



FATF REPORT

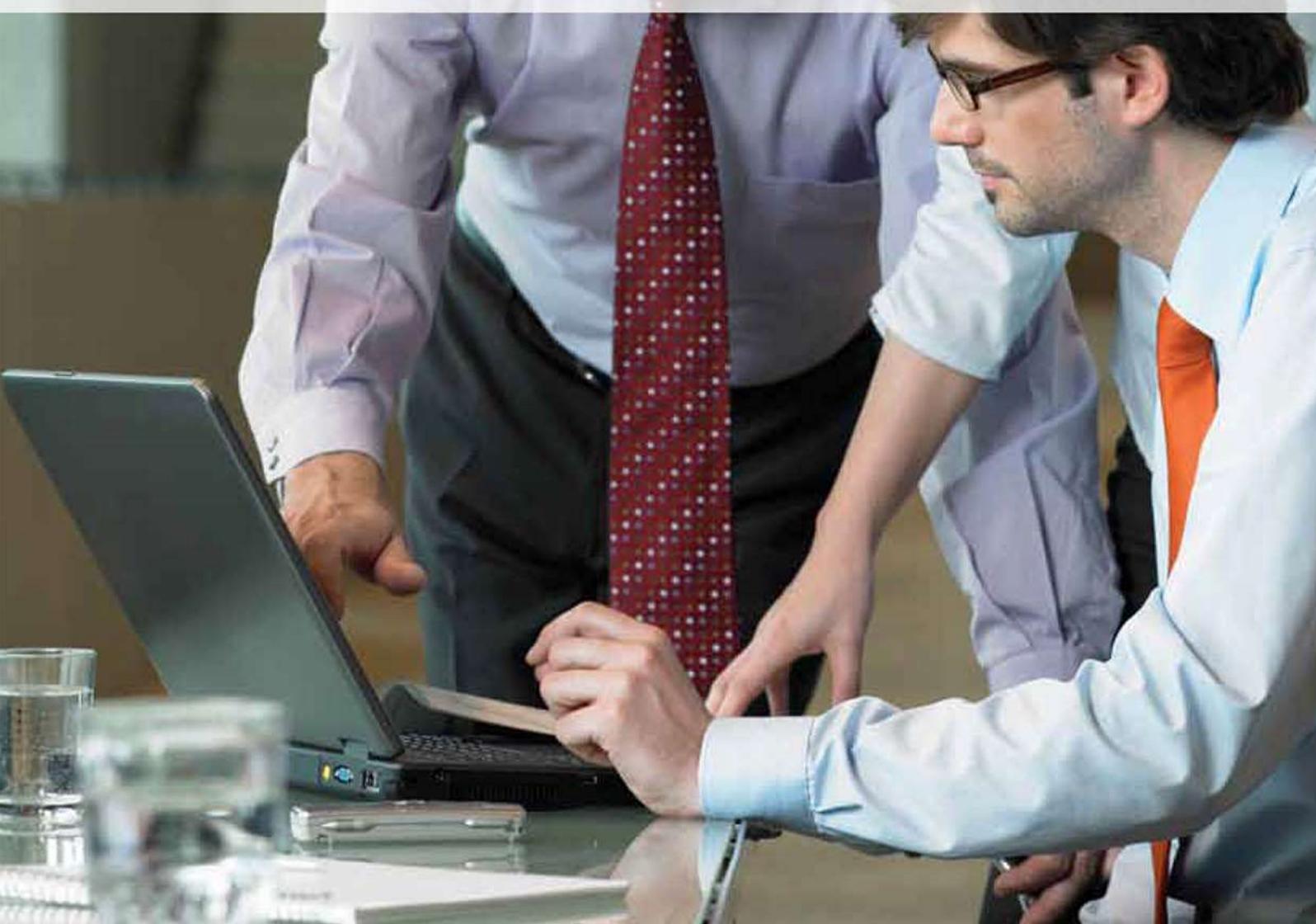
防制洗錢金融行動工作組織報告

Operational Issues Financial Investigations Guidance

執行議題 - 財務調查指引

June 2012

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FINANCIAL ACTION TASK FORCE
防制洗錢金融行動小組

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

防制洗錢金融行動工作組織（FATF）是跨政府之獨立單位，負責保護全球金融系統及研擬和推動防制洗錢、資助恐怖分子及資助大規模毀滅性武器擴散之政策。防制洗錢金融行動工作組織的建議已成為公認的全球防制洗錢（AML）與打擊資助恐怖主義（CFT）標準。

For more information about the FATF, please visit the website:
有關防制洗錢金融行動工作組織的詳細資訊，請造訪以下網站：

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FINANCIAL INVESTIGATIONS GUIDANCE

財務調查指引

I. PURPOSE OF THE GUIDANCE

I. 指引目的

1. During the latest revision of Financial Action Task Force (FATF) standards, greater attention was given to the operational anti-money laundering/countering the financing of terrorism (AML/CFT) framework. One goal was to strengthen the law enforcement standards (Recommendations 30 and 31) to enhance the functions, responsibilities, powers and tools of law enforcement to effectively conduct money laundering (ML), terrorism financing (TF) and asset-tracing investigations. The revised standards now recognise financial investigations as one of the core elements of the FATF's operational and law enforcement Recommendations. This guidance note is not a standard or interpretative note and is only intended to help countries better understand law enforcement's role in the larger AML/CFT context, specifically addressing the role of financial investigations. The intention of this guidance note is to assist policy makers as well as practitioners by providing ideas and concepts that they can incorporate into their AML/CFT frameworks that might lead to more effective financial investigations. These ideas can go beyond the scope of the standards but are intended to provide examples of ways in which countries conduct financial investigations. As an added benefit, the guidance can also be useful to future AML/CFT assessments and could assist countries in improving the effectiveness of the operational AML/CFT regime.

1. 自上次防制洗錢金融行動工作組織（FATF）標準改版以來，各方焦點皆放在防制洗錢／打擊資助恐怖主義（AML/CFT）的執行架構上。目標之一在於強化執法標準（建議第 30 與 31 項），加強執法功能、責任、權力與工具，以期有效執行洗錢（ML）、資恐（TF）和資產追蹤調查。標準修訂版已承認財務調查為 防制洗錢金融行動工作組織 執行與執法建議的核心元素之一。此指引說明並非標準或註釋，其目的僅在於協助各國正確瞭解執法在防制洗錢/打擊資恐領域的角色，特別是在財務調查方面扮演的角色。此指引說明的目的在於協助政策制定與實務機構，並提供不同的構想與概念，政策制定與實務機構可將此納入其防制洗錢/打擊資恐架構，執行更有效的財務調查。這些構想雖然已逾越標準的範圍，但其目的在於提供可由各國採用的財務調查技術範例。另外，此指引還可在未來用於防制洗錢/打擊資恐評估，協助各國改善其防制洗錢/打擊資恐執行制度的有效性。

2. The term *financial investigation*, for the purpose of this guidance note, means an enquiry into the financial affairs related to criminal conduct. The major goal of a financial investigation is to identify and document the movement of money during the course of criminal activity. The link between the origins of the money, beneficiaries, when the money is received and where it is stored or deposited can provide information about and proof of criminal activity.¹ By identifying the extent of criminal networks, the scale of criminality, by tracing proceeds of crime, terrorist funds and other proceeds subject to confiscation and by developing evidence which can be used in criminal proceedings, the overall effectiveness of a country's AML/CFT regime will be enhanced. This guidance contains overarching concepts, strategies and techniques which are meant to be applicable to different legal systems and different types of operational

¹ See FATF (2012), Interpretative Note to Recommendation 30, 2nd paragraph.
¹ 參閱防制洗錢金融行動工作組織(2012)，參閱建議第 30 項第 2 段註釋。

frameworks and is intended to assist countries on how best to implement the FATF Recommendations associated with conducting financial investigations. This guidance will highlight areas where training and technical assistance for financial investigators and prosecutors² can be sought but is not to be viewed as a training manual on financial investigations. Throughout the document references are made to information that provides further detail on financial investigation.³

2. 依此指引說明之宗旨，*財務調查*一詞係指調查涉及犯罪行為的金融事務。財務調查的主要目的在於辨識與記錄犯罪活動期間的金錢流向。金錢來源、受益人、金錢的收受時間及其儲存或存放地點之間的連結，可提供犯罪活動證據資訊。¹ 各國防制洗錢/打擊資恐制度可藉由辨識犯罪網的範圍與犯罪規模、追查應刑事沒收的犯罪所得、恐怖分子資金及其他收益，以及蒐集可用於刑事程序的證據而加強其整體有效性。此指引包含多種概念、策略與技術，可用於不同的法律制度與執行架構，其目的在於協助各國確實執行防制洗錢金融行動工作組織的財務調查相關建議。此指引特別強調財務調查員與檢察官的訓練與技術協助領域²，但不可作為財務調查訓練手冊。整份文件皆指示參考其他更詳細的財務調查資料。³

3. Before any of the requirements of the FATF standards can be implemented by operational authorities, a comprehensive legal framework is necessary to underpin these requirements, and the use of investigative techniques can only be applied if they are permitted by and within the possibilities of the basic principles of a country's domestic legal system. This guidance will highlight elements of the Palermo Convention⁴ which are necessary to implement many of the law enforcement powers and techniques described in this guidance.

3. 在執行機關執行防制洗錢金融行動工作組織標準的任何要求前，須以完善的法律架構支持各該要求，且須在各國國內法律制度的基本原則准許使用相關調查技術後，才能在該基本原則的可行範圍內使用該調查技術。此指引強調巴勒莫公約⁴，落實此指引描述的諸多執法權力與技術時，皆須仰賴此公約。

STANDARDS RELATED TO LAW ENFORCEMENT

執法相關標準

4. The FATF Recommendations are designed to detect illicit financial activity, protect the integrity of financial markets, bring criminals to justice and prevent threats to national security. Law enforcement should seek to prevent, deter and disrupt ML, associated predicate offences, the financing of proliferation of weapons of mass destruction and TF activity. Also, law enforcement should be aiming to deprive criminals of their illicit proceeds and terrorists of the resources needed to finance their activities. For the purposes of this guidance note – which seeks to clarify the role of law enforcement in conducting financial investigations – the following FATF Recommendations are relevant:

4. 防制洗錢金融行動工作組織建議的目的在於偵查非法金融活動、保護金融市場的健全性、

² For the purposes of this guidance note the term prosecutor also includes investigative magistrate and investigative judge

² 依此指引說明之宗旨，檢察官一詞包括調查官與調查法官。

³ See also the list of selected sources relating to financial investigation at the end of this document.

³ 另請參閱本文件末尾所列的財務調查精選資料來源表。

⁴ United Nations (2000).

⁴ 聯合國 (2000)。

將罪犯交由司法審判，以及避免國家安全受到威脅。執法應尋求防止、威嚇及打擊洗錢、相關前置犯罪、大規模毀滅性武器擴散與資恐活動。此外，執法的目的應在於剝奪罪犯的非法所得及資恐活動所需的資源。此指引說明旨在澄清執法在財務調查中的角色，且涉及以下防制洗錢金融行動工作組織建議：

5. **National cooperation and coordination:** According to the new standards, each country should have a national policy on anti-money laundering and counter terrorist financing, (Recommendation 2). This policy should be informed by the risks identified, and such policy should be regularly reviewed in order to ensure that it stays accurate and contemporary. Knowledge acquired through financial investigations can be used for risk assessment and monitoring purposes. Countries need a national policy to drive the national agenda for combating money laundering, associated predicate offences, terrorist financing and proliferation. Countries should have formalised co-ordination mechanisms which enable authorities to develop and implement these policies. This should facilitate co-operation, informal and formal, between authorities in general and within law enforcement in particular.

5. **國內合作與協調：**根據新標準，各國皆應制定國內防制洗錢和打擊資助恐怖主義政策（建議第 2 項）。此政策應根據所辨識的風險製作，並應定期審查，確保維持正確性且符合當時要求。財務調查過程中獲得的知識可用於風險評估與監控用途。各國須制定國內政策來推動國內打擊洗錢、相關前置犯罪、資恐與武器擴散的時程。各國應規劃協調機制，協助各機關擬定與執行國內政策。此作為應促進各機關一般性正式與非正式合作，特別是在執法領域。

6. **Statistics:** FATF places emphasis on effectiveness, and the collection of data is a necessary element to understand how countries determine the effectiveness of financial investigations. For example, money laundering offences and activities should be pursued criminally using financial investigations, and offenders should be prosecuted and appropriately sanctioned. Recommendation 33 is designed to ensure that effective record-keeping systems are in place for reporting statistically what has been accomplished through ML/TF investigations, prosecutions, convictions, property freezing, seizures and confiscation, along with other relevant data.

