- 可以預期不動產經紀人，只要內部系統與控管合理，在考慮風險高低後，有彈性地調整此等系統與控管。然而，還有一些不論風險程度多高都將執行的最低法律與監管要

求和元素，例如疑似洗錢或資恐交易報告，以及適用於客戶與相對方的最低客戶審查標準。

- Acknowledging that a real estate agent'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 real estate agent with good controls aimed at preventing money laundering and the financing of terrorism is able to achieve. A real estate agent may have acted in good faith to take reasonable and considered steps to prevent money laundering, and documented the rationale for its decisions, and yet still be abused by a criminal.
- 瞭解不動產經紀人偵測與阻止洗錢與資助恐怖份子的能力，有時候必然會受到限制，且此等風險因素的資訊並非總是可靠或可免費取得。因此，具備良好避免洗錢及資助恐怖主義控制措施，可以達成合理的政策和監控期望。不動產經紀人可能已經會秉持誠信行事，採取合理且經過考慮的步驟，避免洗錢，並將所有決定的理據做成文件規定，但仍舊有可能遭犯罪者濫用。
- 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.
- 承認並非所有高風險情況都相同，所以並非每次都要求以進行類型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

74. 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 many cases, it will allow the private sector to provide competent authorities and SROs with information they identify as a result of previously provided government intelligence.

74. 公私部門之間有效的資訊交換將成為國家防制洗錢和打擊資助恐怖主義策略不可或缺的環節。在很多狀況下，這會允許民間產業向指定的主管機關與自律團體提供他們找到的資料，這些資料則是事先提供的政府情報的結果。

75. Public authorities, whether law enforcement agencies, designated competent authorities or other bodies, have privileged access to information that may assist real estate agents to reach informed judgements when pursuing a risk-based approach to counter money laundering and terrorist financing. Likewise, real estate agents are able to understand their clients' businesses reasonably well. It is desirable that public and private bodies work collaboratively within applicable law and regulatory frameworks 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 (consistent with applicable laws and regulations) in a timely and effective manner.

75. 無論是執法機關、指定主管機關或其他組織，公部門有其權限，能夠取得或可協助不動產經紀人在按照風險為基礎的方法去防制洗錢與資助恐怖份子時，做出全盤瞭解後的判斷。相同地，不動產經紀人也能夠在合理的程度，妥善瞭解其客戶業務。理想上公營組織可以在適用的法律與法規架構下合作，找出對於防制洗錢與資助恐怖份子而言重大的資訊，並發展出各種方法，讓這些資訊可以及時、有效地分享（並合乎適用法律與法規）。

76. To be productive, information exchange between the public and private sector should be accompanied by appropriate exchanges among public authorities. FIUs, designated competent authorities, SROs, 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 too widely.

76. 為了提高生產力，公私部門間的資訊交換，應該也要伴隨公部門間的適當交換。金融情報中心、指定主管機關、自律團體、執法機關應該能夠對於結果的資訊和反饋、被發現的弱點共享資訊，這樣才能給予民間產業一致與有意義的投入。所有當事人當然都應考量應採取哪些安全措施來保護公部門持有的敏感資訊，避免散佈過廣。

77. 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:

77. 相關利害關係人應尋求維持對話，充分瞭解在打擊洗錢和資恐方面證明具有實用性的資訊。例如，公私部門間分享後，如果有的話，可能有用的資訊種類，如果有的話，會包括：

- Assessments of country risk.
- 國家風險評估。
- Typologies or assessments of how money launderers and terrorists have abused the DNFBPs, especially real estate agents.
- 洗錢者與恐怖份子會如何濫用指定之非金融事業或人員，尤其是不動產經紀人的類型或評估。
- Feedback on suspicious transaction reports and other relevant reports.
- 疑似洗錢或資恐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 real estate agents.
- 針對性機密情報。在特定情況下，如有適當防衛，並遵守一國法律、法規架構時，主管機構與不動產經紀人分享針對的機密性情報也許亦屬妥當。
- 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。
- Identifying suspicious transactions in the event that large cash elements are involved.
- 如果涉及大筆金額，應辨識可疑交易。

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

78. 在選擇哪些資訊可以適當分享並從中受惠時，公部門或許會希望對不動產經紀人強調，此等來自與公家機關的資訊，應該讓不動產經紀人更清楚狀況，但不能取代不動產經紀人自身判斷。例如，各國可能決定不製作被認為是國家認可的低風險客戶類型清單。公家機關反而寧願把這當作是對不動產經紀人決策過程的投入，在此基礎上分享資訊，以及其他可用的相關資訊。

## 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

#### 通告國家級優先順序的風險評估

79. 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 scale, whether by countries or individual 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".

79. 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上。事實上，每當採用以風險為基礎的方法，在任何層級上，不分國家或個別公司。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。此情況可視為「全國性風險評估」。

80. A national risk assessment should be regarded as a description of fundamental background information to assist designated competent authorities, SROs, law enforcement authorities, the FIU and real estate agents 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.

80. 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、不動產經紀人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。

81. A national risk assessment should be tailored to the circumstances of the individual country, both in how it is executed and its conclusions. Factors that may influence the risk of money laundering and terrorist financing in a country could include the following:

81. 全國性風險評估在如何執行及其結論方面，皆應針對各國國情量身打造。可能對各國洗錢與恐怖分子融資風險造成影的因素包括：

- 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 nature of the activity carried out by real estate agents.
- 不動產經紀人規模與構成。
- Ownership structure of real estate agents' businesses.
- 不動產經紀人業務的所有權結構。
- Corporate governance arrangements in relation to real estate agents and the wider economy.
- 與不動產經紀人與更大範圍經濟的企業管治安排。

- The nature of payment systems and the prevalence of cash-based transactions.
- 支付系統的性質與現金基礎交易的盛行。
- The ability of government agencies to recognise the nature of payment systems and the prevalence of cash-based transactions and its ability to act upon the availability of such intelligence.
- 政府機關瞭解付款系統本質與現金交易普遍性的能力，以及根據此等情報多寡行動的能力。
- Geographical spread of real estate agents' operations and customers.
- 不動產經紀人營運與客戶的地理分布。
- Types of products and services offered by real estate agents.
- 不動產經紀人提供的產品與服務種類。
- Types of customers serviced by real estate agents.
- 不動產經紀人服務的客戶種類。
- Types of predicate offences.
- 前置犯罪的類型。
- Amounts of illicit money generated domestically.
- 國內產生的黑錢金額。
- Amounts of illicit money generated abroad and laundered domestically.
- 海外產生的黑錢金額與國內洗錢金額。
- Main channels or instruments used for laundering or financing terrorism.
- 洗錢或恐怖分子融資主要管道或金融工具。
- Sectors of the legal economy affected.
- 受影響的合法經濟領域。
- Underground/informal areas in the economy.
- 地下／非正式經濟領域。

82. 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.

82. 各國亦應考慮如何在國家層次以最有效的方式瞭解洗錢與恐怖分子融資風險。相關問題可能包括：哪些機關負責支援此評估。評估應有多高的正式性？是否應公佈專責主管機關或自律團體的觀點？這些是專責主管機關或自律團體應考量的所有問題。

83. 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 or SROs should ensure that they identify and provide real estate agents with the information need to design and implement measures to mitigate the identified risks.

83. 預期的結果為：根據對最新風險的全面實際瞭解，決定國家層級的責任與資源分配。要達到希望的結果，指定權責機關與自律團體應確保，他們找到並讓不動產經紀人培養此種瞭解，以及設計、執行進而緩解被找出風險的措施必要資訊。

84. 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, in partnership with law enforcement bodies, FIUs, designated competent authorities/SROs and the real estate agents 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 sharing of information among different agencies and entities, so that there are no institutional impediments to information dissemination.

