



**Financial Action Task Force**

**防制洗錢金融行動工作組織**

**RBA GUIDANCE FOR TRUST AND COMPANIES  
SERVICE PROVIDERS (TCSPs)**

**信託及公司服務業者**

**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**

防制洗錢及打擊資恐風險基礎方法指引

**HIGH LEVEL PRINCIPLES AND PROCEDURES FOR TRUST AND  
COMPANY SERVICE PROVIDERS (TCSPS)**

信託及公司服務業者 (TCSP) 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 年採納防制洗錢及打擊資恐風險基礎方法：高階原則與程序，其包含政府機關指引和金融機構指引。此為防制洗錢金融行動工作組織電子諮詢小組 (EAG) 公私部門成員之間進行的密集諮詢成果。

2. In addition to financial institutions, the FATF Recommendations also cover a number of designated non-financial businesses and professions (DNFBPs). At its June 2007 meeting, the FATF's Working Group on 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. 除了金融機構外，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)。於 2007 年 6 月的會議中，防制洗錢金融行動工作組織的評鑑及執行工作組 (WGEI) 簽署了一份提案，用以召集指定之非金融事業或人員代表人與會，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；並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、信託及公司服務業者、賭場、不動產經紀人、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 trust and company service providers (TCSPs) 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 持續努力，直到此一適用於信託及公司服務業者的指引提交給 WGEI。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 月召開的大會上接受此指引。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.
- 對風險基礎方法的高階適用原則提出概略說明。
- Indicate good practice in the design and implementation of an effective risk-based approach.
- 針對有效風險基礎方法的設計與執行提出優良實務。

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/combatting 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規範基礎 (rules-based) 系統。各國應根據其特有的洗錢/資恐風險、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。對可能已經針對指定之非金融事業或人員採取洗錢防制/打擊資恐 (AML/CFT) 措施、但不確定指定之非金融事業或人員對於有效的風險基礎方法是否擁有足夠執行經驗的國家而言，採用風險基礎方法的時機也是個重要的議題。

## Target audience, status and content of the guidance

### 指引的適用對象、情況與內容

8. This guidance is presented in a way that is focused and relevant for TCSPs. 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, in addition to specialised trust and company service providers, financial institutions, lawyers, and accountants may also undertake the trust and company services covered by the Recommendations.

8. 此指引之呈現方式聚焦於相關信託及公司服務業者（TCSP）的領域。不同指定之非金融事業或人員領域的角色與風險通常皆各自區別。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，除了專業信託及公司服務業者之外，金融機構、律師和會計師也可能從事防制洗錢金融行動工作組織建議描述的信託與公司服務。

9. DNFBPs provide a range of services and activities that differ vastly, e.g. in their methods of delivery, in the depth and duration of the relationships formed with customers, and the size of the operation. For example, some of these entities are single person operations. This Guidance is written at a high level to cater for the differing practices of TCSPs 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 TCSPs 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許多在提供服務方式、客戶關係的深度與持續性、營運規模等方面有著明顯不同的服務與活動；例如，有些實體以個體戶形式經營。此指引在撰寫時著眼於高階，以符合各國信託及公司服務業者的不同實務需求，以及各國在監理或監控程度與形式的差異。各國及其國內機關應尋求與其信託及公司服務業者及其他指定之非金融事業或人員領域建立夥伴關係，確保在防制洗錢及打擊資恐方面彼此受惠。

10. The FATF definition of TCSP relates to providers of trust and company services that are not covered elsewhere by the FATF Recommendations, and therefore excludes financial institutions, lawyers, notaries, other independent legal professionals and accountants. Separate guidance is being issued for those sectors, and they should therefore apply that guidance. However, all those engaged in TCSP activities may also wish to refer to the TCSPs guidance, as it is more specifically tailored to TCSP services.

10. 防制洗錢金融行動工作組織對信託及公司服務業者的定義涉及防制洗錢金融行動工作組織其他建議項目未涵蓋的信託及公司服務業者，因此排除金融機構、律師、公證人、其他獨立法律專業人員和會計師。這些領域已另外發行指引，故應用各該相關指引。然而，從事信託及公司服務業者活動的所有業者可能也希望參照信託及公司服務業者指引，因為這是專門為信託及公司服務業者服務量身打造的指引。

11. The primary target audience of this guidance is the TCSPs themselves, when they conduct activities that fall within the ambit of the FATF Recommendations, as described below.

11. 此指引的主要對象在防制洗錢金融行動工作組織建議的範圍內進行活動的信託及公司服務業者。茲說明如下。

12. FATF Recommendation 12 mandates that the requirements for customer due diligence, record-keeping, and paying attention to all complex, unusual large transactions set out in Recommendation 5, 6, and 8 to 11 apply to DNFBPs in certain circumstances. Specifically, Recommendation 12 applies to TCSPs when they prepare for and carry out transactions for a client in relation to the following activities:

12. 根據建議第 12 項，建議第 5、6 及 8 至 11 項有關客戶審查、紀錄保存以及注意所有複雜、不尋常大筆交易的要求，在某些情況下適用於指定之非金融事業或人員。具體來說，若信託及公司服務業者為從事以下相關活動的客戶準備及進行交易，則適用建議第 12 項：



- Acting as a formation agent of legal persons.
- 擔任法人的成立代理人。
- 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。

13. Recommendation 16 requires that FATF Recommendations 13 to 15 regarding reporting of suspicious transactions (see paragraphs 116-118) 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 trust and company service providers when they prepare for or carry out a transaction on behalf of a client, in relation to the activities referred to at R.12 above.

13. 建議第 16 項要求，防制洗錢金融行動工作組織建議第 13 至 15 項的回報可疑交易（參閱第 116-118 段）與內部防制洗錢/打擊資恐控制，以及建議第 21 項針對未遵守或未完全遵守防制洗錢金融行動工作組織建議的國家採取的措施，在某些條件下適用於指定之非金融事業或人員。具體來說，若信託及公司服務業者為從事上述 R.12 部分提及相關活動的客戶準備及進行交易，則適用建議第 16 項。

14. The wider audience for this guidance includes countries, regulators, and self regulatory organisations (SROs), which are considering how to apply AML/CFT measures to TCSPs. Countries need to identify the most appropriate regime, tailored to address individual country risks, which takes into consideration the idiosyncrasies and activities of TCSPs and the other DNFBP sectors 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.

14. 此指引的其他對象包括研究如何將防制洗錢/打擊資恐措施適用於信託及公司服務業者的國家、監管機關和自律團體（SRO）。各國應針對自己情況鑑別最適合的制度處理各自風險，並應考量其國內信託及公司服務業者及其他指定之非金融事業或人員領域的特性與活動。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 TCSPs

##### 觀察信託及公司服務業者從事的特別活動

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

15. 以下對信託及公司服務業者的一般觀察應有助於提供方法資訊。除此之外，還應以全國性

的角度考量信託及公司服務業者從事的活動。

16. TCSPs can take different forms. In some countries they may be predominantly lawyers. In other countries—particularly in countries with a high concentration of non-resident business—TCSPs are independent trust companies or are trust companies that are subsidiaries of banks, and may be other professionals such as accountants. In other countries, trust service providers (e.g. trust companies) and company service providers are separate and distinct categories of entities subject to separate regulatory requirements. As a result, not all persons and businesses active in the TCSP industries provide all of the services listed in the definition of a TCSP. Accordingly, risk should be identified and managed on a service-by-service basis.

16. 信託及公司服務業者可能有多種形式。在某些國家，信託及公司服務業者主要為律師。在其他國家，特別是在非本地註冊的公司非常多的國家，信託及公司服務業者為獨立信託公司或銀行的信託子公司，但也可能是其他專業人員，例如會計師。其他國家，信託服務業者（例如信託公司）和公司服務業者為各自獨立、區別明顯的實體類別，而且適用不同的監管要求。因此，在信託及公司服務業者產業裡，並非所有活躍的個人與公司都提供信託及公司服務業者定義指稱的所有服務。因此，應根據不同的服務鑑別及管理風險。

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

### **第二章：風險基礎方法 – 目的、利益與挑戰**

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

##### 風險基礎方法的目的

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

17. 防制洗錢金融行動工作組織建議提及了允許各國在防制洗錢及打擊資恐時，某程度地運用風險基礎方法。防制洗錢金融行動工作組織建議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。

18. By adopting a risk-based approach, it is possible to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. This will allow resources to be allocated in the most efficient ways. The principle is that resources should be directed in accordance with priorities so that the greatest risks receive the highest attention. The alternative approaches are that resources are either applied evenly, or that resources are targeted, but on the basis of factors other than risk. This can inadvertently lead to a “tick box” approach with the focus on meeting regulatory requirements rather than on combating money laundering or terrorist financing efficiently and effectively.

18. 採取風險基礎方法可確保為預防或減少洗錢及資恐，所採取的措施與所鑑別的風險相當。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。相反的方法為平均分配資源，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」的方法，也就是著重於配合監管要求、而非以有效率及有效的防制洗錢或打擊資恐為主要考量。

19. A number of the DNFBP sectors, including TCSPs, are already subject to regulatory or professional requirements which complement AML/CFT measures. Where possible, it will be beneficial for TCSPs 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 TCSPs, but creates barriers to those who seek to misuse these services.

19. 有些指定之非金融事業或人員領域適用監管或專業要求，而這些規範使防制洗錢/打擊資恐措施更加完善。若可能，信託及公司服務業者可以用符合其他監管或專業要求的方法，使其防制洗錢/打擊資恐政策與程序呈現多元面貌。這將為信託及公司服務業者帶來助益。以風險為基礎的防制洗錢/打擊資恐制度應有助於確保誠實客戶能獲得信託及公司服務業者提供的服務，同時建立屏障以阻止企圖濫用信託及公司服務業者服務的客戶。

20. A risk analysis must be performed to determine where the money laundering and terrorist financing risks are the greatest. Countries will need to identify the main vulnerabilities and address them accordingly. TCSPs 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.

20. 應進行風險評估以確定洗錢及資恐風險最高的部分。各國須鑑別最大的弱點，並做相應處理。信託及公司服務業者需要這項支援來協助鑑別風險較高的客戶、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。

21. 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.

21. 有關管理與減少經鑑別的洗錢及資恐活動，其策略的目的主要在於透過有助調查的威嚇（例如適切的客戶審查措施）、偵查（例如監控和可疑交易報告）及紀錄保存等綜合措施以達到預防之效果。

22. Proportionate procedures should be designed based on assessed risk. Higher risk areas should be subject to enhanced procedures; this would include measures such as enhanced customer due diligence checks and enhanced transaction monitoring. It also follows that in instances where risks are low, simplified or reduced controls may be applied.

22. 應根據評估的風險制定符合比例的程序。風險較高的領域應適用加強程序，包括執行加強客戶審查，以及加強交易監控。據此，低風險個案則適用簡易或較不嚴格的控制。

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

23. 尚無公認的通用方法描述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及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。

24. An effective risk-based approach will allow TCSPs 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 TCSPs from continuing with legitimate business or from finding innovative ways to diversify their business.