6. **統計：**防制洗錢金融行動工作組織 著重有效性，而蒐集資料是瞭解各國如何確定其財務調查有效性必須具備的元素。例如，洗錢犯罪與活動應透過財務調查進行刑事追訴，犯罪應予追訴並接受適當制裁。建議第 33 項的目的在於確保設置有效的記錄維持系統以製作統計報表，除了說明透過洗錢/資恐調查、追訴、定罪、凍結財產、扣押與刑事沒收得到何種成果外，還提供其他相關資料。

7. **ML and TF offences:** Recommendations 3 and 5 are the core Recommendations requiring that money laundering and terrorist financing activities be criminalised as independent criminal offences. To successfully prosecute these offences without a prior financial investigation is extremely difficult. This guidance note is to assist countries to better develop their capacity to conduct a proper financial investigation.

7. **洗錢與資恐犯罪：**建議第 3 及 5 項為核心建議，要求將洗錢和資恐活動宣告為非法行為，且列為獨立犯罪。如果不先完成財務調查，將很難成功追訴洗錢與資恐罪行。此指引旨在協助各國培養自身正確執行財務調查的能力。

8. **Confiscation and provisional measures:** Recommendations 4 and 38⁵ address measures to identify, trace and evaluate property which is subject to confiscation. The Recommendations call for the use of provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property. The standards recommend that countries initiate appropriate investigative measures.

8. **刑事沒收與暫時措施：**建議第 4 及 38 項⁵ 提出應沒收財產的辨識、追蹤與評估措施。這兩個建議要求凍結及扣押等暫時措施，以防止交易、轉讓或處分應沒收的財產。相關標準建議各國採取適切的調查措施。

9. **Responsibilities of law enforcement and investigative authorities:** Recommendation 30 calls on countries to designate criminal investigators to pursue ML and TF offences. New requirements include the need to pursue parallel financial investigations as well as to make use of domestic and international investigative task forces or multidisciplinary teams. Therefore, countries should ensure that their legal framework does not impede the usage of such multi-disciplinary groups. The Interpretative Note to Recommendation 30 applies *to criminal investigators* who are responsible for pursuing the criminal violations involving the ML and TF offences. The note also clarifies that law enforcement investigators of designated offences⁶ should either be authorised to pursue the investigation of any related ML/TF offences during a parallel investigation or be able to refer the case to another designated agency to follow up with such an investigation. Further, this guidance note also applies not only to those *competent authorities* which are not law enforcement authorities per se but also to those authorities which have the responsibility for pursuing financial investigations of predicate offences to the extent that they are exercising functions covered under Recommendation 30. For example, anti-corruption enforcement authorities and tax authorities with enforcement powers may be designated to investigate ML and TF offences arising from or related to corruption or serious tax offences under Recommendation 30, and these authorities should also have sufficient powers to identify, trace, and initiate freezing and seizing of assets in accordance with the laws of the jurisdiction. This guidance is also relevant to *public prosecutors*, especially when their role is to co-ordinate the necessary investigative resources in the field which are required to pursue complex financial investigations and organised crime cases. Prosecutors are often responsible for a variety of tasks associated with the financial investigation and in preparing evidence to support formal charges. While the focus is on creating specialised “financial investigators”, all criminal investigators should be trained on the value of financial evidence to support all criminal investigations. Raising awareness should also apply to street level crimes, in addition to long-term investigations, thus requiring changing the dynamics and attitudes of investigators and prosecutors regarding the utility of financial investigations. This guidance should also be useful to *policy makers* and those who deliver technical assistance.

9. **執法責任與調查職權：**建議第 30 項呼籲各國指定刑事偵查員追查洗錢和資恐犯罪。新的要求包括須尋求併行財務調查以及充分運用國內與國際調查特別小組或跨領域團隊。因此，各國應確保其法律架構不會妨礙運用跨領域團隊。建議第 30 項的註釋適用於 **刑事偵查員**，由其負責追查涉及洗錢及資犯罪的刑事違法行為。此指引說明亦澄清，特定犯罪的執法調查員於併行調查過程中應有權調查任何相關洗錢/資恐犯罪，或能將案件移轉給其他指定的幹員繼續調查。此外，此指引說明不僅適用於本身並非執法機關的 **權責機關**，亦適用於負責對前置犯罪進行財務調查且得行使建議

⁵ FATF (2010): A list of selected sources for financial investigation with complete bibliographic information is included at the end of this report.

⁵ 防制洗錢金融行動工作組織 (2010)：此報告末尾列有一份包含完整書目資訊的財務調查精選資料來源表。

⁶ See FATF (2012), Glossary.

⁶ 參閱防制洗錢金融行動工作組織 (2012)，詞彙表。

第 30 項所稱職權的機關。例如，可指定反貪機關以及稅務機關調查衍生自或涉及建議第 30 項所稱貪污或重大稅務犯罪的洗錢和資恐犯罪。這些機關應有充分的權力得依管轄區法律辨識、追查及凍結和扣押資產。此指引對**檢察官**也很重要，特別當其在現場協調複雜財務調查與組織犯罪案件所需的必要資源時。檢察官通常負責多項與財務調查有關的任務，另外還負責準備支持起訴的證據。儘管重點在於培養專業「財務調查員」，所有刑事偵查員皆應接受金融證據價值訓練，以支援所有犯罪調查。除了長期調查外，還應提升街頭犯罪意識，故在財務調查的實效方面，必須改變調查員與檢察官的動力與心態。此指引對**政策制定者**和技術支援者也非常實用。

10. **Powers of law enforcement and investigative authorities:** Recommendation 31 stresses the need for investigators to have access to all necessary documents. This includes having powers to compel the production of financial records and obtain evidence. The Recommendation is designed to enable the use of a wide range of investigative techniques which include undercover operations, intercepting communications, accessing computer systems and controlled delivery. Section VI of this report addresses these techniques. Specific requirements also include establishment of mechanisms to identify the owner/controller of accounts, including the ability to identify assets without tipping off the owner and to seek and utilise information from the FIU.

10. **執法權力與調查職權：**建議第 31 項強調調查員須有權取得所有必要文件，包括有權製作金融記錄和取得證據。此建議的目的在於確保使用各種調查技術，包括臥底偵查、通訊監察、進入電腦系統及控制下交付。此報告第 VI 節討論這些技術。各項特定要求還包括建立機制以辨識帳戶的所有人／控制人，包括不通知所有人而能辨識資產的能力，以及尋求和使用金融情報中心資訊。

11. **International co-operation:** Recommendation 40 calls on countries to establish mechanisms allowing financial investigators to obtain and share information on each other's behalf. Countries are expected to establish mechanisms for investigators to use their powers to assist foreign financial investigations. Recommendation 40 states that law enforcement should be allowed to establish and utilise joint investigative teams with law enforcement in other countries and promotes the posting of liaison officers. Some co-operation can be accomplished through bilateral and multilateral arrangements, including memoranda of understanding (MoUs), when needed. Financial investigators are encouraged to strategically include co-operation with non-counterparts as part of financial investigations, indirectly or directly. Recommendation 40 is designed to ensure that information received from other countries is used for investigative and law enforcement purposes and that information received is protected from unauthorised disclosure. Further, the Recommendation advocates that countries establish procedures to allow informal exchanges of information to take place (prior to the submission of a formal request); in essence, advocating the exhausting of all forms of informal co-operation prior to the submission of a mutual legal assistance (MLA) request.

11. **國際合作：**建議第 40 項呼籲各國建立機制，確保財務調查能在相互基礎上取得及共享資訊。期待各國建立機制，由調查員透過此機制運用其權力協助國外財務調查員。建議第 40 項除了指出應允許執法與其他國家的執法建立及運用聯合調查小組外，還推動設置聯絡官。有些合作可透過雙邊及多邊協議達成，包括視需要簽備忘錄（MoU）。此建議鼓勵財務調查員直接或間接與非對等機關建立策略性合作，並以此作為財務調查的一部分。建議第 40 項的目的在於確保將得自其他國家的資訊用於調查和執法用途，並保護該資訊避免擅自對外揭露。另外，此建議支持各國制定程序，允許非正式地交換資訊（在正式要求提交之前）；這在本質上就是支持在提出司法互助（MLA）要求前，進行各種形式的非正式合作。

12. **Cash couriers:** The requirements to collect, record and share information related to Recommendation 32 are invaluable when pursuing a financial investigation. In particular, on-going criminal investigations can benefit greatly when it is known that targets or associates have previously filed cross-border cash declarations. These declarations often help investigators establish knowledge and intent in on-going money laundering or criminal investigations. While the main objective of Recommendation

32⁷ is to put measures in place to detect the physical cross-border movement of currency and negotiable instruments, a financial investigation is an important follow up component of any Recommendation 32 regime.

12. **現金攜帶**：建議第 32 項的資訊蒐集、記錄與共享等要求對執行財務調查非常重要。特別須指出的是，當發現調查目標或同夥過去曾經提交跨國現金申報時，也就是長期犯罪調查展現輝煌成果的時候。這些申報通常能協助調查員瞭解持續進行的洗錢或犯罪調查，並加強其調查決心。建議第 32 項的⁷ 主要目的在於規劃措施查明貨幣及可轉讓金融工具的實際跨境流動情形，而財務調查則是任何建議第 32 項制度的重要追蹤要素。

OBJECTIVES AND BENEFITS OF FINANCIAL INVESTIGATION

財務調查的目的與效益

13. Countries should ensure that financial investigations become the cornerstone of **ALL** major proceeds-generating cases and terrorist financing cases and that their key objectives include:

13. 各國應確保讓財務調查成為**所有**產生犯罪所得的重大案件與資恐案件的基石，其主要目的包括：

- Identifying proceeds of crime, tracing assets and initiating asset confiscation measures, using temporary measures such as freezing/seizing when appropriate.
- 辨識犯罪所得、追蹤資產、執行資產刑事沒收措施、採取適切的凍結／扣押等暫時措施。
- Initiating money laundering investigations when appropriate.
- 時機適當時發動洗錢調查。
- Uncovering financial and economic structures, disrupting transnational networks and gathering knowledge on crime patterns.
- 揭露金融與經濟結構、瓦解跨國網絡、蒐集犯罪模式資訊。

14. A financial investigation involves the collection, collation and analysis of all available information with a view towards assisting in the prosecution of crime and in the deprivation of the proceeds and instrumentalities of crime. Criminals usually like to maintain some degree of control over their assets, and as a result there is usually a “paper trail” that will lead back to the offender. That paper trail can also be followed to identify additional offenders and potentially the location of evidence and instrumentalities used to commit the crimes. The ability of law enforcement agencies to conduct financial investigations and have access to financial and other information is essential to effectively combating ML, associated predicate offences and TF offences. Such investigations will often establish the existence of otherwise unknown crimes and assets that have been purchased with proceeds of criminal activity, thus allowing these assets to become subject to confiscation.

14. 財務調查需要蒐集、核對與分析所有可用的資訊，以協助追訴犯罪及剝奪犯罪所得與工具。罪犯對其資產通常希望保有某種程度的控制，因此經常會留下一些追查至犯罪人的「活動紀錄」。

⁷ FATF (2005).

⁷ 防制洗錢金融行動工作組織 (2005)。

也可循著活動紀錄找到其他犯罪人，甚至找到犯罪證據和工具的所在地點。執法機關執行財務調查和存取金融及其他資訊的能力，對於有效打擊洗錢、相關前置犯罪和資恐犯罪至關重要。這些調查通常能發掘其他未知的犯罪以及用犯罪所得購買的資產，而應予以刑事沒收。

15. A financial investigation can be used as an instrument to reveal undiscovered predicate offences and to identify other people or companies. Thus, it is imperative for countries to use financial intelligence upstream and downstream within their value chain. This means that the flow of financial intelligence between regulators, supervisors, FIUs, law enforcement and other competent authorities (the value chain) should be free-flowing to and from all entities in accordance with existing domestic laws, policies and procedures and should be results-driven, not process-driven. If such a fluid system of sharing financial information and intelligence is established, the country will make more effective use of financial data, thus becoming more effective in combating money laundering, terrorist financing and major proceeds-generating offences.

15. 財務調查可用作揭露前置犯罪和辨識其他人或公司的工具。因此，各國應充分運用其價值鏈上的金融情報上下游。這表示監管機關、監理機關、金融情報中心、執法及其他權責機關（價值鏈）間的金融情報流動應在現行國內法、政策與程序的規範下，於實體之間自動流動，且應成果導向而非過程導向。建立這套金融資訊與情報共享流動系統後，各國將能更有效地使用金融資料，在打擊洗錢、資恐和產生犯罪所得的重大案件方面也將更有成效。

16. Countries should take appropriate measures to protect the human rights of the targets of their investigations. Financial enquiries are often intrusive and result in obtaining private information on an individual. Competent authorities involved in financial investigations must be aware of their country's human rights legislation protecting the right to privacy, along with associated considerations. Investigators should be able to justify such enquiries as proportionate, non-discriminatory, legitimate, accountable and necessary to the investigation being undertaken. As a rule, such measures ensure that the targets of investigation have the right to a fair trial, the presumption of innocence and the protection of property.