84. 制定和執行風險基礎方法需要形成判斷。重要的是須在獲得充分資訊的條件下進行判斷。因此，為了確保有效，風險基礎方法應以資訊為基礎，並在可行時納入情報。應致力確保在新取得的正確資訊基礎上進行風險評估。政府和執法機關、金融情報中心、指定主管機關／自律團體、不動產經紀人本身合作時，能夠將其知識與專業帶入，發展適合該國使用的以風險為基礎方法。各國政府的評估並非靜態，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。因此，各國應促進各機關與實體間的資訊分享，確保不會因為制度而影響資訊的宣導。

85. 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.

85. 不論採取何種形式，全國性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恐怖分子融資，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訊。

86. 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 the regulatory/monitoring regime to address the risks identified. An over-zealous effort to counter the risks could be damaging and counter-productive, placing unreasonable burdens on industry. Alternatively, less aggressive efforts may not be sufficient to protect to societies from the threats posed by criminals and terrorists. A sound understanding of the risks at the national level could help obviate these dangers.

86. 除了協助指定主管機關與自律團體決定怎麼分配反制洗錢與資助恐怖份子的資金外，國家性風險評估也可以告知決策者執行法規機制，去解決所找出風險的最佳策略。過度熱切致力於對抗風險，可能會造成傷害，反而降低生產力，對產業造成不合理的負擔。相反地，不夠積極努力，可能不足以保護社會免於犯罪者與恐怖份子造成的傷害。在國家層級上對風險做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

87. FATF Recommendation 24 requires that real estate agents be subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. In determining the effective systems, 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 its functions, including powers to monitor and sanction.

87. 防制洗錢金融行動工作組織建議第 24 條規定，不動產經紀人必須具備有效的系統，監測與確保遵循防制洗錢／打擊資恐規定。在決定有效系統的設計時，可能要注意洗錢或資助恐怖份子在此產業的風險。應安排指定專責主管機關或自律團體負責監控及確保其職務，包括監控與制裁權。

*Defining the acceptable level of risk*  
定義可接受的風險程度

88. 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.

88. 防制洗錢／打擊資恐風險的程度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級管理階層不積極投入等內部風險因素可能導致風險程度增加。外部風險程度可能因為第三方的行動及／或政策與公共發展而增加。

89. As described in Section One, all activity involves an element of risk. Designated competent authorities and SROs should not prohibit real estate agents from conducting business with high risk customers as long as appropriate policies, procedures and processes to manage the attendant risks are in place. However, this does not exclude the need to implement basic minimum requirements. For instance, FATF Recommendation 5 (that applies to real estate agents through the incorporation of R.5 into R.12) states that “where [the real estate agent] 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 customers, and conducting business with unacceptable or unmitigated risk.

89. 如第一節所述，所有活動都涉及風險因素。只要備有適當的政策、程序、流程管理參與者風險，指定主管機關與自律團體不應禁止不動產經紀經濟人和高風險客戶從事業務。然而，此拒絕並不排除對執行最低基本要求的需求。舉例來說，防制洗錢金融行動工作組織建議第 5 條（透過結合第 5 至第 12 條適用於不動產經紀人），述明「在（不動產經紀人）無法遵守（客戶審查規定）之處，則不得開戶、開始業務關係，或執行交易；或應終止業務關係，並應考慮提出和該客戶有關的疑似洗錢或資恐交易報告通報。」所以風險水準應該要在不接納客戶，與從事不可接受或未緩解風險之業務兩種極端間取得平衡。

90. Designated competent authorities and SROs expect real estate agents 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. Real estate agents must rely on designated competent authorities and SROs to take appropriate measures once a report of suspicious activity has been filed and the risk-based approach no longer applies. Designated competent authorities and SROs should also ensure that those policies, programmes, procedures and systems are applied effectively to prevent real estate agents from becoming conduits for illegal proceeds and ensure that they keep records and make reports 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 customers’ business. This is why developing an accurate customer profile is important in managing a risk-based system. Moreover, procedures and controls are frequently based on previous typologies cases, but criminals will adapt their techniques, which may quickly limit the utility of such typologies.

90. 指定主管機關與自律團體期待不動產經紀人能具備有效的政策、計畫、程序、系統，以緩解風險，並認可就算具備有效的系統，非必然能偵測到所有可疑交易。一旦通報可疑活動，以風險為基礎的方法不再適用後，不動產經紀人必須仰賴主管機關與自律團體，採取適當的措施。指定主管機關與自律團體應該也要確保，這些政策、計畫、程序、系統，有效地用於防止不動產經紀人成為犯罪所得的管道，並確保他們保留所有紀錄、提出報告，供國家機關反制洗錢與資助恐怖份子之用。有效的政策與程序能降低風險程度，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。監測的目的在於從極端大量的合法交易中，偵測不尋常或可疑交易，此外

判定不尋常的界線，可能並非一體適用，因為取決於客戶業務，「客製化」會有所不同。這就是為什麼發展精確的客戶背景資料對於管理風險基礎系統如此重要。此外，程序與控管經常是根據先前的類型學案例，但犯罪者的技術也會變化，很快就限制了這種類型學。

91. 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 real estate agents 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 Real Estate Agents on Implementing a Risk-Based Approach.”

91. 此外，並非所有高風險情況都相同，所以並非每次都要求執行完全相同的加強客戶審查。所以，指定主管機關／自律團體會期待不動產經紀人找出個別高風險種類，並採用特定的適當緩解措施。更多關於辨識特定風險種類的資訊，在第三節「不動產經紀人執行風險為基礎方法的指引」中提供。

#### *Proportionate Supervisory/Monitoring Actions to support the Risk-Based Approach* 按比例的監管／監測行動，以支持風險為基礎的方法

92. 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.

92. 指定權責機關與自律團體應透過有效的現場與非現場監管以及分析內部和其他可用資訊等方式，尋求鑑別弱點。

93. In the course of their examinations, designated competent authorities and SROs should review a real estate agent’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 the real estate agent’s business and the adequacy of its mitigation measures. Where available, assessments carried out by or for real estate agents 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 monitoring response.

93. 在檢驗過程中，指定主管機關與自律團體應該審查不動產經紀人的防制洗錢／打擊資恐風險評估，以及其政策、程序、控管系統，以達成對該不動產經紀人業務風險狀況與其緩解措施妥適性的整體評估。在可用之處，不動產經紀人進行的評估可能會是有用的資訊來源。指定主管機關／自律團體對管理能力和採取必要矯正行動的評估，也是重要的判斷因素之一。專責主管機關與自律團體應考慮到鑑別的弱點可能引起更嚴重的後果，並應採取合乎比例的措施，確保正確及時矯正弱點。一般而言，系統故障或控制措施不足會造成最嚴重的監測回應。

94. Nevertheless, it may be the case that the lack of detection of an isolated high risk transaction, or of transactions of an isolated high risk customer, 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.

94. 但是，有可能發生對獨立高風險交易，或是獨立高風險客戶交易嚴重缺乏偵測的狀況，例如金額龐大，或洗錢與資助恐怖份子為知名類型，或長期沒有被發現的計畫。這些案件可能表示在鑑別高風險、監管、人員訓練與內部控制方面長期積累的脆弱風險管理實務或監管違法行為。因此，這類案件可能導致採取合理措施以確保遵守防制洗錢／打擊資恐要求。

95. Designated competent authorities and SROs can and should use their knowledge of the risks associated with products, services, customers and geographic locations to help them evaluate the real estate agent's money laundering and terrorist financing risk assessment, with the understanding, however, that they may possess information that has not been made available to the real estate agents, or the real estate agents has been unable to acquire, and, therefore, real estate agents 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 real estate agents in managing their risks. Where real estate agents 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 SROs<sup>1</sup>. Guidance designed specifically for real estate agents is likely to be the most effective. An assessment of the risk-based approach will, for instance, help identify cases where the real estate agents 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 due diligence measures.