24. 有效的風險基礎方法允許信託及公司服務業者對其客戶進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及資恐風險。風險基礎方法不應被用來禁止信託及公司服務業者繼續從事合法事業，或禁止其以創新方式多角化經營其業務。

25. Regardless of the strength and effectiveness of AML/CFT controls, criminals will continue to attempt to move illicit funds undetected and will, from time to time, succeed. They are more likely to target the DNFBP sectors, including TCSPs, if other routes become more difficult. For this reason, DNFBPs may be more or less vulnerable depending on the effectiveness of the AML/CFT procedures applied in other sectors. A risk-based approach allows DNFBPs, including TCSPs, to more efficiently and

effectively adjust and adapt as new money laundering and terrorist financing methods are identified.

25. 不論防制洗錢/打擊資恐控制的強度與效果如何，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。如果其他管道難度增加，他們很可能會以指定之非金融事業或人員（包括信託及公司服務業者）為管道。因此，視其他領域防制洗錢/打擊資恐程序效果的不同，指定之非金融事業或人員可能會有程度不同的弱點。當新的洗錢及資恐方法被識別時，指定之非金融事業或人員（包括信託及公司服務業者）可藉由風險基礎方法，以更有效率的方式有效做好調整與調適。

26. 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.

26. 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及資恐風險。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）都無法鑑別及偵測所有洗錢或資恐的事例。因此，指定權責機關、自律團體、執法機關和司法機關都應考慮合理的風險基礎方法，並給予應有的重視。若未執行規劃完善的風險基礎方法，或缺少規劃不盡完美的風險基礎方案，權責機關、自律團體、執法機關或司法機關應採取適當且必要的措施。

### 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*

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

27. 用風險基礎方法防制洗錢及打擊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。聚焦於較高的風險威脅意味著更有效地得到有利的結果。

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

28. 信託及公司服務業者可藉由風險基礎方法以專業負責的態度，彈性運用專業技術履行防制洗錢/打擊資恐義務。此做法要求信託及公司服務業者以寬廣的視野客觀看待其活動與客戶。

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

29. 防制洗錢及打擊資恐應保持彈性，確保隨著風險的發展調適。在此情況下，信託及公司服務業者可針對其特定組織、結構與商業活動，運用其判斷力、知識與專業技術擬定適切的風險基礎方法。

## Challenges 挑戰

30. 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 42-46 below.

30. 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。以下第 42 至 46 段將詳細討論執行風險基礎方法時在資恐方面遇到的挑戰。

31. 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 lack of understanding by customers regarding information required.

31. 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、制度和訓練人員。此方法還要求在規劃及執行程序與制度時發揮訓練有素的穩健判斷力。風險基礎方法必然導致更多元的實務應用，進而帶來創新，並且改善法遵。然而，風險基礎方法可能會帶來不確定性、實施統一監管的困難性，而且客戶可能缺乏對所需資訊的瞭解。

32. Implementing a risk-based approach requires that TCSPs have a sound understanding of the risks and are able to exercise sound judgement. This requires the building of expertise including for example, through training, recruitment, taking professional advice and “learning by doing”. The process will always benefit from information sharing by designated competent authorities and SROs. The provision of good practice guidance is also valuable. Attempting to pursue a risk-based approach without sufficient expertise may lead to flawed judgements. TCSPs may overestimate risk, which could lead to wasteful use of resources, or they may underestimate risk, thereby creating vulnerabilities.

32. 實施風險基礎方法的前提為信託及公司服務業者對風險須有清楚的認識，而且能做穩健的判斷。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」。此過程將因為指定權責機關與自律團體之間的資訊共享而獲得助益。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。信託及公司服務業者可能高估風險，以致浪費資源；也可能低估風險，以致產生弱點。

33. TCSPs 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.

33. 信託及公司服務業者可能發現有些員工不太願意做風險基礎判斷，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的原因。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，可能會發展出一種法遵資源分配不足的文化，以致可能發生重大法遵問題。

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

34. 指定權責機關和自律團體應特別重視信託及公司服務業者有否制定有效的風險管理決策流程，並應進行抽樣檢查或應審查個別決策，以檢驗信託及公司服務業者整體風險管理的有效性。指定權責機關和自律團體應承認，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，仍可能因為當時無合理的額外資訊而做出不正確的決策。

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

35. 實施風險基礎方法時，應給予信託及公司服務業者根據其特殊情況做出合理判斷的機會。這表示不同的信託及公司服務業者，或此領域不同的業別，在實務細節上很可能不同。這種可能的多元實務現象要求指定權責機關和自律團體付出更多心力，根據實務運作以辨認和宣導指引內容，而這將為負責監督遵循的員工帶來挑戰。優良實務指引、訓練、產業研究和其他可用的資訊與素材，能協助指定權責機關和自律團體辨認信託及公司服務業者是否做出穩健的風險基礎判斷。

36. 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 to 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.

36. 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。這些回饋協助各機構及業別更準確地評估洗錢及資恐風險，並對其風險計畫進行相應的調整。這些作為增加了察覺可疑活動的可能性，且能改善可疑活動報告的品質。回饋除了是評估國家或產業風險的必要元素外，其即時性及其內容對於執行有效的風險基礎方法非常重要。

**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  
● 更好的風險管理方式。
- 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.  
● 需要越來越多能夠做出完善判斷的專業人員。
- Developing appropriate regulatory response to potential diversity of practice.  
● 針對可能的多元做法制定適當的法規以為回應。

### **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**

37. The varying degrees of risk of money laundering or terrorist financing for particular types of DNFBPs, including TCSPs, 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).

37. 洗錢或資恐對於特定類型的指定之非金融事業或人員（含信託及公司服務業者）或特定類型的客戶或交易之風險程度各異，這些都是防制洗錢金融行動工作組織建議的重要考量因素。根據建議內容，在指定之非金融事業或人員方面，當風險程度在某個國家境內是個必須考慮的問題（風險較高）、或可以將之納入考慮（風險較低）時，就會提供特定的建議。

38. 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 TCSPs, 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 TCSPs (R.24).

38. 風險基礎方法或以明確且有限的方式納入某些建議（及方法論），或為建議的固有或相關部分。舉例而言，指定之非金融事業或人員（含信託及公司服務業者）的風險分成下列三個主要領域處理：(a) 客戶審查（建議5、6、8和9）、(b) 企業的內部控管制度（建議15）以及(c) 監督指定之非金融事業或人員（含信託及公司服務業者）的方式（建議24）。

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

39. Risk is referred to in several forms:

39. 風險以不同的形式提及：

- a) Higher risk – Under Recommendation 5, a country must require its DNFBPs, including TCSPs, 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) 風險較高 – 根據建議 5，各國必須規定其指定之非金融事業或人員（含信託及公司服務業者）針對風險較高的客戶、業務關係或交易執行強化的客戶審查。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 TCSPs, to take lower risk into account in deciding the extent of the CDD measures they will take (see Methodology criteria 5.9). TCSPs may thus reduce or simplify (but not avoid completely) the required measures.
- b) 風險較低 – 各國也必須允許其指定之非金融事業或人員（含信託及公司服務業者）在決定將執行的客戶審查措施程度時將較低風險納入考慮（見評鑑方法論 5.9 項次）。信託及公司服務業者因此得以減少或簡化（但無法完全避免）所需的措施。
- c) Risk arising from innovation – Under Recommendation 8, a country must require its DNFBPs, including TCSPs, to give special attention to the risks arising from new or developing technologies that might favour anonymity.
- c) 創新衍生而來的風險 – 根據建議 8，各國必須規定其指定之非金融事業或人員（含信託及公司服務業者）特別注意有利於匿名的新技術或開發中技術產生的風險。
- 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 TCSPs to determine the degree of risk and how they manage that risk, as well as to review the actual determinations themselves. This expectation applies to all areas where the risk-based approach applies. In addition, where the designated competent authorities or SROs have issued guidelines on a suitable approach to risk-based procedures, it will be important to establish that these have been followed. The Recommendations also recognise that country risk is a necessary component of any risk assessment mechanism (R.5 & 9).
- d) 風險評估機制 – 防制洗錢金融行動工作組織標準預期會有一個適當的機制，讓指定權責機關或自律團體能夠評估或審核信託及公司服務業者採用的程序，進而決定風險程度，以及如何管理該風險並自行檢視實際做出的決定。這個期望在適用以風險基礎方法時得適用各領域。此外，若指定權責機關或自律團體就執行風險基礎程序的適切方法提出準則，即應確定已遵守該準則。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）

40. Under Recommendation 15, the development of “appropriate” internal policies, training and audit systems will need to include a specific, and ongoing, consideration of the potential money laundering and terrorist financing risks associated with 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 TCSPs, 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.

40. 根據建議 15，制定「相關」內部政策、訓練和稽核制度將需要特定地持續考慮與客戶、產品以及服務、營運地理區域等可能有關的洗錢和資恐風險。建議 15 的註解清楚提到各國得允許指定之非金融事業或人員（含信託及公司服務業者）在決定所需的措施類型和程度時可將洗錢和資恐風險以及企業規模等納入考慮。

*Regulation and oversight by designated competent authorities or SROs (R.24)*  
指定權責機關或自律團體的監管與監督（建議第 24 項）

41. Countries should ensure that TCSPs 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.

41. 各國應確保信託及公司服務業者受有效監督及遵照防制洗錢/打擊資恐要求之約束。決定監督並確保法遵制度是否適用，可能需要考慮特定事業內的洗錢或資恐風險，亦即：若風險經證明很低，則可能採取比較不嚴格的監督措施。

Applicability of the risk-based approach to terrorist financing  
風險基礎方法對資恐的適用性

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

42. 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，資恐的特徵使偵測變得困難，而且因為考慮了諸如資恐涉及的交易價值相對較低或資金可能來自合法和違法來源等因素，所以執行降低風險措施時可能面臨挑戰。

43. 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 legitimate sources, 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 the TCSPs to

determine the type of underlying criminal activity, or intended terrorist purpose; rather, the TCSP'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.

43. 用以資恐的資金可能來自犯罪活動或可能來自合法源頭，而且贊助的來源性質可能視恐怖組織類型而異。若資金來自犯罪活動，即使該活動可能只是引起懷疑而非與資恐有關，傳統上用來鑑別洗錢的監控機制可能也適合用於鑑別資恐。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。資金有合法源頭時，可能更難以判定是否可能用於恐怖用途。正因為恐怖份子的資金可能來自犯罪活動和正當的源頭，所以和資恐有關的交易可能不會展現和傳統洗錢相同的特點。不管情況為何，判定根本的犯罪活動類型或恐怖企圖等並非信託及公司服務業者的責任；相反地，信託及公司服務業者的職能在於分辨並通報可疑活動。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。

44. The ability of TCSPs 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).

44. 除非有資恐預示報告的指引或有關機關提供特定情報，否則信託及公司服務業者偵測並分辨可能的資恐交易之能力將明顯變得更具挑戰性，高於潛在洗錢和其他可疑活動等。在缺乏明確的全國性指導與態樣時，對已知恐怖分子活動國家或地理區域進行交易監控，或其他有限的態樣（許多態樣皆透露與洗錢相同的技術），很可能會變成偵查的依據。

45. 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 TCSPs to comply with those sanctions are decided by individual countries and are not a function of risk. TCSPs may commit a criminal offence if they undertake a business with a listed individual, organisation or country, or its agent, in contravention of applicable sanctions.