16. 各國應採取適切措施，保護調查對象的人權。金融詢問通常具有侵犯性，目的在於取得個人隱私資訊。涉及財務調查的權責機關除了應瞭解該國保護隱私權的人權立法外，還應瞭解相關考量事項。調查員應證明金融詢問符合比例原則、無歧視、合法、負責，且為財務調查的必要環節。上述措施可確保調查目標的公平審判權、無罪推定及財產保護。

II. OPERATIONAL FRAMEWORK II. 執行架構

INVESTIGATIVE STRATEGY 調查策略

17. Financial investigation should be an integral part of an overall crime strategy. Countries should establish a comprehensive policy that sufficiently emphasises financial investigation as an integral part of law enforcement efforts. Clear objectives, dedicated action, sufficient resources, training for investigators and use of the legal tools available in a comprehensive, creative, consistent, and committed manner are all important elements of an effective financial investigation strategy in any country. Countries should take active measures to ensure that financial investigations become a routine part of all law enforcement inquiries related to crime with financial gain.

17. 財務調查應為整體犯罪策略不可分割的一部分。各國應制定完善的政策，並充分突顯財務調查為執法行動不可分割的一部分。明確的目標、專注的行動、充分的資源、調查員的訓練，以及以全面、一貫、堅定且具創造性的方法使用可用的法律工具，都是確保各國有效財務調查策略的重要元素。各國應採取積極行動，確保財務調查成為與所有金融利得犯罪相關執法詢問的例行工作。

18. Countries should be proactive in developing effective and efficient strategies to make financial investigations an operational part of their law enforcement efforts. The following are some of the key elements that should be contained in these strategic plans:

18. 各國應主動制定效率高且有效的策略，確保財務調查成為執法行動的一個執行項目。以下列出幾個應納入前述策略的重要元素：

- Ensuring support from high-level officials within the country who publicly promote and adopt a national AML/CFT strategy.
- 獲得國家高層官員的支持，並由該官員公開推動採取內國防制洗錢/打擊資恐策略。
- Releasing public statements by high-ranking officials supporting and demonstrating commitment to the national strategy and recognising their accountability.
- 由高階官員發佈公開聲明，支持及展現對國內策略的承諾，同時承認其責任。
- Establishing strategic planning working groups to develop an effective policy that incorporates the skills of all relevant agencies into an action plan; these groups include representatives from all relevant agencies and components participating in financial investigations.
- 成立策略規劃工作小組，制定有效的政策，並將所有相關機關的技術納入行動計畫；工作小組由參與財務調查的所有相關機關及參與單位的代表組成。
- Conducting needs assessments and advocacy in promoting proper allocation of resources.
- 進行需求評估，並倡導推動合理的資源分配。
- Creating specialised investigative units that focus on financial investigations.
- 成立金融專責調查單位。

- Developing operational initiatives that promote the proactive use of powers to freeze assets.
- 擬定執行方案，鼓勵主動運用權力凍結資產。
- Articulating clear objectives for relevant departments and agencies that include effective coordinating structures and accountability.
- 向相關部門與機關傳達明確的目標，並且納入有效的協調架構與責任。

19. Countries should make it a policy priority to ensure that there are an adequate number of properly trained financial investigators. These financial investigators should be experienced in financial investigation matters involving both domestic laws and international conventions and standards. Countries should create institutional conditions that provide the appropriate environment to carry out financial investigations and to facilitate cooperation by providing the proper legal authority for any involved competent authorities as indicated in Recommendation 31. Financial investigations should be worked in close association with or fully integrated within “normal” or other predicate offence investigations. Ensuring that financial investigative specialized units can work closely with different competent authorities where specialised knowledge and expertise is required should be part of “standard operating procedures.”

19. 各國應將提供人數足夠且受過相關訓練的財務調查員列為政策的優先項目。財務調查員應對財務調查事務擁有豐富的經驗，包括國內法和國際公約與標準。各國應訂定制度條件，如建議第31項所稱賦予相關權責機關適切的法定職權，提供適宜的財務調查和有助於合作的環境。財務調查應與「一般」或其他前置犯罪調查密切配合，或整合至該調查。對於需要專業知識與技術且以此為「標準作業程序」一部分的權責機關，應確保財務調查專責單位與各該權責機關密切合作。

20. Countries should establish a strategic approach to financial investigations and consider implementing programmes whereby agencies, such as confiscation agencies, certain law enforcement agencies or financial intelligence units (FIUs), are reimbursed costs incurred on financial investigations with asset recovery actions such as the hiring of experts, translation costs, international travel, etc.

20. 各國應制定財務調查策略方法，且應考慮實施相關計畫，由刑事沒收機關、特定執法機關或金融情報中心（FIU）針對伴隨資產回復行動的財務調查成本支出（例如專家聘雇費、翻譯費、國際差旅費等等），依該計畫獲得償還。

PARALLEL INVESTIGATIONS

併行調查

21. Parallel investigations represent, in relation to financial investigations, focusing on the predicate offence and the money laundering offence simultaneously. In relation to terrorism investigations, parallel investigations focus on the terrorism offences and terrorist financing offence at the same time.⁸

Recommendation 30 states that, for all money laundering, associated predicate offences and terrorist financing, law enforcement authorities should develop a proactive parallel investigation. The concept of having parallel investigations brings together expertise from both investigative backgrounds which is complementary and ensures offences are fully investigated.

⁸ See Section III on terrorist financing.
⁸ 參閱資恐第II節。

21. 併行調查在財務調查方面，代表同時著重前置犯罪和洗錢犯罪。併行調查在恐怖主義調查方面，同時著重恐怖主義犯罪和資恐防制。⁸ 建議第 30 項指出，執法機關應針對所有洗錢、相關前置犯罪和資恐主動進行併行調查。併行調查概念結合兩種調查背景的專業知識，不僅具有互補效果，更能確保充分調查犯罪。

22. Conducting a parallel financial investigation of the predicate offence is being proactive, as it identifies the proceeds of the crimes currently under investigation for seizure/restraint. It therefore ensures that the assets will not dissipate/disappear and prevents the infiltration of illegal profits into the legal economy, thereby removing the instrument for committing future crimes. The practice thus contributes to upholding the principle in both law and society that no person should benefit from crime.

22. 前置犯罪的併行財務調查是一種積極行動，旨在發現目前調查案件的犯罪所得，以利扣押／禁止。併行調查能確保資產不會消散或消失，且能防止非法所得滲透至合法經濟，剝奪犯罪工作，避免日後犯罪。綜上所述，此做法有助於支持法律及社會上「任何人皆不得靠犯罪獲利」的原則。

23. Financial investigations are data intensive. Specifically, they involve records, such as bank account information, which point to the movement of money. Any record that pertains to or shows the paper trail of events involving money is important. The major goal in a financial investigation is to identify and document the movement of money during the course of the commission of an offence. The link between where the money comes from, who receives it, when it is received, and where it is stored or deposited can provide proof of criminal activity. Financial information can also assist the parallel investigation into the predicate offences by:

23. 財務調查為資料密集行動。此行動特別涉及彰顯金錢移動的紀錄，例如銀行帳戶資訊。任何涉及或顯示金錢活動的紀錄都是重要紀錄。在財務調查方面，主要目的在於辨識及用文件證明犯罪過程中的金錢移動。金錢的來源、受款人、受款時間及金錢儲存或存放地點之間的連結可能提供犯罪活動證據。金融資訊還能透過以下方式協助對前置犯罪進行併行調查：

- Identifying motives, associations and links to people and places.
- 辨識動機、關聯性以及人與地點的連結。
- Identifying the use of other services such as phones, transport and amenities relevant to the case.
- 辨識其他服務的使用，例如與案件有關的電話、運輸與便利設施。
- Locating or identifying suspects, witnesses or victims.
- 鎖定或辨識可疑分子、目擊者或被害人。
- Providing information on a suspect's movements (proactive, covert use of financial information).
- 提供可疑分子的活動資訊（積極主動、改變金融資訊的用途）。
- Providing information to address the issue of prolific and priority offenders where no previous method has been successful.
- 提供資訊以處理過去沒有任何方法曾經成功處理過的累犯與主要罪犯議題。
- Tracing persons.
- 追蹤個人。

24. For many major proceeds-generating offences, money laundering is simply the by-product of criminal activity. After the criminal receives the proceeds of the crime, he/she usually wants to do something with these proceeds. The ability to follow the paper trail allows the full development of the

facts and circumstances involved in the case to be shown in a logical and sequential pattern, and simplifies the understanding of how the financial pieces fits together. Parallel investigations ensure competent authorities uncover and identify all of the participants in a criminal enterprise. A parallel financial investigation provides insight into the hierarchy of criminal organisations, exposing them to possible prosecution.

24. 對許多產生所得的重大犯罪而言，洗錢只不過是犯罪活動的副產品。罪犯收到犯罪所得後，通常希望為這些錢做些什麼。追蹤活動紀錄的能力不僅揭露案件相關事實與情境全都按照一套邏輯與順序模式發展，更清楚顯示金融活動如何化零為整。併行調查確保權責機關揭露與辨識犯罪企業的所有參與者。透過併行財務調查深入瞭解犯罪組織的階層體系，進而揭露以利進行可能的追訴。

25. Information, intelligence⁹ and evidence obtained during parallel investigations can be shared and resources can be effectively used to avoid duplication of services. For example, a predicate offence investigation may be utilising the interception of communication to collect information/evidence not only of a predicate offence but also of the associated money laundering offence; this information could then be used in seizure/restraint and forfeiture orders. A financial investigation enhances and corroborates a predicate offence investigation, as it shows lifestyle, unexplained wealth and, depending on the country, can be used as indirect proof (inferred by the courts) as the only explanation that the wealth is from illegal activity, thereby helping to establish sufficient evidence to prosecute a person on criminal charges for both predicate and related money laundering offence. This will form the basis for seizure and forfeiture and can be accomplished through the collation and presentation of either direct or circumstantial evidence. Thus, financial investigations help to target the top echelon of a criminal organisation.

25. 併行調查過程中取得的資訊、情報⁹ 與證據可供分享，資源可獲得有效運用，且可避免重複調查。例如，前置犯罪調查可透過通訊監察蒐集前置犯罪和相關洗錢犯罪的資訊／證據，這些資訊可用於後續扣押／禁止及刑事沒收令。財務調查揭露生活方式和不明財產，且視國家的不同用作間接證據（由法院作出推論）以及財產來自非法活動的唯一解釋證據，不僅能強化和支持前置犯罪調查，還有助於建立充分的證據，在前置犯罪和相關洗錢犯罪中起訴當事人。財務調查證據將作為扣押和刑事沒收的依據，且可透過核對及提出直接或情況證據而實現。因此，財務調查有助於鎖定犯罪組織的最高階層。

26. Countries should consider including in their standard operating procedures for investigative agencies some form of checklist or outline of the essential elements for conducting financial investigations. This can help structure each financial investigation and be used as a guideline for investigators.

26. 各國應考慮在其調查機關的標準作業程序中，針對財務調查的執行納入特定形式的檢核表或概略說明必要元素。檢核表有助於建構各次財務調查，且可用作調查員的準則。

MULTI-DISCIPLINARY GROUPS OR TASK FORCES

跨領域團隊或特別小組

27. Particularly in large, complex financial investigations, it is important to assemble a multidisciplinary group or task force to ensure the effective handling of the investigation, prosecution and eventual confiscation. There should be a strategic approach to intra-agency and inter-agency cooperation

⁹ The term *intelligence* in this context includes and focuses on intelligence agencies working on national security matters.

⁹ 情報在此背景下包括及著重於負責全國安全事務的情報機關。

in an effort to support information/intelligence sharing within and between agencies and with foreign counterparts.

27. 進行複雜的大規模財務調查時，須建立跨領域團隊或特別小組，確保有效完成調查、追訴和可能的刑事沒收。應為機關內部和跨機關合作制定策略方法，支持機關內部、跨機關以及與國外對等單位之間的資訊／情報共享。

28. Multi-disciplinary groups may comprise a range of individuals, including specialised financial investigators, experts in financial analysis, forensic accountants, forensic computer specialists, prosecutors, and asset managers. Experts may be appointed or seconded from other agencies, such as a regulatory authority, the FIU, a tax authority, an auditing agency, the office of an inspector general, or even drawn from the private sector on an as-needed basis. The multi-disciplinary groups should include individuals with the expertise necessary to analyse significant volumes of financial, banking, business and accounting documents, including wire transfers, financial statements and tax or customs records. They should also include investigators with experience in gathering business and financial intelligence, identifying complex illegal schemes, following the money trail and using such investigative techniques as undercover operations, intercepting communications, accessing computer systems, and controlled delivery. Multi-disciplinary groups should also consist of criminal investigators who have the necessary knowledge and experience in effectively using traditional investigative techniques. Prosecutors also require similar expertise and experience to effectively present the case in court.