95. 主管機關與自律團體應可使用其對於產品、服務、客戶與地理位置的相關知識，幫助他們評估不動產經紀人的洗錢與資助恐怖份子風險評估，但是要瞭解，他們可能持有並未向不動產經紀人提供的資訊，因此不動產經紀人無法在發展與執行風險為基礎方法時，考慮到這些資訊。鼓勵指定主管機關與自律團體（及其他風險關係人）使用此等知識，發佈方針以協助不動產經紀人管理其風險。若允許不動產經紀人以風險敏感為基礎，判斷客戶審查措施的範圍，則必須與其指定主管機關與自律團體<sup>1</sup> 發佈的方針一致。專為不動產經紀人設計的指引可能是最有效的。例如，風險基礎方法的評量將有助於辨識一些狀況，不動產經紀人利用過於狹隘而無法掌握既有風險的風險類別，或採用的指標可以辨識大量高風險關係，但卻無法提供適當的額外盡職調查措施。

96. 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 real estate agent'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 firms have adequately and effectively implemented appropriate risk mitigation strategies.

96. 在風險基礎方法的背景中，指定權責機關與自律團體的主要焦點應該是判斷不動產經紀人的防制洗錢／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。監控目的不在於禁止高風險活動，而在於確信公司以完善的制度有效執行適合的風險減輕策略。

97. Under FATF Recommendation 24, designated competent authorities and SROs should have adequate powers to perform their 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 to correct or remedy AML/CFT deficiencies. However, designated competent authorities and SROs must have the authority and willingness to apply fines and/or penalties in cases where substantial deficiencies exist. Actions may also take the form of a remedial program through the normal monitoring processes.

97. 根據防制洗錢金融行動工作組織建議第 24 項，專責主管機關與自律團體應擁有執行其職務的充分授權，包括針對未遵守監理與監管機關打擊洗錢與資恐要求的案件予以適當制裁的權利。罰金及／或懲處並非在所有監管行動中都能有效矯正或補正防制洗錢／打擊資恐缺陷。然而，專責主管機關與自律團體在遇到嚴重缺陷問題時，應擁有科以罰金及／或懲處的職權與意願。行動也可透過正式監控流程，採取補救計畫的形式。

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<sup>1</sup> FATF Recommendations 5 and 25, Methodology Essential Criteria 25.1 and 5.12.

<sup>1</sup> 防制洗錢金融行動工作組織建議第 5 及 25 項，方法論基本準則 25.1 及 5.12。

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

98. 考量以上因素後，可清楚瞭解合乎比例的監控將獲得兩項核心元素的支持。

*a) Regulatory Transparency*

*a) 監管透明度*

99. In the implementation of proportionate actions, regulatory transparency will be of paramount importance. Designated competent authorities and SROs are aware that real estate agents, while looking for operational 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 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.

99. 執行合乎比例的措施時，監管透明度將具有極高重要性。指定主管當局及自律團體瞭解，不動產經紀人在尋求營運自由度做自己風險判斷的同時，也將尋求監管義務指引。因此，有防制洗錢／打擊資恐監督職責的指定主管當局／自律團體，應嘗試清楚定出自己的期望，並考慮溝通這些訊息的適當機制。例如，可能會根據希望得到的結果，有高階級的規定，而非詳盡的流程。

100. 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 real estate agents.

100. 不論採用何種程序，皆以對法律責任和監管期待的認知為指導原則。如果缺乏這種透明性，則監控行動可能被視為不相稱或不可預測，甚至可能妨礙不動產經紀人以最有效的方式應用風險基礎方法。

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

*b) 專責主管機關、自律團體及執法機關的人員訓練*

101. In the context of the risk-based approach, it is not possible to specify precisely what a real estate agent 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.

101. 在風險基礎方法的背景中，不可能精確指出不動產經紀人在所有狀況下，必須做什麼才能滿足其監管義務。因此，主要考量應在於如何有效確保堅定地執行可預測且合乎比例的監控措施。因此監測訓練的有效性，對於成功交付合乎比例的監管／監測行動是非常重要的。

102. 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 real estate agents and their 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 firms or business arrangements.

102. 訓練的目的應在於允許專責主管機關與自律團體人員對防制洗錢／打擊資恐制度與控制形成穩健的比較式判斷。在進行評量的時候，指定主管當局及自律團體必須要有能力，根據不動產經紀人及其公司承擔的風險，並考慮可行的產業慣例，對管理控制措施做出判斷。指定主管機關與自律團體也可能發現，針對不同事務所或業務安排的相對長短處，進行比較性評估所作成的判斷是有用的。

103. 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.

103. 訓練應包括指導專責主管機關與自律團體評鑑高階管理團隊是否已採取適當的風險管理措施，以及確定是否已制定必要的程序與控制。訓練亦應包括參照特定指引（若提供）。專責主管機關與自律團體亦應對備妥充分的資源確保執行有效風險管理的作為感到滿意。

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

104. 為履行這些職責，訓練應可讓指定主管當局及自律組織監控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，包括持續性員工訓練計畫及內部稽核、遵循與風險管理部門。

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

ii. 根據不動產經紀人的風險概況，風險管理政策及流程是否適當，並根據改變中的風險概況定期調整。

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. 高階管理團隊是否參與以確定已進行完善的風險管理，並且制定必要的程序與控制。

**SECTION THREE:**  
**GUIDANCE FOR REAL ESTATE AGENTS ON IMPLEMENTING A**  
**RISK-BASED APPROACH**

**第三節：不動產經紀人實施風險基礎方法指引**

**Chapter One: Risk Categories**

**第一章：風險類別**

105. In order to implement a reasonable risk-based approach, real estate agents should identify the criteria to assess potential money laundering and terrorist financing risks. Identification of the money laundering and terrorist financing risks, to the extent that such terrorist financing risk can be identified, of customers or categories of customers, and transactions will allow real estate agents to determine and implement proportionate measures and controls to mitigate these risks.

105. 為實施合理的風險基礎方法，不動產經紀人應確認評量潛在洗錢及資恐風險的指標。辨識客戶或客戶類別以及交易之洗錢及資恐風險（在可辨識範圍內），可讓不動產經紀人決定及實施相應的措施和控制方法，以降低這些風險。

106. Money laundering and terrorist financing risks may be measured using various categories. Application of risk categories provides strategy for managing potential risks by enabling real estate agents to subject customers to proportionate controls and oversight. The most commonly used risk categories are: country or geographic risk, customer risk, and transaction risk. The weight given to each category (individually or in combination) in assessing the overall risk of potential money laundering and terrorist financing may vary from one real estate agent to another, depending upon their respective circumstances. Consequently, real estate agents will have to make their own determination regarding risk weighting. Parameters set by law or regulation may limit a real estate agent's discretion.