45. 在特定國家境內，特定個人、組織或國家可能成為資恐制裁的對象。以這些情況而言，適用制裁的個人、組織或國家清單以及信託及公司服務業者遵照這些制裁的義務是由個別國家決定，不屬於風險函數。信託及公司服務業者若和名單上的個人、組織或國家或其代理人有商業往來，違反相關制裁，即可能構成犯罪行為。

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

46. 因此，此指引未就資恐的風險基礎流程之適用提出廣泛說明。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降低風險措施的多元化策略。此時，指定之非金融事業或人員（含信託及公司服務業者）就會有另一個依據，可更健全地制定並實施一套針對資恐以風險為基礎的過程。

## Limitations to the risk-based approach

### 風險基礎方法的限制

47. 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.

47. 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)。風險基礎方法的限制通常源自法律或監管規範要求必須採取某些措施所導致。

48. 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 116-118.

48. 實施凍結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，雖然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完成後，其報告便不再以風險為基礎。見第 116-118 項。

49. There are several components of 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 the identity of customers are requirements which must be completed regardless of the risk-based approach. However, in relation to all the 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.

49. 客戶審查包含幾個要素 – 分辨並確認客戶和實質受益人之身分、取得和企業關係之目的與用意有關的資訊以及持續執行審查等。在這些要素中，不論是否採用風險基礎方法，皆應分辨及確認客戶與相對方的身分。然而，在所有其他客戶審查要素方面，合理執行的風險基礎方法有助於判定所需的資訊範圍與數量，以及為符合這些最低標準應採用的機制等。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。

50. Countries may allow TCSPs 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.

50. 各國得允許信託及公司服務業者在洗錢或資恐風險較低時採用減少的或簡化的措施。但是，這些減少或簡化的措施未必適用各方面的客戶審查。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。此外，可能還需要客戶身份之外的資訊（如：客戶所在位置），才能適當地評估風險。這將是一個反覆的過程：獲得和客戶有關的初步資訊，應足以決定是否與其建立進一步的關係，而且很多時候監督客戶有助於提供額外的資訊。

51. 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.

51. 須採取某些形式的監控，以偵查不尋常的潛在可疑交易。即使是風險較低的客戶，還是需要監督才能確認交易與最初的低風險資料相符；若不符，則會啟動一個針對客戶風險評級進行相關修正的過程。同樣地，某些客戶的風險可能只會在與其開始建立客戶關係後才會變得顯而易見。因此，針對客戶交易進行適當合理的監督是一個設計妥當、以風險為基礎之基本要素；但是，就現階段而言，應理解成：並非所有的交易、帳戶或客戶都將以完全相同的方式進行監督。若確實發生可疑的洗錢及資恐活動，可將此懷疑視為風險較高的情境，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

52. 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.

52. 指定權責機關或自律團體應分辨風險基礎政策與流程和風險基礎監控。在監管/監督領域內有一個普遍的認知，那就是：資源配置時應將個別事業呈現的風險納入考慮。指定權責機關或自律團體決定監督資源的配置時採用的方法應涵蓋企業重心、風險資料和內部控管環境，並且應允許進行企業間之相關比較。用以決定資源配置的方法需要持續更新，如此才能反映個別企業暴露的風險之性質、重要性與範圍。因此，如此的優先做法應有助於指定權責機關或自律團體將越來越多的注意力放在洗錢或資恐方面呈現較高風險的企業上。

53. 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.

53. 但是，也應該注意到：在針對指定權責機關或自律團體進行重要性分級時，納入考慮的風險因子，不僅視與從事活動的相關固有風險而定，也須視現有得處理此類風險的風險管理系統之品質和有效性而定。

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

54. 因為指定權責機關或自律團體應已評估了適用所有信託及公司服務業者的風險管理控制

品質，所以採用其針對這些控制所做的評估結果，至少在各業別執行洗錢和資恐風險評估時可提供一部份合理的參考資訊。

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

**摘要表：國家層級防制洗錢與打擊資恐風險基礎方法：成功關鍵因素**

- TCSPs, designated competent authorities or SROs should have access to reliable and actionable information about the threats.
- 信託及公司服務業者、指定權責機關或自律團體均應能夠取得和威脅有關的可靠、可據以採取行動的資訊。
- There must be emphasis on cooperative arrangements among the policy makers, law enforcement, regulators, and the private sector.
- 必須強調政策制定者、執法機關、監管機關與私部門間的合作安排。
- 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 TCSPs need not be afraid of regulatory sanctions where they have acted responsibly and implemented adequate internal systems and controls.
- 各機關都有責任建立一個氛圍，那就是：信託及公司服務業者不需要在負責地採取行動並實施相關內部制度和控管後害怕遭受法規制裁。
- Designated competent authorities' or SROs' supervisory staff must be well-trained in the risk-based approach, both as applied by designated competent authorities/SRO and by TCSPs.
- 指定權責機關或自律團體的監管人員必須以風險基礎方法為依據接受完善的訓練(包括指定權責機關/自律團體及信託及公司服務業者採用的做法)。

## SECTION TWO: GUIDANCE FOR PUBLIC AUTHORITIES

### 第二節：公部門指引

#### Chapter One: High-level Principles for Creating a Risk-Based Approach

##### 第一章：建立風險基礎方法之指導原則

55. The application of a risk-based approach to countering money laundering and the financing of terrorism will allow designated competent authorities or SROs and TCSPs 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.

55. 在對抗洗錢和資恐時採取風險基礎方法，可讓指定權責機關或自律團體和信託及公司服務業者得以最有效地使用其資源。本章提出五個指導原則，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。

56. 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.

56. 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於特定國家的特定情況。

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

##### 原則 1：了解並回應威脅和弱點：國家風險評估

57. 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.

57. 是否能成功執行風險基礎方法以防制洗錢及打擊資恐，須視是否能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。此瞭解可從國家風險評估開始。

58. 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 TCSPs, 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.

58. 應針對各國環境設計專屬的國家風險評估。基於各種原因（包括指定權責機關或自律團體的結構和指定之非金融事業或人員 [含信託及公司服務業者] 的性質）各國對於風險做出的判斷將具獨特性，其有關如何將國內評估付諸實施的決定也是如此。全國性評估不須是單一正式流程或文

件。其預期的結果為：各國以其對風險的最新全盤瞭解為基礎，在國家層級上決定責任與資源的分配。指定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，並應考量其金融與非金融制度的洗錢、資恐及其他犯罪的弱點資訊所連結的所有風險。

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

#### 原則 2：採用一套支持以風險為基礎的法規架構

59. 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.

59. 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，國家風險評估結果應顯示應履行的義務為何。

60. The risk-based approach does not mean the absence of a clear statement of what is required from the DNFBPs, including from TCSPs. However, under a risk-based approach, TCSPs 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 to different products, services, customers<sup>1</sup> and locations does not mean that policies and procedures need not be clearly defined.

60. 所謂以風險為基礎的方法並不是指對於指定之非金融事業或人員（含信託及公司服務業者）必須做到的事項無清楚的陳述。採用以風險為基礎的方法時，信託及公司服務業者在實施與其本身風險評估適當對應的政策和程序時應有一定程度的彈性。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。雖然政策和程序可能根據其風險等級，而適用於不同的產品、服務、客戶<sup>1</sup>和地點，但不表示政策和程序不需要清楚界定。

61. 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.

61. 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。但是，這些標準應把重點放在結果（透過嚇阻、偵測和通報洗錢與資恐），而不是以單一機械化的方式將法規要求適用每個客戶。

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

#### 原則 3：設計一套支持採用以風險為基礎的方法之監督框架

62. 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

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<sup>1</sup> For TCSPs, the term “client” is often considered more appropriate; references to “customer” include the concept of client.

<sup>1</sup> 以信託及公司服務業者而言，「當事人」一詞往往被認為比較適當；提到的「客戶」一詞也包含了「當事人」的概念。

authorities' or SROs' rules. These requirements may, in turn, stem from the laws under which the designated competent authority or SRO exercises its powers.

62. 指定權責機關或自律團體已被分配監督防制洗錢/打擊資恐控管活動的責任時，各國可能會想把這些機關和自律團體是否也具備針對監督實施一套以風險為基礎的方法之必要權力納入考慮。為此，遇到的障礙包括不適當地仰賴指定權責機關和自律團體規則中具有規範性的細節要求。這些要求可能源自主管機關行使權力時須遵守的法律。

63. 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 TCSPs, 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 TCSP's business are.

63. 若可行，指定權責機關與自律團體應尋求採用風險基礎方法來監控用以洗錢及資恐防制洗錢及打擊資恐的控制措施。此應以對信託及公司服務業者執行的活動類型有透徹全面的了解，及其所暴露的洗錢和資恐風險為基礎。指定權責機關和自律團體將可能需要根據其針對信託及公司服務業者所含風險所做的整體評估，決定資源分配的優先順序。

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

64. 除了和防制洗錢/打擊資恐有關外，指定權責機關和自律團體仍需要根據其他從指定權責機關或自律團體更廣泛的義務衍生出來的風險評估結果，一併考慮這些風險。

65. 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.

65. 此類風險評估應有助於指定權責機關或自律團體選擇是否在其監督計畫內配置資源，以期利用有限資源實現最大效果。風險評估亦得彰顯指定權責機關或自律團體並無處理這些風險所需的適當資源。遇到這種情況時，指定權責機關或自律團體可能需要取得更多的資源，或採用其他策略，才能管理或降減任何不可接受的剩餘風險。

66. The application of a risk-based approach to monitoring requires that designated competent authorities' and SROs' staff be able to make principle-based decisions in a fashion similar to what would be expected from a TCSP or the staff of a TCSP'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.

66. 採用一套以風險為基礎的監督做法，需要指定權責機關和自律團體人員能夠以類似預期信託及公司服務業者或信託及公司服務業者事業人員會採用的方式，做出原則性的決定。此決策應涵蓋在充分的安排下防制洗錢及打擊資恐。為此，指定權責機關或自律團體可能會想考量，在風險基礎監控的實務應用方面，如何將其人員訓練至最優程度。這類人員應就風險基礎方法的一般原則、可能的應用方法，以及風險基礎方法的成功應用實例，做完整的簡報。



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

#### 原則 4：分辨主要行為者並確保一致性

67. 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 among 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 TCSPs about how to implement a risk-based approach to AML/CFT.

67. 各國應考量在採取風險基礎方法防制洗錢及打擊資恐時，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。舉例而言，得考慮那一個機關或哪些機關最適合在信託及公司服務業者針對防制洗錢/打擊資恐實施一套以風險為基礎的方法時提供相關指引。

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

68. 潛在利害關係人清單可能包括：

- Government – This may include legislature, executive, and judiciary.
- 政府 – 可能包含立法、行政和司法機關。
- Law enforcement agencies – This might include the police, custom and similar agencies.
- 執法機關 – 可能包含警察、海關和類似的機關。
- The financial intelligence unit (FIU), security services, and other similar agencies.
- 金融情報中心 (FIU)、保安勤務和其他類似的機關。
- Designated competent authorities/SROs.
- 指定權責機關/自律團體
- The private sector – This might include TCSPs and their firms, national and international trade bodies and associations, etc.
- 私有部門 – 可能包含信託及公司服務業者及其公司、國內和國際交易機構與協會等。
- 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 TCSPs' businesses.
- 社會大眾 – 設計用以對抗洗錢和資恐的最終的設計在於保障遵守法律的社會大眾。但是，這些安排也可能造成 信託及公司服務業者客戶的負擔。
- 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 – 準備好對以風險為基礎方法的基礎概念做出貢獻的個人；此類利害相關方可包含學術界和媒體。

69. 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.