28. 跨領域團隊可由不同領域的人組成，包括專業財務調查員、金融分析專家、會計鑑識人員、電腦鑑識專家、檢察官及資產管理人。專家可由其他機關任命或指定，例如監管機關、金融情報中心、稅務機關、稽核機關、檢察總長辦公室，或視需要從私部門聘請。跨領域團隊的成員應包括具備必要專業知識，懂得如何分析大量金融、銀行、商業和會計文件的人士，包括電匯、財務報表、稅務資料或客戶紀錄。此團隊的成員還應包括在蒐集商業與金融情報、辨識複雜非法陰謀、追蹤金錢線索以及運用臥底偵查、通訊監察、進入電腦系統及控制下交付等調查技術方面擁有經驗的調查員。跨領域團隊的成員還應包括在使用傳統調查技術方面擁有必要知識與經驗的刑事偵查員。檢察官也必須擁有類似的專業知識與經驗，以期有效向法院提起訴訟。

29. After assembling multi-disciplinary a group, it is imperative to have efficient and effective coordination between members of the team as well as all agencies involved. The failure of agencies or departments to link information/intelligence often plagues complex financial investigations. Some mechanisms that promote intra-agency and inter-agency co-operation are:

29. 成立跨領域團隊後，團隊成員與所有相關機關之間應進行有效的高效率協調。機關或部門若無法連接資訊／情報，通常會使複雜的財務調查變得更加困難。以下是一些有助於推動機關內部與跨機關合作的機制：

- Establishing information sharing systems whereby all investigative services would be aware of previous or on-going investigations made on the same persons and/or legal entities so as to avoid replication; conducting conflict resolution discussions and promoting cross-fertilisation.
- 建立資訊共享系統，所有調查相關機關都能藉此系統瞭解過去或現在針對相同個人及／或法律實體進行的調查，以避免重複；透過討論解決衝突，並促進互惠。
- Establishing policies and procedures that promote the sharing of information/intelligence within intra-agency and inter-agency co-operative frameworks; such policies and procedures should promote the strategic sharing of the necessary information.
- 制定政策與程序，在機關內部與跨機關合作架構下促進資訊／情報共享；政策與程序應能促進必要資訊的策略性共享。

- Establishing a process whereby intra-agency or inter-agency disputes are resolved in the best interest of the investigation.
- 建立流程，確保以最有利於調查的方式解決機關內部與跨機關爭議。
- Competent authorities should consider establishing written agreements such as MoUs or similar agreements to formalise these processes.
- 權責機關應考慮訂定 MoU 等書面協議，正式制定前述流程。

30. To enhance the level of expertise in relation to financial investigation within competent authorities, it should be possible to engage experts. In some cases, it may be useful or necessary to appoint experts or consultants who bring technical expertise in financial analysis, forensic accounting and computer forensics. Adequate safeguards should be in place when engaging private entities which minimise the risks of compromising the integrity of investigations.

30. 為了在權責機關職權範圍內提升財務調查的專業程度，須聘雇專家。在某些個案，任命在金融分析、會計鑑識和電腦鑑識方面帶來技術專業知識的專家或顧問或許有其必要，或者能提供助益。若為了將影響調查完整性的風險降至最低而聘請私人組織，應採取充分的安全措施。

31. Countries should develop a strategy to enhance co-operation between the public and private sectors beyond their reporting obligations (see Annex). As a source of financial information, the private sector is the owner of its data, has a vested interest in protecting its standing, has the ability and the expertise to process its data and often may be in a better position than law enforcement agencies. Adequate protection of information and right to privacy should also be part of the information exchange done within legal parameters. Thus, information exchange within legal parameters should be enhanced between the sectors to better and more effectively identify activity that may assist law enforcement in conducting financial investigations.

31. 公私部門除了報告義務（參閱附錄）外，各國應制定策略加強雙方的合作。作為金融資訊的來源之一、私部門為資料所有人、對其名望地位的維護有其利益、擁有處理資料的能力與經驗，且其所處情境通常優於執法機關。在法律範圍內交換資訊時，應考量完善的資訊保護和隱私權。因此，應加強公私部門在法律範圍內的資訊交換，確保以更有效且更佳的方式辨識有助於執法機關進行財務調查的活動。

ASSET RECOVERY 資產回復

32. Successful asset recovery requires a comprehensive plan of action that incorporates a number of important steps and considerations. Competent authorities will need to gather and assess the facts to understand the case, assemble a team, identify key allies, communicate with foreign practitioners (if a foreign nexus is established), grapple with the legal, practical, and operational challenges and ensure effective case management. Countries should also strategically look at options other than criminal confiscation, such as *non-conviction based* (NCB) or even administrative proceedings.

32. 成功的資產回復需要周全的行動計畫，並在計畫中納入重要的步驟和考量事項。權責機關需蒐集和評估事實，瞭解案件、成立團隊、辨識重要盟友、與國外實務工作者溝通（若與國外建立關係）、解決法律、實務和執行問題，以及確保有效管理案件。各國應從策略角度檢視犯罪刑事沒收以外的選項，例如非定罪基礎（NCB）程序，或甚至行政程序。

33. One of the biggest challenges in asset recovery investigations is producing the evidence that links the assets to the criminal activities (*property-based* confiscation) or proving that assets are a benefit derived from an offence committed by the target (*value-based* confiscation). To establish this link

investigators must identify and trace assets up to the point where the link with the offence or location of the assets can be determined. To achieve this, countries should consider creating specialised confiscation units, made up of financial investigators and prosecutors to identify and trace assets for the purpose of confiscation. If such an approach is taken, financial investigators dedicated to tracing and confiscating assets must then work closely with their counterparts in pursuing the criminal prosecution. Failure to do so can have negative consequences for the criminal case, and that in turn is likely to affect confiscation efforts.

33. 資產回復調查最大的挑戰之一是產生能將資產連結至犯罪活動的證據（*財產基礎*刑事沒收），或證明資產為調查目標的犯罪利益（*價值基礎*沒收）。為了建立此連結，調查員必須辨識資產，並追查至可確定與犯罪或資產所在地有所連結的程度。為此，各國應考慮成立由財務調查員與檢察官組成的沒收專責機構，以辨識和追查應沒收的資產。若採取此方法，負責追查和沒收資產的財務調查員須與其對等機關密切合作，以利刑事追訴。若未採取此方法，可能會對刑事案件造成負面後果，甚至可能影響刑事沒收。

34. As discussed in the Interpretative Notes to Recommendations 4 and 38, countries should establish mechanisms that will enable their competent authorities to effectively manage and, when necessary, dispose of, property that is frozen or seized or has been confiscated.¹⁰ These mechanisms should be applicable both in the context of domestic proceedings and pursuant to requests from foreign countries.¹¹ Asset management units should work closely with financial investigators and prosecutors to prevent the confiscation of assets that could be too cost-prohibitive or cumbersome to maintain.

34. 如建議第 4 與 38 項的註釋所述，各國應建立機制，確保其權責機關有效管理並在必要時處置凍結、扣押或刑事沒收的財產。¹⁰ 此機制應在國內訴訟程序條件下或依國外要求而適用。¹¹ 資產管理機構應與財務調查員和檢察官密切合作，避免刑事沒收成本過高或難以維護資產。

35. Another challenge in asset recovery investigations is the lack of central oversight as each asset recovery case passes through the various stages of the judicial system. A lack of central oversight of the process can result in blockages within the criminal justice pipeline. This can result in each stage of the process becoming fragmented; dealt only in isolation, making it difficult to coordinate financial investigation, seizure and confiscation from start to finish. To overcome this, countries should consider the creation and use of a national asset recovery database which records information on each asset recovery case as it passes through the criminal justice system. This allows information to be considered and analysed centrally with all stakeholders uniformly applying a statistical methodology. This should enable the identification of blockages in the process which in turn allows the swift resolution of such issues.

35. 當資產回復案件在司法體系的不同階段進行處理時，缺乏中央監督機關的監督，而這正是資產回復調查的另一個挑戰。在過程中缺乏中央監督機關可能造成刑事司法管道阻滯，導致過程的每個階段支離破碎，各自孤立，以致難以從開始自結束協調財務調查、扣押與沒收。為了解決這個問題，各國應考慮建立和使用國家資產回復資料庫，當資產回復案件進入刑事司法體系流程後，記錄每筆案件的資訊。此方法可確保集中考量分析資訊，所有利害關係人皆統一使用一種統計方法。如此一來將能發現過程中的阻滯，並迅速解決問題。

¹⁰ FATF (2010).

¹⁰ 防制洗錢金融行動工作組織 (2010)。

¹¹ See Brun, J.P., *et al* (2011).

¹¹ 參閱 Brun, J.P., *et al* (2011)。

36. Such a database provides a single source of historic information about asset recovery actions for the use of on-going investigations and also facilitates greater understanding and co-operation among competent authorities. Such a system often contributes to better co-ordination, allowing for more assets to be identified, seized and successfully confiscated. A national database is also an important tool because it helps to improve the effectiveness of the asset recovery regime and support a “joined-up” approach to legal and operational processes. Statistics for the purposes of Recommendation 33 may also be retrieved from the database.

36. 全國性資料庫提供資產回復措施單一歷史資訊來源，不僅可用於進行中的調查，更有助於權責機關之間的瞭解與合作。這類系統對協調有很大的幫助，亦有助於辨識、扣押和成功沒收更多資產。全國性資料庫也是一種重要的工具，能協助改善資產回復制度的有效性，支持法律與執行過程的有效連接。也可從資料庫擷取統計資料，達到建議第 33 項要求的目的。

REGISTRIES

登記簿

37. As mentioned in Recommendation 24, countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. Moreover, as mentioned in Recommendation 25, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries that can be obtained or accessed in a timely fashion by the competent authorities. Such accurate and timely information is vital to a financial investigation. Complex financial investigations involving the use of corporate vehicles require imaginative, tenacious and expert investigators. Hence, in order to properly investigate complex cases involving corporate vehicles, countries should provide financial investigators more education, development and training regarding:

37. 如建議第 24 項所稱，各國應確保充分、正確、及時的法人受益所有權與控制資訊，且可由權責機關及時取得或存取。如建議第 25 項所稱，各國應確保充分、正確、及時的意定信託資訊（包括委託人、受託人與受益人資訊），且可由權責機關及時取得或存取。這些正確的及時資訊對財務調查非常重要。涉及公司的複雜財務調查應由富有創意、意思堅定的專業調查員執行。因此，為了順利調查涉及公司的複雜案件，各國應提供財務調查員更多有關以下項目的教育訓練與發展課程：

- The nature of corporate vehicles around the world and their potential for misuse.
- 全球公司的性質及可能的濫用。
- The most effective investigative skills and techniques for “piercing the corporate veil”.
- 「揭穿公司面紗」最有效的調查技巧與技術。

38. In order to facilitate financial investigations, countries could develop and maintain publicly available registries, such as company registries, land registries, and registries of non-profit organisations. If possible, such registries should be centralised and maintained in electronic and real-time format, so that they are searchable and updated at all times. Such a system will speed up the access of financial investigators to necessary information related to identifying, tracing, freezing and subsequently confiscating assets.

38. 為了促進財務調查，各國應制定與維持公開的登記簿，例如公司登記簿、土地登記簿及非營利組織登記簿，若可能，應以電子及時格式集中管理和維持登記簿，確保可隨時搜尋與更新。這

類系統將加速財務調查員取得辨識、追查、凍結及後續沒收資產等必要資訊的速度。

39. In order to assist competent authorities in obtaining access to relevant information in financial investigations, certain basic information on legal entities should be maintained in corporate registries.¹² Such basic information must be easily verifiable and unequivocal.¹³ Where feasible, the transition of company registry systems from passive recipients of data to more active components in a country's AML/CFT regime is encouraged. Countries are also encouraged to direct more resources to their company registries to ensure that the basic information supplied is compliant with the Recommendations. Registries would benefit from implementing a robust ongoing fact-checking component (even if based solely on statistically significant random sampling). Those that demonstrate an effective capacity to enforce financial penalties or other punitive measures against noncompliant registered legal entities will contribute to improving the accuracy of data. As a result, financial investigators would have immediate access to high-quality data rather than the outdated often inaccurate information.