106. 可運用不同的類別評量洗錢與資恐風險。風險類別的應用可以提供管理潛在風險的策略，讓不動產經紀人可以對客戶進行相應的控制和監督。最常用的風險類別為：國家或地理風險、客戶風險及交易風險。評量潛在洗錢及資恐整體風險時，各不動產經紀人給各類別的權重（個別或合併）可能依其相對情況而有所不同。因此，不動產經紀人必須自行決定風險權重。法律規定的參數可能會限制不動產經紀人的裁量權。

107. While there is no agreed upon set of risk categories for real estate agents, the examples provided herein are the most commonly identified risk categories. There is no one single methodology to apply these risk categories, and the application of these risk categories is intended to provide a strategy for managing potential risks. The following risk categories can indicate a higher risk of money laundering or terrorist financing, dependent upon all of the surrounding circumstances, taking into account the norms of the market at any given time.

107. 雖然不動產經紀人沒有一致認定的風險類別，但本文件中提供的範例是最常見的風險類別。沒有單一的方法可以應用這些風險類別，而這些風險類別的應用旨在提供管理潛在風險的策略。根據所有週遭環境，並考慮任何特定時點的市場規範，以下風險類別可能表示較高的洗錢或資恐風險。

Country/geographic risk  
國家／地理風險

108. Potential elements contributing to risk include:

108. 導致風險的潛在因素包括：

- Location of property(s) in relation to the buyer. Different countries pose different levels and types of risks pertaining to cross border, non-face to face transactions, *e.g.* some countries have higher or lower levels of criminality and/or regulation.
- 不動產與買方的相關位置。不同國家對跨國、非面對面交易會有不同水準及不同型態的風險，例如，某些國家會有較高或較低水準的犯罪率及／或規定。
- Location of the buyer and seller.
- 買方和賣方的位置。

109. There is no universally agreed definition by either competent authorities, SROs, or real estate agents that prescribes whether a particular country or geographic area represents a higher risk. Country risk, in conjunction with other risk factors, provides useful information as to potential money laundering and terrorist financing risks. Factors that may result in a determination that a country poses a higher risk include:

109. 權責機關、自律團體或不動產經紀人之間並沒有一致的定義，可用以描述特定國家或地區是否具有較高的風險。國家風險與其他風險因素共同提供有關潛在洗錢與資恐風險的實用資訊。可用來判定國家是否具有較高風險的因素包括：

- 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 which may not be universally recognised, may be given credence by a real estate agent because of the standing of the issuer and the nature of the measures.
- 例如聯合國(UN)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，不動產經紀人可能會因為發布機構的立場以及該措施的性質而予以考慮存在較高風險。
- Countries identified by credible sources<sup>2</sup> as lacking appropriate AML/CFT laws, regulations and other measures.
- 經可靠來源<sup>2</sup> 認定為缺乏防制洗錢／資助打擊恐怖主義法律、規定及其他措施之國家。

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<sup>2</sup> “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 Financial Action Task Force 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.

<sup>2</sup> 「可靠來源」係指由普遍被視為聲名卓著的知名機構製作的資訊，這類資訊通常公開而且隨處可得。除了防制洗錢金融行動小組及 FATF 相關的區域機構外，此類來源包括但不限於跨國機構或國際機構，例如國際貨幣基金會、世界銀行及金融情報中心艾格蒙組織（Egmont Group of Financial Intelligence Units）以及相關國家政府機構和非政府組織。可靠來源提供的資訊不具法律或監管效力，不可視為自動確定某項活動具有較高風險。

- Countries identified by credible sources as providing funding or support for terrorist activities that have designated terrorist organisations operating within them.
- 被可靠來源辨識為提供資金或支持有指定恐怖份子組織從中操作的恐怖活動。
- Countries identified by credible sources as having significant levels of corruption, or other criminal activity.
- 經可靠來源認定為腐敗或其他犯罪活動情況嚴重之國家。
- Countries where there is no mandatory registration of real property.
- 沒有強制不動產登記的國家。

### Customer risk

#### 客戶風險

110. The behaviour and motivations of customers may be a source of money laundering or terrorist financing risk. However, agents may also form concerns or suspicions about the other parties in a transaction, which may need to be reported to their own compliance office (often referred to as the Money Laundering Reporting Officer, depending on applicable laws and firms' procedures). Mitigation of customer risk primarily centres on CDD, including customer identification.

110. 客戶的行為和動機可能是洗錢或資恐風險的來源。但經紀人也可能對交易中的其他人產生疑慮或懷疑，而可能必須對他們自己的遵循辦事處報告（根據相關法律及公司的程序，通常稱為洗錢報告專員）。客戶風險的降低主要集中於客戶審查，包括客戶身分辨識。

111. The main customer risk categories are:

111. 主要的客戶風險類別有：

- Significant and unexplained geographic distance between the agent and the location of the customer.
- 經紀人與客戶位置存在重大且未經解釋的地理距離。
- Customers where the structure or nature of the entity or relationship makes it difficult to identify the true owner or controlling interest.
- 因實體或關係的結構或性質，使得難以辨識其真正所有權人或控制利益的客戶。
- Cash intensive businesses.
- 現金密集型企業。
- Charities and other non-profit organisations that are not subject to monitoring or supervision.
- 不受監控或監督的慈善團體和其他非營利組織。
- The use of intermediaries who are not subject to adequate AML/CFT laws and measures and who are not adequately supervised.
- 使用不受適當防制洗錢／打擊資恐法律及措施約束且未受適當監督的中介機構。
- Politically exposed persons (PEPs).
- 重要政治性職務人士（PEPs）。

### Transaction risk

#### 交易風險

112. This category of risk is associated with the factors related to the property, the financing of the transaction and the parties to the transaction.

112. 此類風險伴隨於不動產、交易融資及交易當事人相關的因素。

- Speed of the transaction (transactions that are unduly expedited without a reasonable explanation may be higher risk).
- 交易速度（異常加速而無合理說明的交易可能有較高的風險）。
- Type of properties (residential or commercial, vacant land, investment, high-turnover properties, multi-unit properties for lettings/leases).
- 不動產的型態（住宅或商業大樓、空地、投資、高週轉不動產、出租／租賃用多單位不動產）。
- Successive transactions, especially of same property in short period of time with unexplained changes in value.
- 連續交易，尤其是相同不動產在短期內未經解釋的改變價值。
- Conversion of properties into smaller units.
- 不動產轉換成多個較小的單位。
- Introduction of unknown parties at a late stage of transactions, e.g. arrangements made between purchasers.
- 交易末期引進未知單位，例如買方之間做的安排。
- Third-party vehicles (i.e. trusts) used to obscure true ownership of buyer.
- 利用第三方工具（亦即信託）以掩飾買方真正的所有權。
- Under- or over-valued transactions.
- 低估或高估價值的交易。
- Sale of properties immediately before restraint or insolvency.
- 管押或喪失償付能力前立即出售不動產。
- Property value not in the profile of the customer.
- 不動產價值相關資訊不在客戶資料中。

113. Financing risk is associated with the factors related to the funding and/or source of funding relative to a transaction. Potential elements contributing to financing risk include:

113. 融資風險伴隨於和交易相關資金及／或資金來源有關的因素。導致融資風險的潛在元素包括：

- Location of client's and/or customer's source of funds.
- 委託人及／或客戶資金來源的位置。
- Unusual sources, e.g. funds obtained from unknown individuals or unusual organizations.
- 異常來源，例如從不知名個人或異常組織取得之資金。
- Purchase with large amounts of cash.
- 以高額現金購買。
- Cash deposits or money orders from unusual sources or countries as identified under country/geographic risks.
- 來自依國家／地理風險確認之異常來源或國家的現金存款或匯票。
- Use of complex loans, or other obscure means of finance, versus loans from regulated financial institutions.
- 使用複雜的貸款或其他模糊的融資手段，而非受監管金融機構的貸款。
- Unexplained changes in financing arrangements.
- 未經解釋的融資安排改變。

114. Financing practices vary between countries, and cultural differences must be recognised. While in some markets, large (or all cash) transactions may seem higher risk, this may be common in other markets, particularly where the currency may fluctuate a great deal or there is no well-functioning mortgage market.