69. 政府對某些利害關係人的有效影響能力，顯然高於其他利害關係人。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防制洗錢及打擊資恐。

70. 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:

70. 進一步是政府在認同指定權責機關與自律團體採取以風險為基礎的相關方法時扮演的角色。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：

- TCSPs 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.
- 可預期信託及公司服務業者具備調整其內部制度和控管方式時，將較低和高風險同時納入考慮的彈性，但前提是此類制度和控管方式須合理。然而，也有最低的法規要求不論風險等級為何一律適用者，如：通報可疑交易和客戶審查的最低標準等。
- Acknowledging that a TCSP'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 TCSP with good controls aimed at preventing money laundering and the financing of terrorism is able to achieve. A TCSP 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.
- 須認清的一點是：信託及公司服務業者偵測並遏止洗錢和資恐的能力有時受到限制，而且風險因子相關資訊未必總是穩健、可自由取得。因此，對於具備旨在預防洗錢和資恐良好控管方式的信託及公司服務業者，其能夠實現的結果須有合理的政策和監督期待。在預防洗錢方面，信託及公司服務業者可能實際已經採取行動、採取了合理、考慮周全的步驟，並且對於做出決定時的理論依據有相關書面紀錄，但是卻仍遭到犯罪份子濫用。
- 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 5：公私部門間的資訊交流

71. 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 designated competent authorities and SROs with information they identify as a result of previously provided government intelligence.

71. 公私部門間有效的資訊交流將構成一國防制洗錢及打擊資恐時所採取策略的重要部份。許多個案皆允許私部門向指定權責機關或自律團體提供先前由政府提供的情報資訊。

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

72. 公家機關 – 不管是執法機關、指定權責機關或其他機關 – 有取得資訊的特權，此可能有助於信託及公司服務業者針對洗錢防制及打擊資恐採取以風險為基礎的方法時做出明智的判斷。同樣地，信託及公司服務業者能夠合理了解其客戶的事業。期待公私部門相互合作，主動鑑別有價值的資訊，協助防制洗錢及打擊資恐，並且建立方法，確保及時有效地分享資訊。

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

73. 為了增加效率，公私部門間的資訊交流應伴隨公家機關間的交流。金融情報中心、指定權責機關和執法機關應能在結果與鑑別弱點方面分享資訊與回饋，以提供私部門一致且有意義的貢獻。當然，各方均應考慮在適當保護公家機關持有的敏感性資訊方面，採取一定的防衛措施，以免過度散佈。

74. 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:

74. 相關利害關係人應尋求維持對話，充分瞭解在防制洗錢及打擊資恐方面證明具有實用性的資訊。舉例而言，公私部門間可能分享的實用資訊類型包括（如可得）：

- Assessments of country risk.
- 國家風險的評估。
  
- Typologies or assessments of how money launderers and terrorists have abused the DNFBPs, especially TCSPs.
- 針對洗錢者和恐怖份子如何濫用指定之非金融事業或人員（特別是信託及公司服務業者）所做的類型和評估。
  
- Feedback on suspicious transaction reports and other relevant reports.
- 可疑交易報告和其他相關報告的回饋。
  
- Targeted unclassified intelligence. In specific circumstances, and subject to appropriate safeguards and a country's legal and regulatory framework, it may also be appropriate for authorities to share targeted confidential information with TCSPs.
- 目標性非機密情報。在特定情況下，只要遵照相關防衛措施和各國法規框架，各機關也許能夠適當地和信託及公司服務提供業分享目標性機密資訊。
  
- Countries, persons or organisations whose assets or transactions should be frozen.
- 資產或交易應予凍結的國家、個人或組織。

75. When choosing what information can be properly and profitably shared, public authorities may wish to emphasize to TCSPs that information from public bodies should inform, but not be a substitute for, TCSPs' 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 TCSPs' decision making processes, along with any other relevant information that is available.

75. 在選擇哪些資訊可以被適當地、能夠帶來效益的方式進行分享時，公家機關可能會想向信託及公司服務業者強調：來自公家機關的資訊應僅供信託及公司服務業者自行做出判斷時參考，而非完全取代其判斷。舉例而言，各國可能會決定不製作被認為是經各國批准、具限定性的低風險客戶類型清單。相反地，公家機關可能會比較想在其可能納入信託及公司服務提供業決策過程的基礎上分享任何可用的相關資訊。

## **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

##### 作為國家優先事項參考的風險評估

76. A risk-based approach should be built on sound foundations: effort must first be made to ensure that the risks are well understood. As such, a risk-based approach should be based on an assessment of the threats. This is true whenever a risk-based approach is applied, at any level, whether by countries or individual 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".

76. 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。不論在任何層級上執行風險基礎方法，也不論由國家或個別公司執行，都適用這個說法。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「國家風險評估」。

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

77. 國家風險評估應被認為是有關基本背景資訊的描述，旨在協助指定權責機關、執法機關、金融情報中心、金融機構和指定之非金融事業或人員，確保針對分配國家層級的責任與資源時所做的相關決定，是以對風險有實際、全面、最新的了解作為依據。

78. 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:

78. 國家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。可能對各國洗錢與資恐風險造成影響的因素包括：

- Political environment.
- 政治環境。
  
- Legal environment.
- 法律環境。
  
- A country's economic structure.
- 國家的經濟結構。
  
- Cultural factors, and the nature of civil society.
- 文化因素與公民社會的性質。
  
- Sources, location and concentration of criminal activity.
- 犯罪活動的資源、地點與匯集。

- Size and composition of the financial services industry.
- 金融服務業的規模與組成要素。
- Ownership structure of financial institutions and DNFBPs businesses.
- 金融機構和指定之非金融事業或人員企業的所有權結構。
- Size and nature of the activity carried out by DNFBPs, including TCSPs (this applies particularly to company incorporation for non-residents).
- 指定之非金融事業或人員（含信託及公司服務提供業）。執行的活動規模和性質（這特別適用於非由居民成立的公司行號）。
- Corporate governance arrangements in relation to financial institutions and DNFBPs and the wider economy.
- 涉及金融機構與指定之非金融事業或人員的公司治理安排與廣泛經濟。
- 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。
- Geographical spread of the financial industry's and DNFBPs' operations and customers
- 金融業和指定之非金融事業或人員運作與客戶的地理分佈。
- Types of products and services offered by the financial services industry and DNFBPs
- 金融服務業和指定之非金融事業或人員提供的產品與服務類型。
- Types of customers serviced by financial institutions and DNFBPs.
- 金融機構和指定之非金融事業或人員提供的客戶服務類型。
- 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.
- 洗錢或資恐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。

79. 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.

79. 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資恐風險。相關問題應包含：哪一個機關或哪些機關負責對這類評估做出貢獻？評估應有多高的正式性？指定權責機關或自律團體的觀點是否應該公開？這些是指定權責機關或自律團體應考量的所有問題。

80. 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 firms with the information needed to develop this understanding and to design and implement measures to mitigate the identified risks.

80. 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。為了達到理想的結果，指定權責機關或自律團體應確保其分辨並提供具備所需資訊的單位建立這樣的認知，並設計和實施用以降低經識別的風險之措施。

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

81. 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。利用和執法機構、金融情報中心、指定權責機關/自律團體以及信託及公司服務業者合作，政府能夠充份將其知識和專業融入以風險為基礎、特別適用其國家的做法。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，各國應方便不同機關間彼此流通資訊，如此才不會因為制度造成資訊傳播上的阻礙。

82. 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.

82. 不論採取何種形式，國家風險評估與風險減輕措施都能透露如何分配資源以防制洗錢及打擊資恐，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。

83. 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 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 societies from the threats posed by criminals and terrorists. A sound understanding of the risks at the national level could help obviate these dangers.

83. 除了可以協助指定權責機關和自律團體決定如何配置打擊洗錢和資恐所需的資金外，國家風險評估還能夠提供決策者實施處理所發現風險之法規制度時應採用的最佳策略等所需要的相關資訊。對抗風險時過度熱衷可能會造成破壞性結果而適得其反，造成產業不合理的負擔。若投入的心力不足，則可能不足以保護社會避免受到犯罪或恐怖分子威脅。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

##### 監督並確保遵照 防制洗錢/打擊資恐規定的有效制度 – 一般原則

84. FATF Recommendation 24 requires that TCSPs be subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. In determining the effective system, regard may

be had to the risk of money laundering or terrorist financing in the sector. There should be a designated competent authority or SRO responsible for monitoring and ensuring compliance of TCSPs; the authority or SRO should have adequate powers to perform its functions, including powers to monitor and sanction. It should be noted that in some countries, TCSPs are supervised in the same way as banks and other financial institutions. Other countries apply a separate monitoring/oversight regime.

84. 防制洗錢金融行動工作組織建議 24 規定信託及公司服務業者受有效監督及確保遵照防制洗錢/打擊資恐要求的制度之約束。決定有效的制度時，得考慮部門內洗錢或資恐的風險。應有一個指定權責機關或自律團體負責監督並確保信託及公司服務業者遵守規定；該機關或自律團體應有適當的權力能夠執行其職能，包含監督與制裁的權力。值得一提的是：部份國家境內的信託及公司服務業者與銀行以及其他金融機構被以相同的方式接受監管。其他國家採取不同的監控／監督制度。

### *Defining the acceptable level of risk*

#### *定義可接受的風險程度*

85. 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.

85. 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，不足的法遵資源、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，可能導致風險程度的增加。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。

86. As described in Section One, all activity involves an element of risk. Designated competent authorities and SROs should not prohibit TCSPs from conducting business with high risk customers as long as appropriate policies, procedures and processes to manage the attendant risks are in place. Only in specific cases, for example when it is justified by the fight against terrorism, crime or the implementation of international obligations, are designated individuals, legal entities, organisations or countries denied categorically access to services.

86. 如第一節所述，所有活動都涉及風險因素。指定權責機關和自律團體不應禁止信託及公司服務業者和高風險客戶做生意，但前提是必須有管理伴隨風險的相關政策、程序和過程。只有特定情況下（例：因為對抗恐怖主義、犯罪或善盡國際義務等合理原因），指定的個人、法人、組織或國家才會依據類別被拒絕使用服務的權利。

87. However, this does not exclude the need to implement basic minimum requirements. For instance, FATF Recommendation 5 (that applies to TCSPs through the incorporation of R.5 into R.12) states that “where [the TCSP] 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.

87. 然而，此拒絕並不排除對執行最低基本要求的需求。舉例而言，防制洗錢金融行動工作組織建議 5（適用信託及公司服務業者，將建議 5 融入建議 12）提及：「該信託及公司服務業者無法遵照（客戶審查要求）時，即不應開戶、展開商業關係或執行交易或應中止商業合作關係並應考慮針對該客戶通報疑似洗錢或資恐交易報告。」因此，風險等級應在拒絕客戶和從事不可接受或不可降低的風險這兩個極端間取得一個適當的平衡。

88. Where TCSPs are allowed to implement a risk-based approach, designated competent authorities and SROs expect TCSPs to put in place effective policies, programmes, procedures and systems to mitigate the risk and acknowledge that even with effective systems not every suspect transaction will necessarily be detected. They should also ensure that those policies, programmes, procedures and systems are applied effectively to prevent TCSPs 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.