39. 為了協助權責機關取得財務調查資訊，應在公司登記簿內維持法律實體的某些基本資訊。¹² 這些資訊必須明確且容易驗證。¹³ 若可行，鼓勵在國家的防制洗錢/打擊資恐制度下，將公司登記簿從被動接受資料轉變成提供更主動的功能。亦鼓勵各國將更多資源導入公司登記簿，確保所提供的資訊符合相關建議。若能持續實施全面事實驗證（即使僅以統計學上重要的隨機取樣為依據），登記簿將更加完善。能針對登載不實的法律實體執行金融裁罰或其他處罰措施的有效做法，將有助於改善資料的正確性。如此一來，財務調查員將能及時取得高品質資料，而非多半為不正確的過時資訊。

40. Countries should make technological investments in their corporate registry systems. If a registry is to become an efficient AML/CFT tool, this development, including the upgrading of resources specifically for this purpose, needs to be planned carefully. A computerised registry is preferable to a paper-based one, and an online registry is preferable to a closed-network.

40. 各國應對其公司登記系統進行技術投資。若登記簿成為有效率的防制洗錢/打擊資恐工具，即應審慎規劃此發展，包括特別為此目的而進行的資源升級。電腦化登記簿優於紙本登記簿，而線上登記簿又優於封閉式網路。

41. Countries could assign unique identifiers to legal entities incorporated within their jurisdiction. This enables financial investigators to collect evidence from different domestic agencies within the jurisdiction (for example, tax, licensing, or municipal authorities) most efficiently. This is especially pertinent to operational entities, and if the process of receiving a unique identifier is sufficiently streamlined, it may be further applicable to all legal entities in the jurisdiction (including foreign legal entities, which may have only an operational connection or only be administered from that jurisdiction).

41. 各國可分發獨特的識別標誌給在其管轄區域內成立的法律實體。此方法讓財務調查員能以最有效率的方式從管轄區內不同的國內機關蒐集證據（例如稅務、許可或市政機關）。這對執行機關特別具有意義。如果將受領獨特識別標誌的程序合理化到一定程度，此方法將能進一步適用於管轄區內的所有法律實體（包括外國法律實體，這類實體可能只有一種執行關係，或只從該管轄區管理）。

¹² See FATF (2012), Interpretative Note to Recommendation 24 - Transparency and Beneficial Ownership of Legal Persons.

¹² 參閱防制洗錢金融行動工作組織（2012），建議第 24 項 - 透明性與法人受益所有權 - 的註釋。

¹³ See US Department of Justice (n.d.)a, for a list of the information that should be maintained.

¹³ 參閱美國司法部（日期不詳）a 所列應維持的資訊。

42. Documented particulars of a legal entity's organisation, including those details that indicate beneficial ownership and control, copies of all banking documents, as well as all powers granted to non-officers, should be kept at the registered domestic address of the legal entities. This allows law enforcement authorities to find all necessary information in one location. Moreover, such information should be held physically or electronically within the jurisdiction under whose laws it has been created.

42. 法律實體的組織明細紀錄（包括詳細的受益所有權與控制紀錄、所有銀行往來文件複本，以及授予非主管的所有權力）應保留在法律實體登記的國內地址。此措施有助於執法機關在同一地點找到所有必要的資訊。此外，根據建立資訊所依循的法律，應將資訊以實體或電子形式保存在該法律適用的管轄區內。

III. TERRORIST FINANCING III. 資恐

43. Money laundering and terrorist financing activity appear as interrelated topics; however, nuanced differences exist between these two distinct criminal offences. These differences need to be understood by law enforcement and those who conduct financial investigations. While terrorist organisations may utilise money laundering techniques when raising funds from criminal proceeds, there are certainly many sources and techniques that these groups use in order to raise funds “legitimately” without engaging in illegal activity¹⁴. Put another way, money laundering is the process of making dirty money appear clean whereas terrorist financing most often involves clean money being utilised for nefarious purposes.

43. 洗錢和資恐活動似乎是互有關聯的主題，然而，這兩種不同的犯罪類型之間仍然存在著細微差異。執法和財務調查員應瞭解這些差異。恐怖組織可能會用洗錢技術自犯罪所得籌措資金，但這些組織必定可以透過許多來源與技術籌措「合法」資金，而不必從事非法活動。¹⁴ 換句話說，洗錢是讓髒錢變乾淨的過程，但最常見的情形是，資恐需使用乾淨的錢達到惡毒目的。

44. Terrorist financiers want to mask their activities from law enforcement authorities. The motivation of the perpetrators is ideology based with the primary goal of advancing the organisations goals or agenda. This includes having access to funds to meet broad organizational requirements including, but not limited to, propaganda, recruitment, travel and acquiring weapons.

44. 資恐者對執法機關遮掩其活動。犯案者的動機出自意識形態，主要目的在於推動組織的目標或行動。資恐包括提供資金以滿足組織的各項需求，包括但不限於宣傳、徵兵、差旅和購買武器。

45. In the case of a terrorism investigation, a terrorist financing investigation is crucial, as it can identify targets early in a terrorism plot, such as when they set up a safe-house, and it allows more time for investigation and disruption. Terrorist financing should be viewed not only from an evidentiary perspective but, arguably more importantly, from an intelligence standpoint. Terrorist financing investigations can greatly benefit from focusing on the relationships financial information reveals and the intelligence value that can be derived from the associated “non-financial” information such as phone numbers, email addresses, passport numbers, etc. contained in financial documents. Detecting and investigating terrorist activity is significantly enhanced when national security intelligence and financial information are used together. Exploiting this additional intelligence can identify those leads that may otherwise go undetected and help prevent future attacks.

45. 就恐怖主義調查而言，資恐調查具有關鍵作用，因為此調查不僅能儘早在恐怖主義陰謀計畫中鎖定目標（例如當恐怖分子設置安全屋時），還可爭取更多調查與瓦解時間。不僅應從證據角度看待資恐，更重要的是應從情報的角度理解此事。若能著重於金融資訊揭露的關係以及衍生自金融文件中相關「非金融」資訊（例如電話號碼、電子郵件地址、護照號碼等等）的情報價值，必能對資恐調查帶來很大的幫助。若能將國家安全情報與金融資訊整合，必能大幅加強恐怖分子的偵查與調查行動。這些額外的情報有助於辨識原本未發現的線索，避免未來攻擊。

46. In order for a terrorist operation to be conducted there must be a source of funding no matter how big or small. While the sources of funding are only limited by imagination, individuals engaged in

¹⁴ See FATF (2008), for descriptions and examples of how terrorists raise money and use funds.

¹⁴ 參閱防制洗錢金融行動工作組織 (2008) 有關恐怖分子如何籌錢和使用資金的描述與範例。

terrorist financing can be viewed with more specificity. Financial supporters of terrorist operations may be involved in four distinct but interrelated roles: *donor*, *fundraiser*, *facilitator*, and *operative*. More specific examples of these different interrelated roles will help explain how terrorist financing in practice can occur, but are not to be considered as legal definitions. *Donors* are individuals who, wittingly or unwittingly, support the terrorist organisation's goals through financial contributions and usually exhibit limited interaction with the group beyond monetary support. *Fundraisers* are individuals who actively solicit funds on behalf of the terrorist organisation and are often more engaged in the movement and concealment of money. *Facilitators* are directly associated with terrorist organisation leadership and operatives, often directly involved in promoting the terrorist agenda and knowledgeable of operational plans. Finally, the *operative* is an individual committed to conducting a terrorist attack and, through either funding provided by the terrorist organisation or via self funding, procures the necessary resources to this end.

46. 不論金額大小，恐怖分子需要資金才能行動。資金來源只受到想像力的限制，而提供資恐的個人可從更具體明確的角度檢視。恐怖分子行動的金融支持者可能涉及四種明顯不同卻又相互關聯的角色：捐贈者、籌資者、助長者與特工。關於這些相互關聯卻各自不同的角色，可藉由更多範例解釋為何實際發生的資恐不被視為法律定義的原因。捐贈者係指有意或無意以財務捐款支持恐怖組織目標的個人，通常在金錢支持之外，還和組織進行有限的互動。籌資者係指主動為恐怖組織籌募資金的個人，對金錢的移動與隱藏通常介入較深。助長者與恐怖組織的領導階層與特工具具有直接關係，通常直接參與推動恐怖行動，而且熟悉行動計畫。最後，特工是承諾從事恐怖攻擊的個人，並使用恐怖組織提供的資金或自籌資金獲得恐攻所需的資源。

47. While it is certainly possible for one individual to fulfil all four financial roles (the “lone wolf” example), most often the previously mentioned financial hierarchy is the norm within organized terrorist's infrastructures. Identifying the financial role that an individual plays within the organisation is the key to focusing investigative strategies in an effort to disrupt terrorist financing activity. In order to be effective, countries should develop legal mechanisms that enable their law enforcement and other competent authorities tasked with investigating terrorist financing to collaborate with their counterparts in the intelligence community. Countries should create an environment whereby these typically two distinct cultures work toward the common goal of disrupting terrorist financing.

47. 雖然一個人可以同時扮演所有四種金融角色（例如「孤狼」），但最常見的情形是，前面提到的金融階層結構只是恐怖組織基礎結構中的規範準則。辨識個人在恐怖組織扮演的金融角色，對於將調查策略集中於瓦解資恐活動非常重要。為了確保有效，各國應建立法律機制，鼓勵執行機關和其他負責調查資恐的權責機關與其在情報界的對等機關合作。各國應塑造環境，讓這兩種有著明顯差異的領域相互合作，共同致力於瓦解資恐。

48. In the case of terrorist activity (such as a bombing where there will be serious injury and loss of life), investigation of the financing of the operation should be integrated with investigation of the terrorist activity since the financing of an operation is an integral element in the overall activity cycle of a terrorist group. Parallel investigations not only foster relationships between different competent authorities but also encourage working relationships among competent authorities, the financial sector, and financial regulators. These relationships promote a more comprehensive approach in developing capability and financial intelligence that can be useful in tracing terrorist financial trails – not only in post-attack investigations but also during the planning and preparation stage – so as to be able to prevent attacks and work towards a common goal of preserving life. Community, financial sector and competent authorities have knowledge or information that could lead to useful pieces of intelligence. At the same time, the regulatory and competent authorities have the capability to provide the policies and the tools necessary to build that intelligence.

48. 對於恐怖活動（例如造成重傷和死亡的炸彈事件），行動資助調查應和恐怖活動調查整合，因為行動資助是恐怖組織整體活動周期不可分割的一環。併行調查不僅在不同的權責機關之間建立關係，同時也促成權責機關、金融業和財務調查員之間的工作關係。這些關係推動涵蓋面更廣的能

力與金融情報綜合發展方法，不僅有助於追查資恐線索（不僅攻擊後調查，還包括規劃與準則階段調查），更能預防攻擊，往保護生命的共同目標邁進。社區、金融業和權責機關擁有能整理出片段情報的知識或資訊。在此同時，監管和權責機關皆有能提供建構該情報所需的政策與工具。

IV. SOURCES OF INFORMATION

IV. 資訊來源

49. Financial investigators develop hypotheses and draw conclusions based on available information. A financial investigation combines tried and tested investigative techniques and traditional accounting and auditing practices to investigate the financial affairs of targets of investigations. Facts that are relevant to a financial investigation may be found from a variety of sources. Traditional “fact-finding” is, of course, highly relevant in financial investigations and includes interviews with suspects, searches of residences and/or offices, forensic examination of computer(s), collection and analysis of financial and business records to include bank statements, tax returns, etc.

49. 財務調查員根據可使用的資訊來發展假說和獲得結論。財務調查結合經過試驗與測試的調查技術和傳統會計與審計實務，對金融事件的目標進行調查。與財務調查相關的事實可從各種來源取得。傳統的事實調查與財務調查密切相關，包含嫌犯約談、住處和／或辦公處的搜索、電腦鑑識、財務與業務紀錄（銀行結算單、稅務申報等）的蒐集與分析。

50. The nature of the hypothesis determines to a large extent the type of information required to prove the merits of the hypothesis. Identifying the type of information needed allows financial investigators to determine where such information is held. Once financial investigators have determined where the required information is held, they should determine the methods and challenges in obtaining the information. Thus, they should develop and implement an action plan that leads to the successful acquisition of the required information and such an action plan could include many of the investigative techniques discussed in this guidance note.

50. 須用何種類型的資訊證明假說的價值，主要取決於假說的性質。辨識所需的資訊類型讓財務調查員能確定此類型資訊的取得來源。一旦確認所需資訊的取得來源，財務調查員便應確定取得該資訊將採取的方法和將面臨的挑戰。因此，調查員應建立並採取行動計畫，以成功取得相關所需資訊。此類行動計畫應包含在指引中備註討論的各種調查技術。

51. After identifying a potential evidence source, the evidence needs to be collected. Regardless of the source, all evidence should be legally obtained; otherwise, unlawfully obtained evidence could jeopardise the success of the prosecution or confiscation. Investigators should be aware of any legal privilege issues while searching for evidence and seek advice from prosecutors or other relevant competent authorities. Moreover, some information may be considered potential *evidence* from a prosecutorial stand-point however be considered sensitive intelligence by intelligence agencies. Thus, co-ordination between prosecution and intelligence authorities is required.