114. 各國之間的融資做法各不相同，必須承認文化差異。雖然大量（或全部現金）交易在某些市場可能有較高的風險，但在其他市場可能就很普遍，尤其是在貨幣可能大幅波動或缺乏健全抵押市場的地方。

115. Agents who are involved at any level in the obtaining, processing or closing of a loan, mortgage or other financial instrument must consider the specific risks that raises, and make reference to guidance for financial service providers. Real estate agents who handle purchase funds must also ensure that their policies and procedures are sufficiently robust to account for the additional risk this poses.

115. 在貸款、抵押或其他金融工具的取得、處理或締結過程中參與任何層級的不動產經紀人必須考慮所引發的特定風險，並參考金融服務提供者指引。處理採購資金的不動產經紀人亦需確定，其政策及程序健全，足以應付額外的風險。

116. In some national systems it is a requirement or common practice that other professions or businesses with CDD requirements under the FATF Recommendations are involved with the transactions, predominantly lawyers, notaries, and financial institutions. This involvement of more than one profession or business might have implications regarding CDD and might reduce risk.

116. 在某些國家體制中，符合防制洗錢金融行動工作組織建議之客戶審查要求的其他職業或企業參與交易，是一項要求或普遍的慣例，主要包括律師、公證人及金融機構。一種以上的職業或業務參與可能對客戶審查有所影響，並可能降低風險。

#### Variables that impact upon risk

##### 影響風險的變數

117. There are a number of variables that may impact upon these risk categories, dependent upon all of the surrounding circumstances:

117. 根據所有週遭環境，有許多變數可能影響這些風險類別：

- Involvement of other parties, *e.g.* financial institutions, lawyers or notaries, and whether they are subject to AML/CFT requirements.
- 其他單位的參與，例如金融機構、律師或公證人，不論其是否需滿足防制洗錢／打擊資恐要求。
- How the client was introduced to the agent.
- 委託人如何引薦給經紀人。
- Method of communication between client and agent, *e.g.* email or personal contact.
- 委託人與經紀人之間的溝通方式，例如電子郵件或個人接觸。
- Whether the client is a PEP.
- 該委託人是否為重要政治性職務人士。
- Whether there is a beneficial owner that is different from the direct customer.
- 是否有不同於直接客戶的實質受益人。
- The products/services used by the client or the purchaser.
- 委託人或購買者使用的產品／服務。

- The person with whom the real estate agent has the relationship, for example legal persons or arrangements with no clear structure might pose a higher risk than a natural person.
- 與不動產經紀人有關係之人，例如沒有清楚結構的法人或法律協議可能比自然人更具風險。

### Controls for higher risk situations

#### 較高風險情況的監控

118. Real estate agents should implement appropriate measures and controls to mitigate the potential money laundering risks of those customers that are determined to be higher risk as the result of the agent's risk-based approach. These measures and controls may include:

118. 不動產經紀人應實施適當措施及控制方法，降低該經紀人以風險基礎方法認定為較高風險之客戶的潛在洗錢風險。這些措施及控制方法可能包括：

- Increased awareness by the real estate agent of higher risk customers and transactions within business lines across the institution.
- 提高不動產經紀人對於整個產業不同業務線較高風險客戶及交易的認知。
- Increased levels of know your customer (KYC) or enhanced due diligence.
- 提高認識你的客戶（KYC）或強化盡職調查的水準。
- Escalation for approval of the establishment of an account or relationship.
- 建立帳戶或關係時提請核准。
- Increased monitoring of transactions.
- 增強交易監控。
- Increased levels of ongoing controls and frequency of reviews of relationships.
- 增加業務關係的檢視頻率及現行監控等級。
- The same measures and controls may often address more than one of the risk criteria identified, and it is not necessarily expected that real estate agents establish specific controls targeting each and every risk criteria.
- 相同的措施及控制方法通常可以解決一項以上經確認的風險指標，因此，不需要期望不動產經紀人針對每一項風險指標建立特定的控制方法。

## **Chapter Two: Application of Risk-Based Approach**

### **第二章：風險基礎方法的應用**

119. Real estate agents should conduct risk assessments of their business taking into account the following factors:

119. 不動產經紀人應執行其業務的風險評量，並應考慮下列因素：

- The size of their business, *e.g.* the financial value of the transactions facilitated.
- 其業務規模，例如所推動之交易的財務價值。
- Nature of business, overseas and/or domestic, residential and/or commercial.
- 業務性質，海外及／或國內，住宅及／或商業。
- How instructions are obtained, *e.g.* through advertising, or through referrals.
- 取得指示的方法，例如透過廣告或透過推薦。

120. Risk mitigation policies and procedures should be devised and implemented in the following areas. The effectiveness of these policies and procedures should be kept under review:

120. 風險降低政策及程序應在下列領域中策劃執行。應持續檢討這些政策及程序的效果。

#### Customer due diligence

#### 客戶審查

121. Customer Due Diligence/Know Your Customer is intended to enable a real estate agent to form a reasonable belief that it knows the true identity of each customer. In the normal course of acting for customers real estate agents may also learn surrounding information which may be helpful in terms of AML/CFT, e.g. the reason for the sale/purchase<sup>3</sup>, and/or the source of funding.

121. 客戶審查／認識你的客戶旨在讓不動產經紀人能合理相信其知道每一位客戶的真實身分。在代表客戶的正常過程中，不動產經紀人亦可瞭解有助於防制洗錢／打擊資恐的環境資訊，例如買賣的原因<sup>3</sup>及／或資金的來源。

122. The real estate agent's procedures should include procedures to:

122. 不動產經紀人的程序應包括下列目的：

i. Identify and verify the identity of each customer/client.<sup>4</sup>

i. 辨識並驗證各客戶／委託人的身分。<sup>4</sup>

ii. Identify the beneficial owner, and take reasonable risk-based measures to verify the identity of any beneficial owner. The measures that have to be taken to verify the identity of the beneficial owner will vary depending on the risk.

ii. 辨識實質受益人，並採取合理風險基礎措施，驗證任何實質受益人的身分。為驗證實質受益人身分所採取的措施將因風險而異。

iii. Obtain appropriate additional information to understand the customer's circumstances and business, including the expected nature and level of transactions.

iii. 取得適當的額外資訊，以瞭解客戶的狀況與業務，包括預期中的交易性質與水準。

123. Failure to verify the identity of a beneficial owner to the real estate agent's satisfaction as a result of the lack of CDD information, could be the basis for an agent's reporting of the transaction as a suspicious transaction to the relevant authorities

123. 如因缺乏客戶審查資訊而無法以不動產經紀人滿意的方式驗證實質受益人的身分，經紀人即可能因此向相關當局提出可疑交易報告。

124. Identification documents should be a secure form of document as recognised by the respective country (e.g. passport, driver's license). The extent of the verification will need to take into account the level of risk that the customer poses, and that the objective is to understand the overall ownership and control structure of the customer. These checks should be approached using a risk-based approach. This should ensure that the requirement does not become disproportionately onerous, but that greater checks

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<sup>3</sup> Agents must be aware of the possibility of relationships between the sellers and buyers of a property who may be colluding to create a paper transaction for dishonest purposes.

<sup>3</sup> 經紀人必須瞭解買賣雙方間關係的可能性，他們可能基於非法目的共謀建立紙上交易。

<sup>4</sup> In transactions where either the vendor or purchaser is not a client/customer of a real estate agent, the agent acting in the transaction should apply reasonable risk-based CDD measures to the party that is not their client.