88. 信託及公司服務業者得實施一套以風險為基礎的方法，而指定權責機關和自律團體期待信託及公司服務業者能夠採用有效的政策、計畫、程序和制度，以降低風險，並認清即使有了有效的制度，未必就能偵測到每一筆可疑的交易此一事實。它們亦應確保這些政策、計畫、程序和制度均能有效應用，以預防信託及公司服務業者成為犯罪所得管道，並確保其在對抗洗錢與資恐方面維持一套紀錄，並製作對於國內機關具實用性的報告。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。監督旨在偵測極大量的合法交易間是否存在不尋常或可疑的交易；此外，何謂不尋常的劃分並非總是直接了當，因為何謂「常規」可能因客戶的事業性質而異。這就是為何在管理一套以風險為基礎的制度時建立準確的客戶基本資料如此重要了。此外，程序和控管方式經常是以之前的預示報告個案為依據，但是犯罪人士會調整其手法，可能很快就限縮了這類預示報告的效用。

89. 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 TCSPs 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 Trust and Company Service Providers on Implementing a Risk-Based Approach.”

89. 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。因此，指定權責機關/自律團體期待信託及公司服務業者找出個別高風險類別並採用特定相關的降減措施。有關如何分辨特定風險類別的進一步資訊，請見第 3 節：「信託及公司服務業者提供方實施一套以風險為基礎的方法指引」。

#### *Proportionate supervisory/Monitoring actions to support the risk-based approach* 採取合比例的監管/監督行動支持以風險為基礎的方法

90. 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.

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

91. In the course of their examinations, designated competent authorities and SROs should review a TCSP’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 TCSPs’ business and the adequacy of its mitigation measures. Where available, assessments carried out by or for TCSPs 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.

91. 進行檢查時，指定權責機關和自律團體應審核信託及公司服務業者的防制洗錢/打擊資恐風險評估及其政策、程序和控管制度，如此才能整體評估信託及公司服務業者事業的風險資料及其採取的降減措施之適當性。若有信託及公司服務業者執行或替其執行的評估，可能是實用的資訊來源。指定權責機關/自律團體針對管理能力和採取必要改善措施之意願所做的評估也是一個重要的決定



因素。指定權責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，制度瓦解或不當的控管方式將導致最嚴重的監督回應。

92. Nevertheless, it may happen 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.

92. 然而，仍可能發生未偵查到被隔離的高風險交易，或未偵查到被隔離的高風險客戶所從事的交易，而且此未偵測本身將造成重大影響的情形。例如龐大的金額、洗錢與資恐的態樣非常明顯，或長久以來一直未偵查到陰謀。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或違規行為。因此，這類案件可能引致合理措施以確保遵守防制洗錢/打擊資恐要求。

93. 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 TCSPs' money laundering and terrorist financing risk assessments, with the understanding, however, that they may possess information that has not been made available to TCSPs and, therefore, TCSPs 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 TCSPs in managing their risks. Where TCSPs 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>2</sup>. Guidance designed specifically for TCSPs is likely to be the most effective. An assessment of the risk-based approach will, for instance, help identify cases where TCSPs 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.

93. 指定權責機關和自律團體可以並且應該善用其對於產品、服務、客戶和地理位置相關風險的認知協助其評估的洗錢和和資恐風險評估結果，但是必須體認到它們可以處理信託及公司服務業者還無法獲得的資訊，因此信託及公司服務業者在制定並實施一套以風險為基礎的方法時無法把這類資訊納入考慮。鼓勵指定權責機關和自律團體（以及其他相關利害關係方）利用該認知發行規範，協助信託及公司服務業者管理其風險。信託及公司服務業者得以決定根據風險敏感度決定客戶審查措施的程度時，這應與其指定權責機關和自律團體出具的規範一致<sup>2</sup>。專為信託及公司服務業者設計的指引可能最有效。舉例而言，評估一套以風險為基礎的方法，有助於信託及公司服務業者識別其採用無法捕捉所有既有風險過度狹隘的風險類別，或有助於發現許多高風險關係卻無法提供適當的額外盡職調查措施時提供標準。

94. 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 TCSP'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.

94. 採用以風險為基礎的方法時，指定權責機關和自律團體的主要重點應在於決定信託及公司服務業者的防制洗錢/打擊資恐法遵和風險管理計畫是否足以：(a) 符合最低的法規要求並 (b) 有

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<sup>2</sup> FATF Recommendations 5 and 25, Methodology Essential Criteria 25.1 and 5.12.

<sup>2</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。

效降減相關風險。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。

95. 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. Often, action will take the form of a remedial program through the normal monitoring processes.

95. 根據防制洗錢金融行動工作組織建議第 24 項，指定權責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恐怖分子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，指定權責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。相關作為常透過一般監督過程以補救計畫形式進行。

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

96. 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*

97. In the implementation of proportionate actions, regulatory transparency will be of paramount importance. Designated competent authorities and SROs are aware that TCSPs, 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/monitoring responsibilities should seek to be transparent in setting out what it expects, and will need to consider appropriate mechanisms of communicating these messages. For instance, this may be in the form of high-level requirements, based on desired outcomes, rather than detailed processes.

97. 執行合乎比例的措施時，監管透明度將具有極高重要性。指定權責機關和自律團體清楚信託及公司服務業者在追求自行進行判斷風險的操作自由時，也會找尋法規義務的指引。因此，負有防制洗錢/打擊資恐監管/監督責任的指定權責機關/自律團體在設定其期望時應努力透明化，並且考慮傳達這些訊息的相關機制。舉例而言，高程度要求的形式，可能基於期待的結果而定，而不是詳細的過程。

98. 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 TCSPs.

98. 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。在沒有這樣的透明度下，監督行動就有被認為不成比例或有不具預測能力的危險，可能讓信託及公司服務業者無法以風險為基礎而達到最有效的應用。

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

##### *b) 指定權責機關、自律團體及執法機關的人員訓練*

99. In the context of the risk-based approach, it is not possible to specify precisely what a TCSP 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.

99. 若採取以風險為基礎的方法，即不可能準確地詳述信託及公司服務業者在各情況下必須做到，才算善盡法規義務的細節。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。因此有效監督訓練對於是否能夠成功採取成比例的監管/監督行動很重要。

100. 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 TCSPs 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.

100. 訓練的目的應在於允許指定權責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。執行評估時，很重要的一點是：指定權責機關和自律團體必須具備根據信託及公司服務業者及其公司承擔的風險，就其管理控制做出判斷的能力，並考慮可用的業界做法。指定權責機關和自律團體可能也會發現另一個實用的方法，就是：進行比較評估，以便針對不同公司或企業安排的相關優缺點做出判斷。

101. 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.

101. 訓練應包括指導指定權責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（若有提供）。指定權責機關與自律團體亦應對備妥充分資源以確保執行有效風險管理的作為感到滿意。

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

102. 為了實現這些責任，訓練應要能讓指定權責機關和自律團體的監督人員適當地評估：

- 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、法遵與風險管理部門。
- ii. Whether or not the risk management policies and processes are appropriate in light of TCSPs' risk profile, and are periodically adjusted in light of changing risk profiles.
- ii. 風險管理政策和程序是否適用於信託及公司服務業者的風險資料，並根據風險資料出現的變化定期調整。
- iii. The participation of senior management to confirm that they have undertaken adequate risk management, and that the necessary procedures and controls are in place.
- iii. 高階管理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 TRUST AND COMPANY SERVICE PROVIDERS  
(TCSPS) ON IMPLEMENTING A RISK-BASED APPROACH**

**第三節：信託及公司服務業者（TCSP）實施風險基礎方法之指引**

**Chapter One: Risk Categories**

**第一章：風險類別**

103. In order to implement a reasonable risk-based approach, TCSPs should identify the criteria to assess potential money laundering and terrorist financing risks on a service-by-service basis. These risks will vary according to the activities undertaken by the TCSP.

103. 為了實行風險基礎方法，信託及公司服務業者應找出可按服務評估潛在洗錢與資恐的標準。這些風險將因信託及公司服務業者從事的活動而異。

104. 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 TCSPs to determine and implement proportionate measures and controls to mitigate these risks. While a risk assessment should always be performed at the inception of a customer relationship, for some customers, a comprehensive risk profile may only become evident through time, making monitoring of customer transactions and ongoing reviews a fundamental component of a reasonably designed risk-based approach. A TCSP may also have to adjust its risk assessment of a particular customer based upon information received from a designated competent authority or SRO.

104. 找出洗錢和資恐風險，以期發現客戶或某些類別的客戶或交易面臨的這類資恐風險程度，將有助於信託及公司服務業者決定並實施成比例的措施和控管方式，以降減這類風險。應永遠在建立客戶合作關係之初執行風險評估。但是針對部份客戶，可能需要時間才能清楚看出全面的風險資料，使監督客戶交易、持續審核成為合理設計、以風險為基礎的方法之基本要素。信託及公司服務業者也可能必須根據自指定權責機關或自律團體接獲的資訊，調整其針對特定客戶所做的風險評估。

105. Money laundering and terrorist financing risks may be measured using various categories. Application of risk categories provides a strategy for managing potential risks by enabling TCSPs to subject customers to proportionate controls and oversight. The most commonly used risk criteria are: country or geographic risk; customer risk; and product/services risk. The weight given to these risk categories (individually or in combination) in assessing the overall risk of potential money laundering may vary from one TCSP to another, depending upon their respective circumstances. Consequently, TCSPs will have to make their own determination as to the risk weights. Parameters set by law or regulation may limit a TCSP's discretion.

105. 可運用不同的類別評量洗錢與資恐風險。針對風險進行分類是管理潛在風險時採取的一套策略，讓信託及公司服務業者能夠針對各客戶採取合比例的控管方式與監督。最常使用的風險標準：國家或地理風險、客戶風險、產品／服務風險。評估潛在洗錢的整體風險時這些風險類別所佔權重（個別或結合）可能因信託及公司服務業者而異，視其個別情況而定。因此，信託及公司服務業者針對風險權重必須自行進行判斷。法規若設定相關參數可能會限縮信託及公司服務業者的決定權。

106. While there is no agreed upon set of risk categories for TCSPs, the examples provided herein are the most commonly identified risk categories. There is no one single methodology for applying these risk categories; however, the application of these risk categories is intended to assist in designing an effective strategy for managing the potential risks.