51. 辨識可能的證據來源後，需蒐集相關證據。不論來源為何，所有證據皆應合法取得；非法取得的證據可能導致追訴或沒收的失敗。調查員在尋求檢察官或相關權責機關的建議時，應注意任何與合法特權有關的議題。此外，從追訴觀點視為潛在證據的某些資訊，可能會被情報機關視作敏感情報。因此，追訴機關和情報機關之間的合作是必要的。

DATA SOURCES AND TYPES OF INFORMATION

資料來源及資訊類型

52. Within each country there will be differences in the way that various types of information can be made available to investigative authorities and this may be influenced by legal requirements including human rights considerations (such as freedom of information and privacy legislation). The producers and owners of the different information and intelligence products will differ between countries. Additionally,

access to that information or intelligence and under what circumstances presents a challenge to countries when designing an effective AML/CFT legal and operational framework. Access to and management of sensitive personal data by the competent authorities requires adequate training of staff in order to ensure adherence to data protection laws and laws that protect the right to privacy.

52. 各國對於調查機關提供各類資訊的方式皆不同，此差異受到法律規定的影響，包括人權考量（資訊自由以及隱私法規）。不同資訊和情報成果的生產者與擁有者因國別而異。此外，該資訊或情報的使用以及在何種情況下使用，皆成為各國在制定有效的防制洗錢/打擊資恐法律和執行架構時將面對的挑戰。權責機關在使用與管理敏感的個人資料時，工作人員需受過相關訓練，以確保符合資料保護法與保護隱私的法律規定。

53. This guidance is primarily concerned with examining how information and intelligence are made available in support of financial investigations, prosecutions and the identification of assets for confiscation efforts. In order to conduct financial investigations, law enforcement should have access to the widest possible range of financial, administrative and law enforcement information. This should include information from open or public sources, as well as relevant information collected and/or maintained by, or on behalf of, other authorities and, where appropriate, commercially held data.

53. 此指引的主要目的在檢驗如何提供資訊與情報來支援財務調查、追訴以及沒收資產的辨識。為執行財務調查，執法應使用最大可能範圍的金融、行政以及執法資訊。此應包含從公開或政府來源取得的資訊、由其他機關、代理機關蒐集、維護的資訊，以及（如適用）商業上持有的資料。

54. The form of the data will vary considerably and will range from papers/documents to electronic data to physical items. The ownership and control of these data types varies. On the one hand, much of the data law enforcement can access is of a public nature and is freely available to the general population. On the other hand, data related to personal, financial or law enforcement records are protected and are often considered highly sensitive and confidential. Safeguards need to be put in place to ensure that this data is protected from misuse and is being accessed and utilised for legitimate purposes.

54. 資料可包含多種不同形式，從書面或文件資料、電子資料到實體項目資料等。這些資料類型的持有與管理皆不盡相同。就一方面而言，執法可使用的大多數資料具有公開的特性，且可供一般大眾自由使用。另一方面，與個人、金融或執法紀錄相關的資料，皆予以保護，並視為高度敏感與機密。應執行相關安全措施，以確保此資料免於誤用，並且使用和應用於合法用途。

55. The sources of information that law enforcement and competent authorities can use in furtherance of financial investigations varies but typically can be found in six different categories:

55. 執法機關與權責機關可用來促進財務調查的資訊來源有多種管道，主要包括下列六個不同的類別：

- **Criminal records and intelligence:** This is law enforcement information related to the subject and/or criminal activity. Information such as previous arrests, indictments, convictions, but also reports of links with known criminals. Criminal information is typically gathered from surveillance, informants, interviews/interrogation and data research, or may be just picked up “on the street” by individual police officers.
- **犯罪紀錄與情報：**此為關於調查對象和／或犯罪活動的執法資訊。資訊例如先前的逮捕、起訴、定罪，或是與已知犯罪相關的報告。犯罪資訊通常經由監視、線人、約談／訊問以及資料研究蒐集而來，也可能由警察「在路邊」偶然取得。
- **AML/CFT Disclosures:** In addition to suspicious transaction reports (STRs), this includes other information as required by national legislation such as

cash transaction reports, wire transfer reports and other threshold-based declarations or disclosures.

- **防制洗錢/打擊資恐揭露：**除疑似洗錢或資恐交易報告（STR）外，防制洗錢/打擊資恐揭露包括國內法律規定的其他資訊（例如現金交易報告、電匯報告和其他的稅徵申報與披露）。
- **Financial Information:** This is information about the financial affairs of entities of interest that helps to understand their nature, resources, structure and capabilities, and it also helps predict future activity and locate assets. This goes beyond the information contained in AML/CFT disclosures and is normally maintained by private third parties. This includes bank accounts, financial accounts, other records of personal or business financial transactions and information collected in the context of meeting customer due diligence (CDD) obligations.
- **金融資訊：**此為利益相關實體的金融事務資訊，有助於瞭解事務的特性、資源、結構與功能，也有助於預測未來活動和發現資產。此資訊比防制洗錢/打擊資恐揭露的資訊範圍廣，且通常由私部門第三方維護。此資訊包括銀行帳戶、金融帳戶、其他個人或業務金融交易紀錄，以及在履行客戶審查（CDD）義務的背景下列集的資訊。
- **Classified information:** Information that is gathered and maintained for national security purposes to include terrorism financing information. Access is typically restricted by law or regulation to particular groups of persons.
- **分類資訊：**基於國家安全考量蒐集與維護的資訊，包括資助恐怖主義的相關資訊。此類資訊通常受到法律或規範的限制，只能由特定小組人員使用。
- **Open source:** All information that is available through open sources such as the internet, social media, print and electronic media, as well as via registries operated publicly or privately.
- **開放式來源：**所有透過開放式來源取得的資訊，例如網際網路、社會媒體、平面與電子媒體，或是經由公開或私人登記簿取得的資訊。
- **Regulatory information:** Information that is maintained by regulatory agencies; access is typically restricted to official use only. This category of information could be held by central banks, tax authorities, other revenue collecting agencies, etc.
- **法律資訊：**由法律機關維護的資訊，僅限於官方使用。此類資訊可由中央銀行、稅務機關和其他徵稅機關所持有。

56. Multi-disciplinary groups or task forces (described in Section II) serve to integrate information from different law enforcement and intelligence sources which had previously been separated by organisational and technical boundaries. In some jurisdictions this requires changes in laws and regulations or may require formalised agreements such as MoUs. These task forces leverage existing technologies and develop new technologies in order to provide cross-agency integration and analysis of various forms of data. Furthermore, this information is stored in centralised databases so that any future investigation of any new target of a participating task-force agency can be cross-referenced against that historical data.

56. 跨領域團隊或特別小組（說明於第二節）負責整合出自不同執法與情報來源且之前因組織與技術界線而拆分的資訊。在某些管轄區域，此資訊整合需修改相關法律與規定，或是簽訂相關協議，例如 MoU。特別小組運用現有技術並發展新技術，以提供跨機關整合與分析各種形式的資料。此外，此資訊存放於集中式資料庫，確保特別小組未來參與任何新對象的調查時，能就該調查進行歷史資料交叉比對。

V. LAW ENFORCEMENT COLLABORATION WITH FINANCIAL INTELLIGENCE UNITS (FIU)

V. 執法機關與金融情報中心（FIU）的合作

57. Along with intelligence divisions of law enforcement or other competent authorities, FIUs are one of the competent authorities that can initiate or enhance financial investigations. Financial intelligence collected by law enforcement, FIUs, and other competent authorities should be thoroughly manipulated and result in the proactive initiation of financial investigations. A core function of FIUs is to analyse the information it collects and to disseminate the results of this analysis. An FIU's analytical capabilities allow it to develop different intelligence products that can be useful to investigative authorities. As a routine task, FIUs spontaneously (*i.e.*, without being solicited) disseminate intelligence to investigative authorities relating to suspected ML and TF offences. Disseminated information could relate to an existing entity of interest, support an existing investigation, or prompt a proactive investigation based on new information made available to investigative authorities.

57. 除了執法的情報部門或其他權責機關外，金融情報中心為可展開或促進財務調查的權責機關之一。應充分利用執法、金融情報中心和其他權責機關蒐集的金融情報，進而主動展開財務調查。金融情報中心的核心功能在於分析蒐集到的資訊，並且宣導分析的結果。金融情報中心的分析功能可為其發展出各種有利於調查機關使用的情報。作為例行任務，金融情報中心也主動（即無需他人要求）對調查機關宣導有關疑似洗錢/資恐犯罪的情報。宣導資訊可能涉及現有利害關係實體，或能支持目前調查，或根據調查機關取得的新資訊展開主動調查。

FIU AND AML/CFT DISCLOSURES IN FINANCIAL INVESTIGATIONS

金融情報中心與防制洗錢/打擊資恐在財務調查過程中的揭露

58. Effective financial investigations are characterised by extensive law enforcement use of FIU information and exchanges of information and personnel. Investigative authorities should be able to ask the FIU for relevant information they may hold when conducting lawful investigations. FIUs should be able to respond to information requests from competent authorities pursuant to Recommendation 31. Under Interpretative Note to Recommendation 29 the decision on what information an FIU can provide in response to a request from a competent authority should always remain with the FIU.

58. 有效的財務調查具有密集使用金融情報中心執法資訊和交換資訊與人員等特性。調查機關進行合法調查時，應能要求金融情報中心提供其持有的相關資訊。根據建議第 31 項，金融情報中心應能回應權責機關對於相關資訊的要求。根據建議第 29 項的註釋，對於回應權責機關要求所要提供的資訊，其決定權應永久屬於金融情報中心。

59. The overarching aim of both the FIU and investigative authorities should seek to work as a *virtual team*, sharing information in appropriate circumstances to support financial investigations. Successful and effective financial investigations can be achieved through obtaining and using the outcomes of FIU financial analysis, as well as proactive sharing of information between the FIU and investigating authorities. Providing an FIU with an information requirement – (such as) detailing information priorities – can assist the FIU in identifying useful information for spontaneous dissemination. Many investigative authorities have seconded personnel working in the FIU, or FIU personnel seconded to investigative authorities, to facilitate co-operation between the FIU and to assist the effective exchange of information. Single points of contact in investigative authorities and FIU can also assist consistent, efficient information exchange.

59. 金融情報中心與調查機關雙方的主要目標應在於尋求以**虛擬團隊**的方式運作，並且在適當

的情況下分享資訊，以支援財務調查。藉由獲得和使用金融情報中心的金融分析結果以及金融情報中心與調查機關之間的主動資訊分享，可成功達成有效的財務調查。提供金融情報中心資訊要求－（例如）詳述資訊的優先順序－可協助金融情報中心辨識主動宣導的有用資訊。許多調查機關在金融情報中心皆有支援人員，或金融情報中心在調查機關派駐支援人員，藉此促進與金融情報中心與調查機關之間的合作，並協助有效的資訊交換。執法機關和金融情報中心的單點聯絡點也有助於持續有效的資訊交換。

60. Formal arrangements between investigative authorities and the FIU can be documented in MoUs, memorandum of agreements (MoAs) and standard operating procedures (SOPs). Documenting how competent authorities and FIUs interact and establishing communication channels can provide clarity on the procedures and processes that are required in order to exchange information appropriately. Agreeing on the use of standard electronic reports and request forms that can be securely exchanged between the FIU and investigative authorities can also facilitate efficient exchange of information. When exchanging bulk or structured data in relation to financial investigations (such as computer files with the results of analysis) consideration should also be given on compatibility of software used by competent authorities and the FIU. Some jurisdictions provide their investigative authorities with restricted access to the FIU database. Investigators are able to directly query the FIU database in certain agreed circumstances. Arrangements for investigator access to the FIU database should take into consideration information handling issues such as confidentiality, human rights, privacy and data protection.

60. 調查機關與金融情報中心之間的正式約定可記錄於協議備忘錄（MoU）和標準作業程序（SOP）中。紀錄權責機關與金融情報中心之間如何互助合作和建立溝通管道，有助於提供明確的程序與流程，確保以適當的方式交換資訊。同意使用能夠在金融情報中心與調查機關之間安全交換的標準電子報表和申請表，將可促進資訊的有效交換。交換與財務調查有關的大量或結構化資料時（例如附有分析結果的電腦檔案），應考量權責機關與金融情報中心所用軟體的相容性。部分管轄區域授予調查機關有限的金融情報中心資料庫使用權。在特定協議情況下，調查員可直接查詢金融情報中心資料庫的資訊。對於調查員取得金融情報中心資料庫的協議，須考量相關資訊處理議題，例如機密、人權、隱私和資料保護。

LAW ENFORCEMENT UTILISATION OF AML/CFT DISCLOSURES AND FIU ANALYSIS IN FINANCIAL INVESTIGATIONS

防制洗錢/打擊資恐揭露與金融情報中心財務調查分析的執法應用

61. While this guidance is not focused on the analysis function of the FIU, FIUs can provide high-quality, useful and timely analysis to law enforcement and other competent authorities. This can only be accomplished through a two-way mechanism between the FIU and recipients of their information which will require feedback from all parties involved.