<sup>4</sup> 若賣方或買方不是不動產經紀人之委託人／客戶，則經紀人在交易中應針對不是其委託人的另一方，應用合理的風險基礎客戶審查措施。

are made in higher risk situations. Public sources of information may assist with checks on beneficial ownership.

124. 身分證明文件應為相關國家承認的正式文件（例如護照、駕駛執照）。驗證的範圍應考慮該客戶帶來的風險水準，而目的則在於瞭解客戶的整體所有權和控制權結構。此類檢查應利用風險基礎方法進行。應確保這項要求不會過於繁重，但較高風險的狀況應做較多的檢查。公開的資訊來源可有助於檢查實質受益權。

125. When considering CDD, agents should bear in mind that there is unlikely to be different levels of risk between buyers and sellers in general as both sides are participating in a financial transaction, either by releasing finance from a property they already own, or by introducing purchase funds.

125. 考慮客戶審查時，經紀人應牢記，買賣雙方之間通常不太可能會有不同的風險水準，因為雙方都參與了一筆金融交易，透過從他們已擁有的不動產釋放資金，或是透過引進購買資金。

### Monitoring of customers and transactions

#### 監測客戶與交易

126. The degree and nature of monitoring by a real estate agent will depend on the size of the agent's business, the AML/CFT risks that it has, the monitoring method being utilised (manual, automated or some combination), and the type of activity under scrutiny. The degree of monitoring will be based on the perceived risks associated with the customer, the transactions undertaken by the customer and the location of the customer and the real property. Monitoring methodologies and processes also need to take into account the resources of the real estate agent's firm.

126. 不動產經紀人監控的程度及性質將取決於該經紀經濟人的業務規模、其具有的防制洗錢／打擊資恐風險、所使用的監控方法（人工、自動或某種結合）以及所檢查的活動型態。監控的程度將根據所感受到與客戶相關的風險、客戶進行的交易以及該客戶和該不動產的位置。監控方法和流程亦需考慮該不動產經紀人之公司的資源。

127. Depending upon the size of the real estate agent's business, effective monitoring may include the following:

127. 根據該不動產經紀人的業務規模，有效的監控可能包括：

- Record keeping consistent with any relevant duty of care, and/or local domestic requirements or limitations.
- 紀錄保存須符合相關審查義務及／或當地國要求或限制的。
- The role of the compliance officer (e.g. Money Laundering Reporting Officer or MLRO) including their function in relation to:
- 遵循專員（例如：洗錢報告專員（MLRO））之角色包括其下列相關職能：
  - Monitoring transactions, e.g. routine or spot checking.
  - 監控交易，例如例行或現場檢查。
  - Making external suspicious transaction reports to the national authorities.
  - 對國家當局做疑似洗錢或資恐交易報告。
  - Regular reporting to senior management about AML/CFT performance.
  - 定期向高階管理層報告防制洗錢／打擊資恐績效。

- The role of the government in identifying cash elements of the transaction<sup>5</sup>.
- 辨識交易的現金元素時政府的角色<sup>5</sup>。

### Suspicious transaction reporting 疑似洗錢或資恐交易報告

128. The reporting of suspicious transactions or activity is critical to a country's ability to utilise financial information to combat money laundering, terrorist financing and other financial crimes. Countries' reporting regimes are laid down in national law, requiring institutions to file reports when the threshold of suspicion is reached.

128. 報告可疑交易或活動非常重要，關係到一個國家利用金融資訊打擊洗錢、資恐及其他金融犯罪的能力。各國的通報機制，存在於國家法律中，規定機構要在到達可疑門檻時加以通報。

129. 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 suspicious activity under these circumstances is not applicable.

129. 若法律或法規規定，在構成可疑之際，就要強制通報可疑活動，且須撰寫報告，在此等狀況下通報可疑活動不適用以風險為基礎方法。

130. A risk-based approach is, however, appropriate for the purpose of identifying suspicious activity, for example, by directing additional resources at those areas a real estate agent has identified as higher risk. As part of a risk-based approach, it is also likely that a real estate agent will utilise information provided by designated competent authorities or SROs to inform its approach for identifying suspicious activity. A real estate agent should also periodically assess the adequacy of its system for identifying and reporting suspicious transactions.

130. 但風險基礎方法適用於辨識可疑活動，例如將額外資源調撥到不動產經紀人認定具有較高風險的領域。在風險基礎方法中，不動產經紀人也可能利用指定權責機關或自律團體提供之資訊強化其確認可疑活動的方法。不動產經紀人亦應定期評估其辨識及報告可疑交易之系統的足夠性。

131. The requirement to make reports is supported by the following:

131. 提出報告的要求將受到下列支援：

- Staff internal reporting line to the MLRO.
- 員工對洗錢報告專員的內部報告流程。
- Confidentiality of reports, *i.e.* how to deal with customers, and others involved in a transaction, after an internal or external report has been made.
- 報告的保密性，亦即提出內部或外部報告後，如何處理參與交易的客戶及其他人。

### Counter financing of terrorism 打擊資助恐怖主義

132. Real estate agents should make reference to paragraphs 45 to 49 in relation to terrorist financing.

132. 關於資恐，不動產經紀人應參考第 45 至 49 條。

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<sup>5</sup> Registration of mortgages should aim to identify the cash elements of the transactions.

<sup>5</sup> 抵押登記之目的在於辨識交易的現金元素。

## Training and awareness

### 訓練與意識

133. Real estate agents should consider the following:

133. 不動產經紀人應考慮下列事項：

- New staff, and update training for staff.
- 新進員工，以及更新員工訓練。
- Legal and other obligations.
- 法律及其他義務。
- Good practice education which should include appropriate and proportional training with regard to money laundering and terrorist financing.
- 優良實務教育，包括洗錢及資恐方面適當且均衡的訓練。
- What may be suspicious.
- 哪些事情可疑。

134. Recommendation 15 requires that real estate agents are provided with AML/CFT training, and it is important that agents receive appropriate and proportional training with regard to money laundering and terrorist financing.

134. 第 15 號建議要求必須對不動產經紀人提供防制洗錢／打擊資恐訓練，且經紀人必須接受適當且均衡的洗錢及資恐訓練。

135. Applying a risk-based approach to the various methods available for training, however, gives each real estate agent's firm additional flexibility regarding the frequency, delivery mechanisms and focus of such training. A firm should review its own workforce and available resources and implement training programmes that provide appropriate AML/CFT information that is:

135. 但若將風險基礎方法用於各種訓練方法，則可讓不動產經紀人的公司對此類訓練的頻率、執行機制和重點有額外彈性。各公司應檢討其自己的勞動力及可用資源，並實施可提供適當防制洗錢／打擊資恐資訊的下列訓練課程：

- Tailored to the appropriate staff responsibility (e.g. customer contact or operations).
- 根據員工的職責（例如客戶接觸或營運）做適當調整。
- At the appropriate level of detail.
- 以適當的詳細程度。
- At a frequency related to the risk level of the transactions involved.
- 以所涉交易之風險水準相關的頻率。
- Testing to assess knowledge commensurate with the detail of information provided.
- 進行測驗，以評估與所提供之資訊細節相稱的知識。

## **Chapter Three: Internal Control Systems**

### **第三章：內控系統**

136. 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 real estate agents, 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.