106. 雖然針對信託及公司服務業者並無一套公認的風險類別，但是這裡提供的例子都是最普遍

獲得認同的風險類別。對於如何應用這些風險類別並無一套「放諸四海而皆準」的方法；但是，應用這些風險類別的用意，在於協助設計管理潛在風險的一套有效策略。

## Countries/Geographic risk

### 各國/地理風險

107. There is no universally agreed definition by either competent authorities or TCSPs that prescribes whether a particular country or geographic area (including the country within which the TCSP operates) represents a higher risk. Country risk, in conjunction with other risk factors, provides useful information as to potential money laundering and terrorist financing vulnerabilities. Factors that may result in the determination that a country poses a higher risk include:

107. 不管是權責機關或是信託及公司服務業者都沒有一套普遍認知特定國家或地理區域（含信託及公司服務業者運作的國家）呈現較高風險的定義。國家風險和其他風險因子併用時，能夠提供有關潛在洗錢和資恐弱點的實用資訊。可能導致判定某個國家呈現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 TCSP because of the standing of the issuer and the nature of the measures.
- 遭受如聯合國制裁、禁運或類似措施的國家。此外，基於實施制裁單位的立場和制裁措施的性質，部分情況下信託及公司服務業者還是可以考量遭受類似聯合國等機構實施、即便未受普遍認同的制裁或措施的國家。
- Countries identified by credible sources<sup>3</sup> as lacking appropriate AML/CFT laws, regulations and other measures.
- 經可靠來源認定<sup>3</sup> 缺乏相關防制洗錢/打擊資恐法律、規範和其他措施的國家。
- Countries identified by credible sources as providing funding or support for terrorist activities that have designated terrorist organisations operating within them.
- 經可靠來源認定贊助或支援恐怖活動，並有指定的恐怖組織在其境內運作的國家。
- Countries identified by credible sources as having significant levels of corruption, or other criminal activity.
- 經可靠來源認定有明顯貪腐或其他犯罪活動的國家。

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<sup>3</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, 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>3</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。除防制洗錢金融行動工作組織與其他區域性防制洗錢組織外，可靠來源還包括但不限於跨國或國際機構，例如國際貨幣基金、金融情報中心艾格蒙聯盟，以及相關國家政府機構與非政府組織。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。

## Customer risk

### 客戶風險

108. Determining the potential money laundering or terrorist financing risks, to the extent that such terrorist financing risks can be identified, posed by a customer, or category of customers, is critical to the development of an overall risk framework. Based on its own criteria, a TCSP will determine whether a particular customer poses a higher risk and the potential impact of any mitigating factors on that assessment. Application of risk variables may mitigate or exacerbate the risk assessment. Categories of customers whose activities may indicate a higher risk include:

108. 決定潛在洗錢或資恐以便找出某個客戶或某個類別的客戶呈現的此類資恐風險攸關整體風險框架的制定。根據其本身的條件，信託及公司服務業者將決定特定客戶是否呈現較高風險，以及任何降低因素可能對該評估結果造成的影響。應用風險變數可能降減或加劇風險評估的結果。其活動可能顯示較高風險的客戶類別有：

- Customers<sup>4</sup> conducting their business relationship or transactions in unusual circumstances, such as:
- 在不尋常的情況下做生意或進行交易的客戶<sup>4</sup>，如：
  - Significant and unexplained geographic distance between the TCSP and the location of the customer.
  - 信託及公司服務業者和客戶所在地點之間有明顯、無法解釋的地理距離。
- Customers where the structure or nature of the entity or relationship makes it difficult to identify and verify the true owner or controlling interests, such as:
- 其實體或合作關係的結構或性質很難分辨並確認其真實所有權或控制利益的客戶，如：
  - Unexplained use of corporate structures, express trusts and nominee shares, and use of bearer shares.
  - 無法解釋的企業結構用途、意定信託和名義股票以及無記名股票。
  - Unexplained delegation of authority by the applicant or customer through the use of powers of attorney, mixed boards and representative offices.
  - 無法解釋申請者或客戶透過授權書、混合的董事會和代表辦公室所做的授權。
  - Unexplained relationship between an applicant's beneficial owners and controllers and account signatories.
  - 無法解釋申請者與實質受益人、控制人以及帳戶簽約方之間的關係。

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<sup>4</sup> TCSPs generally use the term “client” instead of “customer.” The definition of “client” of the TCSP, may extend (for identification and verification purposes) to other relevant parties who might have some degree of control over the trust/company structure. This should include the settlor, the trustee or person exercising effective control over the trust and the beneficiaries. This may include protectors if they have any positive powers. Nevertheless it is generally accepted that not all beneficiaries are always beneficial owners. Different countries have adopted different approaches to deal with this issue.

<sup>4</sup> 信託及公司服務業者一般會使用「當事人」而非「客戶」一詞。信託及公司服務業者針對「當事人」所下的定義可延伸至其他可能對信託/公司結構有某種程度控制權的相關各方(基於分辨和確認等目的)。應包含委託人、受託人或有效控制信託和受益方的人。也可能包含監理人(若其具備權力)。儘管如此，一般公認的說法：並非所有的受益方均為實質受益人。不同的國家對於這個議題採取不同的處理方式。

- In the case of express trusts, an unexplained relationship between a settlor and beneficiaries with a vested right, other beneficiaries and persons who are the object of a power.
- 若是意定信託，則是無法解釋委託人與具備既得權利的受益人、其他受益人以及屬於權利標的之個人之間的關係。
- In the case of an express trust, an unexplained nature of classes of beneficiaries and classes within an expression of wishes.
- 若是意定信託，則是無法解釋各類別受益人和各類意定之性質。
- Cash (and cash equivalent) intensive businesses including:
- 現金（和約當現金）密集的事業，包括：
  - Money services businesses (e.g. remittance houses, currency exchange houses, casas de cambio, bureau de change, money transfer agents and bank note traders or other businesses offering money transfer facilities
  - 貨幣服務事業（如：電匯所、貨幣交易所、外匯兌換所、貨幣兌換處、匯款代理人以及票券交易方或其他提供匯款服務的事業）。
  - Casinos, betting and other gambling related activities.
  - 賭場、打賭或其他賭博相關活動。
  - Businesses that while not normally cash intensive, generate substantial amounts of cash for certain transactions.
  - 正常情況下不具現金密集性，但是會替特定交易帶來大量現金的事業。
- Charities and other “not for profit” organisations which are not subject to monitoring or supervision (especially those operating on a “cross-border” basis).
- 不受監督或監管的慈善機構和其他「非營利」組織（特別是「跨國」運作的這類組織）。
- Other TCSPs, financial institutions, and other designated non-professional businesses and professions who are not subject to adequate AML/CFT laws and measures and who are not adequately supervised.
- 不受相關防制洗錢/打擊資恐 法規規範並且不受適當監管的其他信託及公司服務業者、金融機構和其他指定之非金融事業和人員。
- Customers that are politically exposed persons (PEPs).
- 擔任重要政治性職務人士（PEP）。
- Customers where there is no commercial rationale for a customer buying the products or services that he seeks, who request undue levels of secrecy, or where it appears that an “audit trail” has been deliberately broken or unnecessarily layered.
- 對於客戶購買其產品或服務並無商業理論依據、要求不合理的保密、或刻意瓦解或多層化其「稽核軌跡」之客戶。

### Product/Service risk

#### 產品/服務風險

109. An overall risk assessment should also include determining the potential risk presented by products and services offered by a TCSP. TCSPs should be mindful of the risks associated with new or innovative products or services. A key element for TCSPs is establishing the existence of an apparent legitimate business, economic, tax or legal reasons for the structures the TCSP is asked to set up and manage. Determining the risks of products and services should include the consideration of such factors as:

109. 整體的風險評估亦應包含判定信託及公司服務業者提供的產品與服務呈現的潛在風險。信

託及公司服務業者應注意與新型的或創新的產品或服務有關的風險。信託及公司服務業者的一個要素是針對其被要求設立並管理的結構證明有明顯的合法事業、經濟、稅務或合法原因的存在。決定產品與服務的風險時應考慮下列因素：

- Shell companies, companies with ownership through nominee shareholding and control through nominee and corporate directors<sup>5</sup>.
- 空殼公司、透過掛名持股方式展現其所有權以及透過掛名的公司董事進行控制的公司。<sup>5</sup>
- Services where TCSPs, acting as financial intermediaries, actually handle the receipt and transmission of cash proceeds through accounts they actually control in the act of closing a business transaction.
- 擔任金融仲介的信託及公司服務業者，實際卻在關閉商業交易時透過其實際控管的帳戶接收和傳送現金收益等服務。
- Other services to conceal improperly beneficial ownership from competent authorities.
- 其他用以隱藏不當實質受益權，使權責機關無法發現的服務。
- Situations where it is difficult to identify the beneficiaries of trusts. This might include situations where identification is hindered because the beneficiary of a trust is another trust or corporate vehicle, or where the trust deed does not include the names of the settlor, the beneficiaries or the class of beneficiaries.<sup>6</sup>
- 難以辨識信託受益人的情況。這可能因為信託受益人是另一個信託或公司、或是信託契約不含委託人或受益人等資訊而阻礙辨識的情況<sup>6</sup>。
- Commercial, private, or real property transactions or services with no apparent legitimate business, economic, tax, family governance, or legal reasons.
- 商業、私人或房地產的交易或服務並無明顯真正業務、經濟、稅務、家族治理或合法原因。
- Payments received from unassociated or unknown third parties where this would not be a typical method of payment.
- 從不相關或不明的第三方透過不正常的付費方式接獲的款項。
- The offer by customers to pay extraordinary fees for services which would not ordinarily warrant such a premium.
- 客戶提議針對服務支付不尋常的費用。
- Services that inherently have provided more anonymity.
- 服務固有性質提供更多的匿名性。
- Trusts which are pensions that may be considered lower risk.
- 屬於可能被認為風險較低的退休金信託。

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<sup>5</sup> See detailed examples of the use of these types of products in the FATF typologies report “The Misuse of Corporate Vehicles, including Trust and Company Service Providers” published 13 October 2006.

<sup>5</sup> 有關這些類型產品的用途之詳細範例，請見防制洗錢金融行動工作組織於 2006 年 10 月 13 日發表的預示報告「濫用公司工具，包括信託及公司服務業者提供方」。

<sup>6</sup> See the FATF typologies report “The Misuse of Corporate Vehicles, including Trust and Company Service Providers,” Annex 2 on trusts, for a more detailed description of “potential for misuse” of trusts.