61. 雖然此指引並非著重於金融情報中心的分析功能，但金融情報中心可及時提供執法及其他權責機關高品質實用分析資訊。此目標僅可透過金融情報中心與資訊接收者之間的雙向機制達成，並且需要所有參與方的回饋。

62. AML/CFT financial disclosures and FIU analysis are considered a particular category and source of information collected as part of a national AML/CFT regime. This information is intended to be available to law enforcement, and in particular, to financial investigators. Reporting entities are required to file AML/CFT disclosures. These disclosures will include suspicious transaction reports (STRs) and other information required by AML/CFT legislation such as cash transaction reports, wire transfers reports and other threshold-based declaration/disclosures and reports made in relation to the physical cross border transportation of currency and bearer negotiable instruments.

62. 在國家防制洗錢/打擊資恐制度下，防制洗錢/打擊資恐金融揭露與金融情報中心分析被視為一種特別的類別與資訊來源。此資訊供執法以及特定的財務調查員使用。回報實體應提出防制洗錢/打擊資恐揭露。此揭露須包括疑似洗錢或資恐交易報告（STR）和防制洗錢/打擊資恐法律要求的其他資訊、電匯報告、其他稅徵申報／揭露，以及與跨國移轉通用貨幣與無記名可轉讓金融工具有關的報告。

63. AML/CFT disclosures constitute a particularly valuable source of information for financial investigations. Given that the main focus is on the use of STRs, the unique nature of this data should be highlighted. In most countries, STR information is used for intelligence purposes and is not used as evidence in court proceedings. In some countries, STR information is directly admissible in court and when such instances occur between these different systems, countries should coordinate and promote the effective use of the information. There are also strict confidentiality issues associated with access to and use of this information. It is essential that only appropriately trained and authorised law enforcement officers have access to this information.

63. 防制洗錢/打擊資恐揭露提供特別有價值的財務調查資訊來源。由於主要針對疑似洗錢或資恐交易報告的使用，故應強調此資料的獨特性質。大部分的國家將疑似洗錢或資恐交易報告資訊用於情報目的，但未將其視為證據用於法院程序。在某些國家，法院可直接採納疑似洗錢或資恐交易報告資訊，當此情況發生在不同體系時，各國之間應互相協調並增進資訊有效使用。許多關於此資訊取得和使用的敏感議題也相繼浮現。只允許受過相關訓練及獲得授權的執法人員取得此資訊。

64. The national and international frameworks for providing access to FIU/STR information are important in determining how intelligence can be made available to operational authorities and developed into investigative leads or evidence. In order to promote the timely sharing of information, law enforcement authorities can expect to see clear and precise handling instructions from the FIU upon initial dissemination and where possible prior consent to share this information.. Such arrangements could be discussed bilaterally between FIUs in order to address any privacy concerns and to ensure that such information is shared lawfully and appropriately with the competent authorities conducting a lawful financial investigation. However, if such prior consent (also known as third party rule) is required, FIUs should establish mechanisms whereby such consent is obtained in a timely manner. Because of the practical differences among countries, there is no exact model for STR utilisation that would necessarily fit every country. Regardless, countries should consider putting into place mechanisms that allow their investigative authorities prompt delivery of FIU information and analysis in furtherance of their investigations. The procedures for delivery should be clearly delineated and subject to strict safeguards to ensure proper security and use of the information. Any model should have in place monitoring systems while ensuring that the process is free of unnecessary hurdles. In all cases, investigators should handle information in accordance with confidentiality, human rights, privacy and data protection requirements.

64. 提供金融情報中心/疑似洗錢或資恐交易報告資訊取得管道的國家與國際架構對決定如何將情報提供給執行機關以及將其發展成調查的線索或證據極為重要。為增進資訊的即時分享、執法機關於宣導初期可在 金融情報中心 查看明確的處理指示，並且事先取得分享此資訊的同意（若可能）。金融情報中心之間可針對此安排進行雙邊討論，進而提出任何隱私疑慮，並確保與執行法定財務調查的權責機關分享資訊的合法性與正當性。然而，若需事先同意（亦稱為第三人利益規則），金融情報中心（FIU）應建立可即時取得此同意的相關機制。因各國之間的實質差異，並無一套適用於所有國家的疑似洗錢或資恐交易報告使用模型。儘管如此，各國應執行相關機制，允許調查機關即時傳送金融情報中心資訊與分析以促進其調查。應清楚描述資訊的傳遞流程並符合安全保護措施，以確保資訊的安全與使用。任何疑似洗錢或資恐交易報告的使用模型皆應有適合的監控制度，但應確保流程免於不必要的阻礙，調查員不論在何種情況下皆應根據機密、人權、隱私以及資料保護法規處理資訊。

ACCESSIBILITY OF FIUS TO ENHANCE FINANCIAL INVESTIGATIONS

金融情報中心對加強財務調查的可用性

65. The objective of this section is to ensure FIUs work with law enforcement agencies and that financial intelligence is promptly available to enhance investigations. Requesting all relevant FIU information should be a basic step in the investigation of any predicate offence and any crimes, which are financially motivated. This should be included in an investigators “checklist.” This is one of the reasons why it is essential that law enforcement has timely access to AML/CFT disclosures filed in their country. As stated earlier, this access does not have to be direct but should be prompt so as to facilitate the incorporation of significant and relevant findings and to further active investigations.

65. 此節目的在於確保金融情報中心與執法機關合作以及金融情報的即時可用，以促進相關調查。調查任何以金融為動機的前置犯罪行為與活動時，最基本的步驟為請求金融情報中心提供所有相關資訊。此步驟應列於調查員的「檢核表」中。這也是執法時需具有即時取得國家防制洗錢與打擊資助恐怖主義揭露範疇資訊的重要原因之一。如前所述，此資訊的取得無需直接但應即時，以促進重大與相關調查結果的整合，並進一步進行有效調查。

66. Information contained in STRs, when checked against operational or historical intelligence databases, can complement existing ML/TF investigations by helping to identify laundered money and money intended for terrorist use. STRs can help investigators connect other pieces of information, provide information on where the proceeds of criminal activity or funds intended for terrorist use are located and when and where these funds are moved, or even what methods are being utilised. STRs are not to be considered as criminal charges and should not be viewed as “criminal activity reports”. However, in many cases, the financial activities reported in the STRs are themselves illegal, such as check, credit card or loan fraud, check kiting, counterfeiting, embezzlement and the structuring of transactions to avoid the filing requirement of threshold based reporting.

66. 疑似洗錢或資恐交易報告資訊與操作或歷史情報資料庫比對時，應與現行的洗錢／資助恐怖份子調查相對應，協助辨識用於洗錢與資助恐怖份子的資金。疑似洗錢或資恐交易報告可協助調查員與其他資訊連結、提供犯罪活動進行地點或資助恐怖份子的資金流向地點以及資金在何時與何處流通，或是以何種方式使用。疑似洗錢或資恐交易報告並非對犯罪的指控，且不應被視為「犯罪活動報告」。然而，在許多情況下，疑似洗錢或資恐交易報告回報的金融活動本身即屬非法，例如支票、信用卡或貸款詐騙、空頭支票、假冒、盜用以及偽造交易以規避稅徵申報的規定等。

67. FIUs can enhance investigations by responding to requests by investigative authorities. This information can support existing activity by identifying and locating proceeds of crime and also supply information which can assist in securing convictions and confiscations. The FIU will hold, or have access to its own information and information gathered from 3rd parties (domestic and foreign) that can enhance investigations. Some of this information will be confidential or sensitive and may be restricted in the manner in which it can be shared. These restrictions may be imposed by law or by the 3rd party originator of the information. When receiving information from the FIU, investigators should note the restrictions on the use of information, and, how it can be utilised or “handled”, in particular for investigative purposes. It is important that law enforcement personnel handling this information be trained and knowledgeable on the applicable disclosure rules.

67. 金融情報中心可藉由回應調查機關的請求來促進調查。經由辨識此資訊與找出犯罪資金來支援現行活動，並提供可協助定罪及刑事沒收的資訊。金融情報中心將持有有助於調查的自身資訊或取得由第三方（國內外）蒐集的資訊。部分資訊將具有機密性與敏感性，並應限制其分享。這些限制將由法律或資訊來源的第三方匯款人執行。從金融情報中心接收到資訊時，尤其是將資訊作為調查用途時，調查員應注意資訊的使用限制以及如何運用或「處理」。處理資料的執法人員需經過訓練，並且具備有關現行揭露法規的知識。

REVIEW OF STR INFORMATION AND OTHER AML/CFT DISCLOSURES

疑似洗錢或資恐交易報告和防制洗錢/打擊資恐揭露的檢討

68. A financial investigator's understanding is often greatly increased when STR- or disclosure-related information is compared with information from other sources. The real added value of STR information lies in the analysis/assessment (usually in the first instance by the receiving FIU), when STR information is combined with information from other sources, other STR information, other types of transaction reports and open and closed sources of intelligence. The cross reference of STR information with other information available to law enforcement is therefore fundamental for the successful utilisation of STR information in financial investigations. It is essential that law enforcement and the FIU work together to ensure that both parties understand what checks have been conducted and which aspects of the disclosure are the most useful to pursue.

68. 將疑似洗錢或資恐交易報告或揭露的相關資訊與其他來源的資訊相比較，可增進財務調查員對疑似洗錢或資恐交易報告的瞭解。疑似洗錢或資恐交易報告資訊與其他來源的資訊、其他疑似洗錢或資恐交易報告資訊、其他類型的交易報告以及開放或封閉式交易來源的情報結合時，疑似洗錢或資恐交易報告真正的附加價值在於對疑似洗錢或資恐交易報告的分析或評估（通常為金融情報中心第一次接收的實例）。疑似洗錢或資恐交易報告 資訊與執法機關可用的其他來源資訊交互參照，對於疑似洗錢或資恐交易報告資訊在財務調查的成功使用上十分重要。執法機關須與金融情報中心共同合作，確保雙方瞭解哪些檢核項目已經執行，以及應該進行哪些最有用的揭露。

69. A cursory review of the STR information generally includes a selected approach for those STRs that will be assessed and researched on other databases including existing intelligence on illegal activities, criminal records, on-going investigations, historical investigative reports, and in some cases income tax records. These preliminary investigative steps are part of the process to identify those STRs that merit further investigation and de-confliction of STRs with on-going criminal investigations.

69. 概略檢視 疑似洗錢或資恐交易報告資訊時，通常會對將從其他資料庫評估與研究的疑似洗錢或資恐交易報告進行特定方法檢視，包括現有非法活動情報、犯罪紀錄、進行中的調查、歷史調查報告及某些個案中的所得稅紀錄。這些初始的調查步驟是用來辨識應受進一步調查的疑似洗錢或資恐交易報告，並化解與進行中犯罪調查的衝突。

70. The need for efficient utilisation of limited resources is a challenge faced by most investigators. When necessary, STRs should be prioritised based on relative significance and general investigative priorities and strategies for the country. In some countries, where a large number of STRs are generated each month, experienced and sufficiently trained support personnel can be designated to conduct initial reviews. These reviews would identify those STRs of particular interest to law enforcement based on pre-established criteria, e.g., STRs that reflect structuring or illegal money transmitting activity. Such an approach narrows the field of STRs to be reviewed and eliminates from consideration those that investigators may have decided not to pursue. Providing an FIU with an information requirement – (such as) detailing information priorities – can assist the FIU in identifying useful information for spontaneous dissemination. This demonstrates the need for law enforcement and FIUs to share information upstream and downstream allowing for more effective allocation of resources.

70. 大部分的調查員皆面臨對有限資源進行有效運用的挑戰。必要時，疑似洗錢或資恐交易報告應依照相對重要性、整體調查優先順序和國家的策略排定調查的優先順序。每月產生大量 疑似洗錢或資恐交易報告的國家，可指派具有相關經驗並且受過充分訓練的支援人員執行初步審查。這些審查可依據預先制定的標準辨識出執法機關特別關注的疑似洗錢或資恐交易報告，例如反映偽造或非法金錢流向的疑似洗錢或資恐交易報告。此方法可減少應審查的疑似洗錢或資恐交易報告數量，並消除可由調查員決定不調查某些項目的考量。提供金融情報中心資訊要求 –（例如）詳述資訊的優先順序 – 可協助金融情報中心辨識主動宣導的有用資訊。此節說明執法機關和金融情報中心在上下游分享資訊的需求，讓資源分配更有效率。

71. Concerning other AML/CFT disclosures, such as those described above in the section on data sources and types of information, countries should ensure that such information is readily available to FIUs and the competent authorities conducting lawful financial investigations in accordance with confidentiality, human rights, privacy and data protection requirements.