136. 許多指定之非金融事業或人員在規格上與金融機構有很大的不同。和大部分金融機構相較，許多指定之非金融事業或人員只有幾名員工。這使得小企業與專業人員只能運用有限的資源打擊洗錢與資恐。有些指定之非金融事業或人員可能只由一名人員負責前台辦公室、後台辦公室、洗錢報告和高階管理等職務。為內控系統設計風險基礎框架時，應考慮指定之非金融事業或人員的特殊性，包括不動產經紀人。處理內部控制的建議第 15 項註釋指出，針對各項要求採取措施時，其類型與範圍應與公司的規模相稱。

137. In order for real estate agents to have effective risk-based approaches, the risk-based process must be imbedded within the internal controls of the firms. The success of internal policies and procedures will be dependent largely on internal control systems. Following are two key systems identified.

137. 為使不動產經紀人擁有高效能的風險基礎方法，該公司的內控措施必須置入風險基礎流程。內部政策與程序能否成功，主要取決於內部控制制度。以下為經確認的兩大系統。

### Culture of compliance amongst all

#### 全體同仁的遵循文化

138. This should encompass:

138. 此文化應包括：

- Developing, delivering, and maintaining a training program for all designated agents and employees.
- 開發、執行並維持針對全體指定經紀人及員工的訓練課程。
- Monitoring of any government regulatory changes.
- 注意任何政府監管變更。
- Undertaking a regularly scheduled review of applicable compliance policies and procedures within the brokerage firms will help constitute a culture of compliance in the industry.
- 定期對經紀公司相關遵循政策與程序進行表定檢討，將有助於在該產業形成遵循文化。

### Senior management ownership

#### 高階管理層的責任

139. Strong senior management leadership and engagement in AML/CFT is an important aspect of the application of the risk-based approach. Senior management must create a culture of compliance, ensuring that staff adheres to the real estate agent firm's policies, procedures and processes designed to limit and control risks. Within estate agencies, the front line of the transaction is with the individual agent. Therefore, policies and procedures are effective only at the point that firm/company owners and senior management support the guidance.

139. 強大的資深管理層在防制洗錢／打擊資恐的領導能力與參與，對於採用以風險為基礎的方法來說是重要層面。高階管理層必須建立遵循文化，確保員工遵守不動產經紀人公司用以限制及控制風險的政策、程序和流程。在不動產經紀機構中，交易前端繫於個別經紀人。因此，只有在事務所／公司所有權人及高階管理層支持本指引的情況下，政策及程序才會有效。

140. Having regard to the size of the real estate agent's firm, the framework of internal controls should:

140. 考慮不動產經紀人公司的規模之後，內控框架應：

- Provide increased focus on real estate agents' operations (products, services, customers and geographic locations) that are more vulnerable to abuse by money launderers and other criminals.
- 更加重視不動產經紀人易被洗錢者及其他罪犯濫用的作業（產品、服務、客戶及地理位置）。
- Provide for regular review of the risk assessment and management processes, taking into account the environment within which the real estate agent operates and the activity in its market place.
- 定期檢討風險評量和管理流程，並考慮不動產經紀人的經營環境及其市場中的活動。
- Designate an individual or individuals at management level responsible for managing AML/CFT compliance.
- 指定管理層的人負責管理防制洗錢／打擊資恐遵循。
- Provide for an AML/CFT compliance function and review programme.
- 提供防制洗錢／打擊資恐遵循功能與審查計畫。
- Ensure that adequate controls are in place before new products are offered.
- 確保於提供新產品之前定有適當的管控措施。
- Inform senior management of compliance initiatives, identified compliance deficiencies, corrective action taken, and suspicious activity reports filed.
- 告知高階管理層遵循計畫、經確認的遵循瑕疵、採取的矯正行動以及提交的可疑活動報告。
- Provide for programme continuity despite changes in management or employee composition or structure.
- 無論管理層或員工構成或結構有何變化，計畫都能持續。
- Focus on meeting all regulatory record keeping and reporting requirements, recommendations for AML/CFT compliance and provide for timely updates in response to changes in regulations.
- 集中於達到所有法規紀錄留存與通報規定、遵循防制洗錢／打擊資恐建議，並對於法規變化及時反應，提供更新。
- Implement risk-based customer due diligence policies, procedures and processes.
- 執行以風險為基礎的客戶盡職審查政策、程序、流程。
- Provide for adequate controls for higher risk customers, transactions and products, as necessary, such as transaction limits or management approvals.
- 必要時對於較高風險的客戶、交易、產品提供適當的控管，例如交易限制或管理層批准。
- Enable the timely identification of reportable transactions and ensure accurate filing of required reports.
- 促進及時鑑別應回報的交易，及確保對必要的報告進行正確歸檔。

- Provide for adequate supervision of employees that handle currency transactions, complete reports, grant exemptions, monitor for suspicious activity, or engage in any other activity that forms part of the institution's AML/CFT programme.
- 適當監督處理貨幣交易、填寫報告、授予豁免、監控可疑活動或從事構成防制洗錢／打擊資恐計畫之任何其他活動的員工。
- Incorporate AML/CFT compliance into job descriptions and performance evaluations of appropriate personnel.
- 將防制洗錢／打擊資恐遵循統合於適當員工的職務說明與績效評估。
- 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, there should be a common control framework.
- 以集團來說，在可能的範圍內，應該有共用的控管架構。

## ANNEXES 附錄

### ANNEX 1 – SOURCES OF FURTHER INFORMATION 附錄 1 – 其他資訊來源

Various sources of information exist that may help governments and real estate agents in their development of a risk-based approach. Although not an exhaustive list, this section highlights a number of useful web-links that governments and real estate agents 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.

有各種資訊來源可協助政府及不動產經紀人開發其風險基礎方法。雖然沒有完全列出，但本節強調了一些有用的網站連結，各政府及不動產經紀人可善加利用。這些連結提供額外的資訊來源，若能再從其他來源取得資訊，將更有助於進行防制洗錢／打擊資恐評估。

#### **A. Financial Action Task Force Documents** **A. 防制洗錢金融行動工作組織（FATF）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）為跨國組織，旨在制定與推動國內及國際打擊洗錢與恐怖分子融資政策。重要的資源包括 40 項防制洗錢建議、9 項打擊資助恐怖活動特別建議、防制洗錢金融行動工作組織建議遵循評鑑方法論、各國與評鑑機構手冊、方法與趨勢（態樣）報告及相互評鑑報告。

<http://www.fatf-gafi.org>

#### **B. Other sources of information to help assist countries' and real estate agents' risk assessment of countries and cross-border activities** **B. 可協助各國家及不動產經紀人評估國家及跨國活動風險的其他資訊來源**

In determining the levels of risks associated with particular country or cross border activity, real estate agents 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:

在判斷特定國家或跨國活動的相關風險水準時，不動產經紀人及政府可利用各種公開資訊來源，包括詳述遵守國際標準和準則、與非法活動相關之特定風險評級、腐敗調查報告以及國際合作水準的