<sup>6</sup> 有關「可能濫用」信託的更詳細描述，請見防制洗錢金融行動工作組織預示報告「濫用公司工具，包括信託及公司服務業者」有關信託的附錄 2。



## Variables that may impact risk

### 可能衝擊風險的變數

110. A TCSP's risk-based approach methodology may take into account risk variables specific to a particular customer or transaction. These variables may increase or decrease perceived risks posed by a particular customer or transaction and may include:

110. 信託及公司服務業者以風險為基礎的方法，可能會把特定客戶或交易專屬的風險變數納入考慮。這些變數可能增加或減少特定客戶或交易被查出的風險，可能包含：

- The purpose and intended nature of a relationship.  
● 合作關係的目的與用途。
- The type, volume and value of activity expected.  
● 預期活動類型、數量與價值。
- The source of funds and the source of wealth – the source of funds is the activity that generates the funds for a customer, while the source of wealth describes the activities which have generated the total net worth of a customer.  
● 資金來源與財富來源 – 資金來源是指為客戶帶來資金的活動，而財富來源是指已經產生客戶總淨值的活動。
- Unusually high levels of assets or unusually large transactions compared to what might reasonably be expected of customers with a similar profile may indicate that a customer not otherwise seen as higher risk should be treated as such. Conversely, low levels of assets or low value transactions involving a customer that would otherwise appear to be higher risk might allow for a TCSP to treat the customer as lower risk.  
● 相較於類似客戶之合理預期，資產或交易異常過多或異常大量時，可能即表示原本不會被認為具備較高風險的客戶，應被視為高風險。相反地，原本可能具備較高風險的客戶，若其資產或交易少或價值低時，信託及公司服務業者可當作低風險。
- The level of regulation or other oversight of a government's regime to which a customer is subject. A customer that is a financial institution regulated in a country with a satisfactory AML regime poses less risk from a money laundering perspective than a customer that is unregulated or subject only to minimal AML regulation. Additionally, companies and their wholly owned subsidiaries that are publically owned and traded on a recognised exchange generally pose minimal money laundering risks. These companies are usually from countries with an adequate, recognised regulatory scheme, and, therefore, generally pose less risk due to the type of business that they conduct and the wider government's regime to which they are subject.  
● 客戶所屬政府體制之法規或監督程度。若客戶是位於防制洗錢制度令人滿意的國家內的金融機構，則從洗錢觀點來看，其面臨的風險低於不受規範或僅需遵守最低防制洗錢規範的客戶。此外，公開發行且在公認的交易所進行交易的公司及其 100% 持股的子公司，一般呈現的洗錢風險最低。這些公司通常位於法規體制適當且獲得認同的國家，而且由於其從事的生意類型及其隸屬更大的政府體制，一般呈現較低風險。
- The regularity or duration of the relationship. Long standing relationships involving frequent customer contact throughout the relationship may present less risk from the money laundering perspective.  
● 合作關係的規律性與持久性。長久的合作關係需要經常和客戶聯繫，因此從洗錢的觀點來看，呈現較低風險。
- The familiarity with the country, including knowledge of local laws, regulations and rules, as well as the structure and extent of regulatory oversight, as a result of a TCSPs own operations within the country.  
● 因為信託及公司服務業者本身在該國內的運作而與該國建立的熟悉度，包括對於當地

法律、規範和規定以及法規監督架構與程度的認知。

- The use of intermediate corporate vehicles or other structures that have no apparent commercial or other rationale or that will increase the complexity or otherwise result in a lack of transparency. The use of such vehicles or structures, without an acceptable explanation, increases the risk.
- 使用中介公司或其他結構卻無明顯商業或其他合理依據，或如此將增加複雜性或導致缺乏透明度。若未提供可接受的解釋，則使用此類工具或結構會增加風險。

### Controls for higher risk situations

#### 較高風險情況的監控

111. TCSPs should implement appropriate measures and controls to mitigate the potential money laundering risks of those customers that are determined to be higher risk as a result of the TCSP's risk assessment. The same measures and controls may often address more than one of the risk criteria identified and it is not necessarily expected that a TCSP establish specific controls targeting each and every criteria. Appropriate measures and controls may include:

111. 信託及公司服務業者應針對因其風險評估判定具備較高風險的客戶之潛在洗錢風險，實施相關降低措施與控管方式。相同的措施和控管方式，可能常會涉及一個以上風險條件，而且信託及公司服務業者未必被預期建立鎖定各條件的特定控管方式。相關的措施包含：

- General training on money laundering and terrorist financing methods and risks relevant to TCSPs.
- 針對洗錢和資恐方式以及信託及公司服務業者相關風險的一般訓練。
- Targeted training for increased awareness of higher risk customers and transactions.
- 增加較高風險客戶與交易意識的目標訓練。
- Increased levels of customer due diligence or enhanced due diligence.
- 提升的客戶審查水準或強化的盡職調查水準。
- Escalation of the approval of the establishment of a relationship.
- 提升建立合作關係時需要的批准層級。
- Increased monitoring of the services offered to determine whether the risk of money laundering occurring has increased.
- 加強監督所提供的服務，以判定洗錢風險是否增加。
- Increased levels of ongoing controls and frequency of reviews of relationships.
- 增加持續控管層級和合作關係審核頻率。

## **Chapter Two: Application of a Risk-based Approach**

### **第二章：採用風險基礎方法**

#### Customer due diligence/know your customer

##### 客戶審查/認識您的客戶

112. Customer Due Diligence/Know Your Customer is intended to enable a TCSP to form a reasonable belief that it knows the true identity of each customer and, with an appropriate degree of confidence, knows the types of business and transactions the customer is likely to undertake. A TCSP's procedures should include procedures to:

112. 客戶審查/認識您的客戶旨在讓信託及公司服務業者能夠合理相信其認識每一個客戶的真

實身份，並且有適度的信心認為其已經知道該客戶可能從事的業務與交易類型。信託及公司服務業者的程序應包含目的如下的程序：

- (a) Identify and verify the identity of each customer on a timely basis.  
(a) 及時找出並確認各客戶的身份。
- (b) Identify the beneficial owner, and take reasonable 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.  
(b) 找出實質受益人並採取合理的措施確認任何實質受益人身份。為確認實質受益人而必須採取的措施將視風險而定。
- (c) Obtain appropriate additional information to understand the customer's circumstances and business, including the expected nature and level of transactions. Relevant customer due diligence information should be periodically updated together with its risk assessment. In the event of any change in beneficial ownership or control of the applicant, or third parties on whose behalf the applicant acts, reasonable measures should be taken to verify identity.  
(c) 取得相關額外的資訊，以了解客戶的情況和事業，包含預期的交易性質與層級。相關客戶審查應定期與其風險評估一併更新。若申請者或申請者代為行使權利的第三方之實質受益權或控制權出現任何改變，應採取合理的措施確認其身份。

113. The starting point is for a TCSP to assess the risks that a customer may pose taking into consideration any appropriate risk variables before making a final determination. TCSPs will determine the due diligence requirements appropriate to each customer. This may include:

113. 信託及公司服務業者一開始必須評估客戶可能呈現的風險，將任何相關風險變數納入考慮，之後才能做出最終決定。信託及公司服務業者將決定適用各客戶的盡職調查規定。這可能包含：

- A standard level of due diligence, to be applied to all customers.  
● 標準層級的盡職調查，以便應用於所有客戶。
- The standard level being reduced in recognised lower risk scenarios, such as:  
● 在辨識出較低風險的情況下減少標準層級，如：
  - Publicly listed companies subject to regulatory disclosure requirements.  
○ 公開上市的公司必須遵照法規揭露規定。
  - Financial institutions (domestic or foreign) subject to an AML/CFT regime consistent with the FATF Recommendations.  
○ 金融機構（國內外）必須遵照與防制洗錢金融行動工作組織建議書一致的防制洗錢/打擊資恐制度。
- An increased level of due diligence in respect of those customers that are determined to be of higher risk. This may be the result of a customer's business activity, ownership structure, anticipated or actual volume or types of transactions, including those transactions involving higher risk countries or defined by applicable law or regulation as posing a higher risk, such as:  
● 針對被判定具備較高風險的客戶增加盡職調查的層級。這可以是客戶業務活動結果、所有權結構、預期或實際的交易量或類型（包括牽涉較高風險國家的交易或相關法規定義屬於呈現較高風險的國家），如：
  - PEPs.  
○ 重要政治性職務人士。
  - Sanctioned countries.  
○ 遭到制裁的國家。

## Monitoring of customers and transactions

### 監督客戶與交易

114. The degree and nature of monitoring by a TCSP will depend on the size of the TCSP, the AML/CFT risks that the institution has identified, the monitoring method being used (manual, automated or some combination), and the type of activity under scrutiny. In applying a risk-based approach to monitoring, TCSPs and where appropriate their regulatory supervisors must recognise that not all transactions or customers will be monitored in the same way. The degree of monitoring will be based on the perceived risks associated with the customer, the products or services being used by the customer, the location of the customer, and the particular transaction. Monitoring methodologies and processes also need to take into account the resources of the TCSP.

114. 信託及公司服務業者的監督程度和性質將視信託及公司服務業者的規模、該機構發現的防制洗錢/打擊資恐風險、採用的監督方式（人工、自動或結合兩者）以及接受審查的活動類型而定。採用一套以風險為基礎的方法進行監督時，信託及公司服務業者及其法規主管（如適用）必須體認道：並非所有的交易或客戶都將以相同方式進行監督。監督的程度將以客戶、客戶使用的產品或服務、客戶所在地點以及特定交易相關的感知風險為基礎。監督方法與過程也需要將信託及公司服務業者的資源納入考慮。

115. Monitoring under a risk-based approach allows a TCSP to determine which activity need not be reviewed or reviewed less frequently. Defined situations used for this purpose should be reviewed on a regular basis to determine the adequacy for the risk levels established. TCSPs should also assess the adequacy of any systems and processes on a periodic basis. The results of such monitoring should always be documented.

115. 採用以風險為基礎的方法進行監督，讓信託及公司服務業者能夠判定哪些活動不需要檢視或減少檢視的頻率。定義的此用途使用情況應定期接受檢視，以判定所建立的風險等級是否合適。信託及公司服務業者亦應定期評估任何制度與過程的適當性。此類監督的結果應永遠記錄起來。

## Suspicious transaction reporting

### 可疑交易通報

116. The reporting of suspicious transactions or activities 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. A TCSP's requirement to report a suspicious transaction will arise when the TCSP engages in a transaction for a client, or on behalf of a client, in relation to the activities referred to in the Glossary to the FATF Recommendations. (See paragraphs 12-13.)

116. 通報可疑交易或活動對於一個國家利用金融資訊對抗洗錢、資恐以及其他金融犯罪的的能力至關重要。各國法律對於其國內通報制度都有說明，需要機構在達到可疑門檻進行報告。信託及公司服務業者通報可疑交易的要求，將在信託及公司服務業者為當事人或代表當事人執行與防制洗錢金融行動工作組織 建議書中字彙表內提到活動相關的交易時出現。（見第 12-13 項。）

117. Where a legal or regulatory requirement mandates the reporting of a suspicious activity once the suspicion has been formed, a report must be made and, therefore, a risk-based approach for the reporting of a suspicious activity under these circumstances is not applicable.

117. 法律或規範有要求在疑點出現時通報可疑活動時，必須製作報告，因此在這些情況下採取一套以風險為基礎的方法通報可疑活動並不適用。

118. A risk-based approach is, however, appropriate for the purpose of identifying a suspicious activity, for example, by directing additional resources at those areas a TCSP has identified as higher risk. As part of a risk-based approach, it is also likely that a TCSP will utilise information provided by designated competent authorities or SROs to inform its approach to identifying suspicious activity. A

TCSP should also periodically assess the adequacy of its system for identifying and reporting suspicious transactions.

118. 但是，以風險為基礎的方法適用於找出可疑活動此一目的；如：將額外的資源用於信託及公司服務業者發現、風險較高的區域。因為採用以風險為基礎的方法，所以可能信託及公司服務業者將利用指定權責機關或自律團體提供的資訊作為找出可疑活動時的參考。信託及公司服務業者亦應定期評估其用於找出並通報可疑交易之制度的適當性。

### Training and awareness

#### 訓練與意識

119. FATF Recommendations 15 and 16 together require that TCSPs provide their employees with AML/CFT training, and it is important that TCSP employees receive appropriate and proportionate training with regard to money laundering and terrorist financing. A TCSP's commitment to having successful controls relies on both training and awareness. This requires an enterprise-wide effort to provide all relevant employees with at least general information on AML/CFT laws, regulations and internal policies.