報告。以為常用（而非全部）的資訊來源：

- IMF and World Bank Reports on observance of international standards and codes (Financial Sector Assessment Programme):
- IMF 與世界銀行的國際標準與法規（金融業評估計畫）遵循報告：
  - World Bank reports: <http://www1.worldbank.org/finance/html/cntrynew2.html>
  - 世界銀行：<http://www1.worldbank.org/finance/html/cntrynew2.html>
  - International Monetary Fund:  
<http://www.imf.org/external/np/rosc/rosc.asp?sort=topic#RR>
  - 國際貨幣基金：<http://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](http://www.imf.org/external/np/ofca/ofca.asp)
  - 離岸金融中心（OFC）IMF 人員評鑑 [www.imf.org/external/np/ofca/ofca.asp](http://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性組織發行的相互評鑑報告：
  1. Asia/Pacific Group on Money Laundering (APG)  
1. 亞太防制洗錢組織（APG）  
<http://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）  
<http://www.cfatf.org/profiles/profiles.asp>
  3. The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)  
3. 歐洲議會防制洗錢／打擊資恐評估專家委員會（MONEYVAL）  
<http://www.coe.int/moneyval>
  4. Eurasian Group (EAG)  
4. 歐亞防制洗錢及打擊資助恐怖主義組織（EAG）  
<http://www.eurasiangroup.org/index-7.htm>
  5. GAFISUD  
5. GAFISUD  
<http://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）  
<http://www.menafatf.org/TopicList.asp?cType=train>
  7. The Eastern and South African Anti Money Laundering Group (ESAAMLG)  
7. 東南非防制洗錢組織（ESAAMLG）  
<http://www.esaamlg.org/>
  8. Groupe Inter-gouvernemental d'Action contre le Blanchiment d'Argent (GIABA)  
8. 非洲政府間防制洗錢行動組織（GIABA）  
<http://www.giabasn.org>
- OECD Sub Group of Country Risk Classification (a list of country of risk classifications published after each meeting)
- OECD 國家風險分級次級團體（每次會議後都會發佈國家風險分級清單）  
[http://www.oecd.org/document/49/0,2340,en\\_2649\\_34171\\_1901105\\_1\\_1\\_1\\_1,00.html](http://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)
- 國際毒品管制策略報告（美國國務院每年發佈）  
<http://www.state.gov/p/inl/rls/nrcrpt/>
- Egmont Group membership – Coalition of FIU's 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.
- 艾格蒙特組織成員 - 定期交換資訊並分享優良實務的金融情報中心聯盟；各國必須通過一套正式程序，以確認其符合艾格蒙特定義的金融情報中心，才能成為艾格蒙特組織成員。  
<http://www.egmontgroup.org/>
- Signatory to the United Nations Convention against Transnational Organized Crime
- 「聯合國打擊跨國組織型犯罪公約」（United Nations Convention against Transnational Organized Crime）簽約國  
[http://www.unodc.org/unodc/crime\\_cicp\\_signatures\\_convention.html](http://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
- 美國財政部外國資產控制辦公室（「OFAC」）經貿制裁計畫  
<http://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](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 – 國家地位：  
<http://www.un.org/sc/committees/>

## ANNEX 2 – GLOSSARY OF TERMINOLOGY

### 附錄 2 – 術語詞彙表

#### **Beneficial Owner**

##### **實質受益人**

The natural person(s) who ultimately owns or controls a customer 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.

最終擁有或控制客戶之自然人及／或交易之受益個人。受益所有人亦包括最終有效控制法人或安排之人。

#### **Competent authorities**

##### **主管機關**

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

主管機關係指與打擊洗錢和恐怖分子融資有關的所有行政與執法機關，包括金融情報中心與監理機關。

#### **Country**

##### **國家**

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

防制洗錢金融行動工作組織建議及本指引提及國家或各國者，亦同樣指稱領土或管轄區。

#### **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（包括網路賭場）。
- b. Real estate agents.
- b. 不動產經紀人。
- c. Dealers in precious metals.
- c. 貴金屬商。
- d. Dealers in precious stones.
- d. 寶石商。
- 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員及會計師 – 係指獨立執業者、合夥人，或受雇於專業公司的專業人員。不包括受雇於其他類型企業的「內部」專業人員，或為政府機關工作的專業人員，這些人員可能已經適用某些打擊洗錢措施。
- f. Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the following services to third parties:
- f. 信託與公司服務業者係指 FATF 其他建議項目未涵蓋的所有其他個人或公司；若為公司，應提供以下任何服務給第三方：
  - Acting as a formation agent of legal persons.
  - 擔任法人的成立經紀人。
  - 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）公司董事或秘書、合夥事業之合夥人，或法人之其他類似職位。
  - Providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement.
  - 提供完成登記的辦公室；商務地址或膳宿、公司通訊或行政地址、合夥事業或任何其他法人或安排。
  - 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）為他人利益持股的代名股東。

## **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.

係指防制洗錢金融行動工作組織 40 項防制洗錢建議及防制洗錢金融行動工作組織 9 項打擊資助恐怖活動特別建議。

## **Identification data**

### **身分識別資料**

Reliable, independent source documents, data or information will be referred to as “identification data”.

可靠的獨立來源文件、資料或資訊稱為「身分識別資料」。

## **Legal Persons**

### **法人**

*Legal persons* refers to bodies corporate, foundations, anstalt, partnerships, or associations, or any similar bodies that can establish a permanent customer relationship with a financial institution or otherwise own property.

法人係指公司、基金會、機構、合夥關係、協會，或其他可和金融機構或自有財產建立永久客戶關係之組織團體。

## **Politically Exposed Persons (PEPS)**

### **重要政治性職務之人 (PEPs)**

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.

目前或過去在國外被委以重要公共職務之個人，例如州長或政府首長、資深政治家、資深政府官員、司法官員或軍官、國營企業資深主管、重要政黨黨務主管。與家庭成員間的業務關係或與重要政治性職務人士間的密切關聯，皆涉及與重要政治性職務人士本人類似的聲譽風險。此定義的用意並非在於涵蓋前述類別中的中階或更資淺個人。

## **Self-regulatory organisation (SRO)**

### **自律團體 (SRO)**

An *SRO* is a body that represents a profession (*e.g.* lawyers, notaries, other independent legal professionals or accountants), and which is made up of member professionals, has a role 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.

自律團體是代表某職業（例如律師、公證人、其他獨立法律專業人員或會計師）的一個機構，由專業人員會員組成，其角色在於監管有資格加入並從事該職業的人，同時也執行特定督導或監控的職能。例如，這類機構經常藉由執行規範確保執業之專業人士遵守高倫理與道德標準。

## **ANNEX 3 – MEMBERS OF THE ELECTRONIC ADVISORY GROUP**

### **附錄 3 – 電子顧問小組成員**

#### **FATF and FSRB members and observers**

##### **防制洗錢金融行動工作組織 及 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、亞塞拜然；加拿大；中華台北；中國；歐盟執行委員會（EC）；尼日利亞；法國；中國香港；義大利；日本；盧森堡；MONEYVAL；荷蘭；紐西蘭；離岸銀行監理機關（OGBS）；葡萄牙；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**

##### **貴金屬商與寶石商**

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、國際貴金屬研究所、世界珠寶聯合會、加拿大皇家鑄幣廠、珠寶商警戒委員會、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.

國際不動產經紀人聯合會、英國全國不動產協會、瑞典不動產經紀人協會。

#### **Trust and company service providers industry**

##### **信託暨公司服務業**

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

信託與財產從業者協會（STEP）、Law Debenture 信託公司。

#### **Accountants industry**

##### **會計師業**

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.

美國會計師協會、加拿大會計師協會、歐洲會計師聯盟、德國審計員協會、香港會計師公會、英國暨威爾斯會計師協會。

## **Casinos industry**

### **賭博業**

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

歐洲賭場聯盟（ECA）、直布羅陀監管機關、Kyte Consultants (Malta) 顧問公司、米高梅賭場飯店、Unibet、威廉希爾有限公司。

## **Lawyers and notaries**

### **律師與公證人**

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

安德慎律師事務所、美國律師公會、美國信託與遺產律師學院、Consejo General del Notariado (Spain)、歐洲律師暨法律公會（CCBE）、國際律師協會（IBA）、英國暨威爾斯律師協會、上加拿大律師協會。