119. 防制洗錢金融行動工作組織建議 15 和 16 都要求信託及公司服務業者提供其員工防制洗錢/打擊資恐訓練，很重要的是，信託及公司服務業者員工接受與洗錢和資恐相關及合比例的訓練。信託及公司服務業者對於成功管控的承諾，同時得依賴訓練和提昇意識來達成。這需要整個企業一起努力，提供所有相關員工至少有關防制洗錢/打擊資恐法律、規範和內部政策的一般資訊。

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

120. 但是，針對訓練可用的各種方式採用一套以風險為基礎的方法，在此類訓練的頻率、執行方式和執行重點等方面，給予了各信託及公司服務業者額外的彈性。信託及公司服務業者應檢視其本身的勞動力 and 可用資源並實施提供相關防制洗錢/打擊資恐資訊，符合下列標準的訓練計畫：

- Tailored to the appropriate staff responsibility (e.g. customer contact or operations).
- 專為相關人員職責所設計（如：客戶聯絡或作業）。
- At the appropriate level of detail (e.g. frontline personnel, complicated products or customer managed products).
- 牽涉相關細節（如：前線人員、複雜的產品或客戶管理的產品）。
- At a frequency related to the risk level of the business involved.
- 頻率和牽涉到的事業風險等級有關。
- Tested to assess staff knowledge commensurate with the detail of information provided.
- 進行測驗，以評估人員的知識是否與所提供的資訊細節相當。

## **Chapter Three: Internal Controls**

### **第三章：內部控制**

121. 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 TCSPs, 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.

121. 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防制洗錢及打擊資恐。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。指定之非金融事業或人員（含信託及公司服務業者）的這個特點，應於針對內部控管制度設計一套以風險為基礎的框架時納入考慮。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。

122. In order for TCSPs to have effective risk-based approaches, the risk-based process must be imbedded within the internal controls of the institutions. Senior management is ultimately responsible for ensuring that a TCSP maintains an effective internal control structure, including suspicious activity monitoring and reporting. Strong senior management leadership and engagement in AML 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 TCSPs policies, procedures and processes designed to limit and control risks.

122. 為了讓信託及公司服務業者擁有有效的以風險為基礎的方法，以風險為基礎的過程必須內建於機構內部控管機制。資深管理階層對於確保信託及公司服務業者是否維持一套有效的內部控管結構（包括可疑活動監督與通報）負有最終責任。資深管理階層在防制洗錢方面有力的領導和投入是應用以風險為基礎的方法時的一個要素。資深管理階層必須建立一個法遵文化，確保人員遵守信託及公司服務業者用以限縮和控制風險的政策、程序和過程。

123. In addition to other compliance internal controls, the nature and extent of AML/CFT controls will depend upon a number of factors including:

123. 除了其他遵規內部控管方式外，防制洗錢/打擊資恐控管方式的性質和程度將視各種因素而定，包括：

- The nature, scale and complexity of a TCSP's business.
- 信託及公司服務業者事業的性質、規模與複雜性。
  
- The diversity of a TCSP's operations, including geographical diversity.
- 信託及公司服務業者作業的多元性，含多元的地域。
  
- The TCSP's customer, product and activity profile.
- 信託及公司服務業者的客戶、產品與活動資料。
  
- The volume and size of the transactions.
- 交易量與交易規模。
  
- The degree of risk associated with each area of the TCSP's operation.
- 信託及公司服務業者運作的各領域相關之風險程度。
  
- The extent to which the TCSP is dealing directly with the customer or is dealing through intermediaries, third parties, correspondents, or non face-to-face access.
- 信託及公司服務業者與客戶直接往來的程度或透過仲介、第三方、聯絡人或非面對面管道往來的程度。
  
- The frequency of customer contact (either in person or by other means of communication).
- 客戶接洽頻繁程度（親自或以其他溝通方式）。

124. Having regard to the size of the TCSP, the framework of internal controls should generally:  
124. 考量信託及公司服務業者的規模，內部控管框架一般應該：

- Provide increased focus on a TCSP's operations (products, services, customers and geographic locations) that are more vulnerable to abuse by money launderers and other criminals.
- 將重心放在比較容易受到洗錢者和其他罪犯濫用的信託及公司服務業者作業（產品、服務、客戶和地理位置）。
- Provide for a regular review of the risk assessment and management processes, taking into account the environment within which the TCSP operates and the activity in its market place.
- 定期檢視風險評估與管理過程，將信託及公司服務業者運作的環境及其市場上的活動納入考慮。
- Designate an individual or individuals at management level responsible for managing AML/CFT compliance.
- 指定管理階層一人或多人負責管理防制洗錢/打擊資恐法遵事宜。
- Provide for an AML/CFT compliance function and review programme.
- 提供防制洗錢/打擊資恐法遵職能與檢視計畫。
- Ensure that adequate controls are in place before new products or services are offered.
- 在提供新的產品或服務前，確保已有相關的控管機制。
- Inform senior management of compliance initiatives, identified compliance deficiencies, corrective action taken and suspicious activity reports filed.
- 通知資深管理階層法遵計畫、發現的法遵缺失、採取的矯正行動以及已經通報的可疑活動。
- Provide for programme continuity despite changes in management or employee composition or structure.
- 在管理階層或員工組成或結構出現變化時讓計畫能夠繼續。
- Focus on meeting where appropriate, all regulatory record keeping and reporting requirements, recommendations for AML/CFT compliance and provide for timely updates in response to changes in regulations.
- 適當時，將重點放在達到所有法令要求的記錄留存和通報要求、防制洗錢/打擊資恐法遵建議並及時回應法規變更。
- Implement risk-based customer due diligence policies, procedures and processes.
- 實施以風險為基礎的客戶審查政策、程序或過程。
- Provide for adequate controls for higher risk customers, transactions and products/services, as necessary, such as transaction limits or management approvals.
- 針對較高風險客戶、交易和產品/服務，視需要提供適當的控管，如：交易限額或管理階層批准等。
- 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 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.
- 針對處理交易的員工提供適當的監管、完成報告、給予豁免、監督可疑活動或參與任何其他構成機構防制洗錢/打擊資恐計畫一部份的活動。
- Incorporate AML/CFT compliance into job descriptions and performance evaluations of appropriate personnel.
- 將防制洗錢/打擊資恐法遵情形結合在工作說明以及相關人員績效評估內。
- Provide for appropriate training to be given to all relevant staff.
- 提供所有相關人員適當的訓練。
- For groups, to the extent possible, there should be a common control framework.
- 針對各小組，只要可能，亦應有一套通用的控管框架。

125. Senior management will need to have a means of independently validating the development and operation of the risk assessment and management processes and related internal controls, and obtaining appropriate comfort that the adopted risk-based methodology reflects the risk profile of the TCSP. This independent testing and reporting should be conducted by, for example, the internal audit department, external auditors, specialist consultants or other qualified parties who are not involved in the implementation or operation of the TCSP's AML/CFT compliance programme. The testing should be risk-based (focussing attention on higher risk customers, products and services) and include comprehensive procedures and testing that cover all activities. It should also evaluate the adequacy of the TCSP's overall AML/CFT programme and the quality of its operational risk management programme.

125. 資深管理階層將需要有一套方法，能夠獨立地確認風險評估與管理過程的開發進度與運作情形以及相關的內部控管方式，並對於採用以風險為基礎的方法是否反映信託及公司服務業者風險資料感到適足。如此的獨立測驗和通報應由（例如）內部稽核部門、外部稽核人員、專業顧問或其他不參與執行或運作信託及公司服務業者 防制洗錢/打擊資恐法遵計畫的合格人士執行。測驗應以風險為基礎（將重點放在風險較高的客戶、產品與服務）並包括涵蓋所有活動的全面程序與測驗，亦應評估信託及公司服務業者整體防制洗錢/打擊資恐計畫的合適性以及操作風險管理計畫的品質。



## 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 TCSPs 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 TCSPs 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. 各種可能有助於政府與信託及公司服務業者制定一套以風險為基礎的方法之既有資訊來源。雖然這個清單並未列出全部，但是此節提供了很多實用的網路連結，各國政府與信託及公司服務業者可能會想參考。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防制洗錢及打擊資恐政策。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 TCSPs' risk assessment of countries and cross-border activities

#### B. 其他有助於各國與信託及公司服務業者針對國家與跨境活動進行風險評估的資訊來源。

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

判定與特定國家或跨境活動相關的風險等級時，信託及公司服務業者與政府可能會採用各種可公開取得的資訊來源，可能包含詳述遵守國際標準與法典、與非法活動有關的特定風險等級、貪污調查

以及國際合作層級等資訊的報告。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 與世界銀行針對國際標準與法典遵守情況做成的報告（金融部門評估計畫）：
  - 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. 歐洲議會反洗錢及打擊資助恐怖主義評估專家委員會（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. 東南非反洗錢組織（ESAAMLG）  
<http://www.esaamlg.org/>
  8. Groupe Inter-gouvernemental d'Action contre le Blanchiment d'Argent (GIABA)  
8. 非洲政府間反洗錢行動組織（GIABA）  
<http://www.giabasn.org>
- OECD Sub Group of Country Risk Classification (a list of country of risk classifications published after each meeting)
- OECD 國家風險分類分級附屬類別（每次開會後公佈的風險國家分類分級列表）  
[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.
- 艾格蒙聯盟成員 – 金融情報中心的聯盟組織，參與正規資訊交換及分享優良實務。各國若想成為艾格蒙聯盟的成員，必須完成正式程序，並被認可為艾格蒙定義的金融情報中心。  
<http://www.egmontgroup.org/>
- Signatory to the United Nations Convention against Transnational Organized Crime
- 聯合國打擊跨國組織犯罪公約簽約國  
[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
- 美國財政部海外資產控制辦公室（OFAC），經濟與貿易，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
- 接受 EU 金融制裁的個人、團體與實體整合清單  
[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:
- 聯合國安理會制裁委員會 – 各國狀態：  
<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。亦包括最終有效控制法人或法律協議之人。

### **Competent authorities**

#### **權責機關**

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

權責機關係指與防制洗錢及打擊資恐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，亦同樣指稱領土或地區。

### **Designated Non-Financial Businesses and Professions (DNFBPs)**

#### **指定之非金融事業或人員 (DNFBP)**

- 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. 信託及公司服務業者係指 防制洗錢金融行動工作組織 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.
  - 擔任法人的成立代理人。
  - 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.
  - 提供完成證記的辦公室；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。

### **Express Trust** 意定信託

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

意定信託是指委託人清楚建立的信託，通常以文件形式為之（如：書面的信託契約）。它們跟透過法律運作而存在而非來自委託人意思或決定建立信託或類似法律協議（如：推定信託）相反。

### **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.

法人是指企業機構、基金會、機構、合作關係或協會或任何能夠與金融機構建立長期客戶關係或擁有財產的類似機構。

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

### **擔任重要政治性職務人士 (PEP)**

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

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。與其家庭成員間的業務關係或密切關聯者之業務往來，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層級或次要之個人。

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

### **自律團體 (SRO)**

A *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.

自律團體代表專業（如：律師、公證人、其他獨立的法律專業人士或會計人員）會員構成、有能力規範符合其執業且也有執行特定監管或監督類型職能的機構。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）；奈及利亞；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.

國際不動產代理人聯合會、英國全國不動產協會、瑞典不動產代理人協會。

#### **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。