71. 關於其他防制洗錢/打擊資恐揭露，如先前資料來源和資訊類型章節所述，各國應確保此類資訊可即時供金融情報中心以及執行合法財務調查的權責機關使用，且符合機密、人權、隱私與資料保護法規的規定。

REVIEW OF CROSS – BORDER CASH DECLARATIONS FOR FINANCIAL INVESTIGATIONS

針對跨境現金申報之財務調查

72. Recommendation 32 calls on jurisdictions to implement measures to detect and prevent the physical cross-border transportation of currency and bearer negotiable instruments, which are one of the main methods used to move illicit funds, launder money and finance terrorism.¹⁵ This collected information can be useful to financial investigations. As a result, such information should be accessed, verified and analysed by competent authorities in furtherance of financial investigations. This analysis can result in the identification of frequent travellers, links between travellers, and the discovery of other evidence or leads. Recommendation 32 requires jurisdictions to ensure that persons who make a false declaration/disclosure and persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments (BNI) related to ML/TF are subject to effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative. In practice, this means that jurisdictions need to be able to investigate and/or prosecute and sanction such conduct.¹⁶

72. 建議第 32 項呼籲管轄機關執行相關措施，實體檢查和預防跨境運輸通用貨幣以及無記名可轉讓金融工具，此為移轉非法資金、洗錢和資助恐怖主義的主要手段之一。¹⁵ 此蒐集的資訊有助於財務調查。因此，此類資訊應由權責機關取得、驗證和分析，以促進財務調查。此分析可辨識經常旅行者、旅客之間的關聯以及發現其他的調查證據或線索。建議第 32 項要求管轄機關保證進行不實申報/揭露和實體跨境運輸通用貨幣或無記名可轉讓金融工具，且與洗錢/資恐有關的人員，不論在刑事上、民事上或行政上皆受到具有有效性、適當性以及勸阻性的國際制裁。這在實務上表示權責機關須具備調查及/或追訴以及制裁此犯罪行為的能力。¹⁶

73. Recommendation 32 calls for sharing of information with the FIU, other domestic partners and international counterparts, subject to strict safeguards to ensure proper use of the data. It is best practice to set out such safeguards in law and co-operation agreements such as MoUs. It should be noted that information sharing and feedback among the FIU, other domestic partners and international counterparts can considerably improve the targeting of illicit cash couriers. It is best practice to ensure that the information being shared is comprehensive, tailored to the needs of the FIU and law enforcement authorities and includes all recorded data. It is also best practice to ensure that the sharing is takes place in a timely fashion (preferably in real time). Recommendation 32 calls on countries to implement a system that informs the FIU of suspicious cross border transportations incidents or ensures that the FIU has access

¹⁵ See FATF (2005).

¹⁵ 參閱防制洗錢金融行動工作組織（2005）。

¹⁶ *Ibid.*

¹⁶ 如前所述。

to information on all cross-border transportations of currency and BNI. The competent authorities conducting financial investigations should routinely access this information in furtherance of their investigations.

73. 建議第 32 項呼籲與金融情報中心及其他國內合作夥伴和國際對等機關分享資訊，並受嚴格的安全保護措施管制以確保資料的正當使用。實務最佳作法是將此類安全保護措施制定成法律及協議，例如協議備忘錄（MoU）等。應注意的是，金融情報中心、其他國內合作夥伴以及國際對等機關的資訊分享與回饋可大幅改善對非法現金挾帶目標的鎖定。實務上最佳作法為確保資訊的全面分享、資訊符合金融情報中心與執法機關的需求，以及資訊內容涵蓋所有紀錄資料。實務最佳作法為確保及時分享（最好能即時分享）。建議第 32 項呼籲各國實施可通知金融情報中心可疑的跨國移轉事件，或能確保金融情報中心取得所有跨國貨幣移轉與 BNI 資訊的制度。進行財務調查的權責機關應定期取得此類資訊以促進其調查。

74. As mentioned in the FATF Best Practices Paper on detecting and preventing illicit cross-border transportation of cash¹⁷, investigating the reasons why a false or no declaration/disclosure was made may uncover information that may be useful for intelligence purposes, or to support an investigation, prosecution and/or sanction against the traveller.¹⁸ This information could be important for an on-going financial investigation, thus access to such information by the competent authorities should be timely and efficient. Moreover, ML/TF cases can result equally from truthful declarations/disclosures or false declarations/disclosures, and such information can be useful to financial investigators by providing new investigative leads and perhaps evidence.

74. 如防制洗錢金融行動工作組織偵查及預防非法跨國現金轉移最佳實務報告¹⁷所述，調查謊報或未申報／揭露的原因可揭發有益於情報或支援調查、追訴及／或制裁旅客的資料。¹⁸ 此資料對於正在進行中的財務調查相當重要。因此，權責機關對於此類資訊應即時且有效取得。此外，誠實／不實申報或揭露皆可導致洗錢／資恐案例產生，此類資訊也有助於提供調查新的線索或證據。

¹⁷ *Ibid.*
¹⁷ 如前所述。

¹⁸ *Ibid.*
¹⁸ 如前所述。

VI. INVESTIGATIVE TECHNIQUES VI. 調查技術

75. This section describes various investigative techniques that can be used in financial investigations. It is not exhaustive in covering all techniques but only highlights techniques that have specific relevance in relation to financial investigations. Recommendation 31 states that countries should use a wide range of investigative techniques which include undercover operations, intercepting communications, accessing computer systems, and controlled delivery. Countries can implement these requirements within their legal systems. This guidance note recognises that countries may have differing mechanisms available to investigators for compelling records that are relevant to financial investigations. For example, some countries use production orders, subpoenas, orders issued by prosecutors, orders issued by investigative magistrates, etc. Regardless of the instrument or process used, it is important that the financial investigator has access to and effectively uses such powers so as to obtain necessary information.

75. 此節描述可用於財務調查的各種調查技術。此節並非詳盡涵蓋所有調查技術，而是僅針對與財務調查有特定相關的技術作重點描述。建議第 31 項說明各國應使用大量的調查技術，包括臥底偵察、通訊監察、進入電腦系統以及控制下交付。各國可在其法律制度下執行這些要求。此指引備註指出各國應有不同的機制供調查員強制取得與財務調查相關的紀錄。舉例來說，有些國家使用搜查令、傳票、檢察官簽發的傳票、地方行政官發出的傳票等。不論使用的工具或流程為何，重要的是，財務調查員可取得並有效使用此類職權來獲得所需資訊。

76. **Physical Surveillance:** This is a useful technique to gain general background and intelligence and information on individuals/businesses, habits and relationships of suspects. Surveillance can be especially useful in financial investigations in cases involving the movement of bulk currency and by identifying “gatekeepers” involved in the development and implementation of ML or TF schemes. Surveillance of targets can often identify where financial and related records might be stored and lead to the discovery of assets. In addition, surveillance can help corroborate financial data and identify other targets and associates.

76. **實地跟監：**此方法可取得個人或企業的一般背景、情報和資訊以及嫌疑犯的習性與人際關係。跟監對於涉及大批通用貨幣移轉的案件特別有用，並藉由監視行動辨識參與洗錢/資恐計畫發展與執行的「守門人」。跟監目標通常可辨識出金融及相關紀錄的可能保管地點，並發現資產。此外，監視也可協助證實財務資料並辨識其他目標與相關聯的事物。

77. **Trash runs:** (*i.e.*, searching the suspect’s discarded trash for evidence): This technique can be an effective way of obtaining leads where assets are maintained, as well as help develop probable cause for more coercive measures and evidence for use at trial. Suspects frequently discard evidence, including financial records and correspondence that may be valuable to a financial investigation.

77. **垃圾搜尋：**(例如搜尋嫌疑犯的廢棄物來找尋證據)：此方法可有效取得資產保管地點的線索並且有助於發現可能動機，以採取更強制的措施並取得用於審問的證據。嫌疑犯經常丟棄證據，包括財務紀錄以及具有財務調查價值的相關證據。

78. **Compulsory measures to obtain evidence:** These measures, including the use of search warrants and other instruments, should be used to gather evidence of criminal activity that cannot be obtained by other means. The timely use of these powers to obtain evidence minimises the opportunity for suspects to purge records and/or destroy evidence. In addition to seizing paper documentation, investigators should seize and examine computer systems and other electronic data. The execution of these powers should be properly planned and be lawfully conducted in accordance with existing policies and procedures. Moreover, to protect the integrity of evidence, investigators should adhere to the established policies and procedures related to the handling of evidence to include chain-of-custody documentation. If

such policies and procedures are not present, countries should develop appropriate policy and procedures that ensure the proper handling of evidence. Adherence to such policies and procedures protects the integrity of evidence as it is introduced into court proceedings. When financial investigators encounter computers or other digital media during the course of an investigation, they should consider the value of the evidence these may contain. In these instances, consulting with a trained computer evidence specialist or technical expert is appropriate. Attempts to access electronic data or transport and store electronic evidence by untrained investigative personnel, without the necessary equipment may result in unintentional tampering and/or permanent lost of valuable evidence. In all instances, original digital evidence should be deposited in an appropriate evidence container and a written chain of evidence should be prepared at the same time. Analysis of this evidence should be conducted by a computer forensic specialist.

78. **取得證據的強制措施：**這些措施包含搜索票的使用以及其他工具，應用來蒐集無法以其他方式取得的犯罪活動證據。即時使用這些權力來取得證據，可使嫌疑犯清除紀錄及／或消滅證據的機會降到最低。除了扣押書面文件外，調查員應扣押並檢查電腦系統和其他電子資料。實行這些權力時應經過適當的規劃，並根據現行的政策和流程依法執行。此外，為保護證據的完整性，調查員應遵守為處理證據所制定的相關政策與流程，以將監管鏈文件納入其中。若未制定前述政策與流程，各國應發展適當的政策與流程，以確保證據處理的正當性。當法院訴訟採用相關證據時，遵守此政策與流程可保護證據的完整性。調查員於財務調查過程中遇到電腦或其他數位媒體時，應考量這些媒介的調查價值。在此情況下，應尋求經訓練的電腦鑑識執法人員或技術員的協助。調查員在未經訓練下且無相關需求設備時，嘗試存取電子資料、儲存或傳送電子證據，可能在未察覺的狀態下造成具有調查價值的證據暫時或永久的遺失。在所有情況下，原始數位證據應存放於適當容器內，存放同時應準備書面證據鏈資料。證據的分析應由電腦鑑識人員執行。

79. **Interviews¹⁹：** Investigators should use this technique to gather evidence and information in furtherance of their financial investigation. Investigators should first attempt to obtain voluntary statements from suspects and witnesses. However, if suspects or witnesses will not voluntarily submit to an interview, their *testimony* may be compelled in accordance with a country's existing laws, policies and procedures. Such interviews should not commence before careful consideration of the potential negative impact on the investigation by soliciting the suspect's/witness's co-operation. Detailed reports of investigation should be completed to document interview results. Investigators should consider all other legal means of obtaining evidence to corroborate testimony and statements. Interview reports may be invaluable in refreshing investigators and witnesses' recollections of events during criminal or civil proceedings.

79. **面談¹⁹：**調查員應使用此方法蒐集證據與資訊促進其財務調查。調查員應先嘗試取得嫌疑犯和目擊者的自白。然而，若嫌疑犯或目擊者並非自願參與面談，其證詞將可依照現行法律、政策與流程強制取得。在此面談開始進行前，應徵求嫌疑犯或目擊者的合作，並仔細考慮面談對於調查可能造成的負面影響。面談結果的文件應使調查的詳細報告更加完整。調查員應設想到其他所有合法手段，以取得證實證詞和陳述的證據。面談報告可能在刑事或民事訴訟上對於調查員和目擊者的事件回憶具有相當大的價值。

80. **Controlled delivery:** This is an effective investigative technique involving the transportation of contraband, currency, or monetary instruments to suspected violator(s) while it is under the direction or surveillance of law enforcement officers. The contraband, currency or monetary instruments may be

¹⁹ See US Department of Homeland Security (n.d.).

¹⁹ 參閱美國國土安全部（日期不詳）

discovered subsequent to a seizure at the ports of entry or through other investigative means such as undercover operations. Controlled deliveries are conducted to:

80. **控制下交付：**此為一有效調查方法，包括在執法官員的監視與管理下，對嫌疑犯運送的違禁品、通用貨幣或金融工具進行交付。在海關扣押後，可發現違禁品、通用貨幣或金融工具，或透過其他像是秘密調查等手段發現。控制下交付針對：

- Identify, arrest, and convict violators.
■ 嫌犯的辨識、逮捕與定罪。
- Disrupt and dismantle criminal organisations engaged in smuggling contraband, currency, or monetary instruments across borders.
■ 中斷及瓦解進行違禁品、通用貨幣或金融工具跨國走私的犯罪集團。
- Broaden the scope of an investigation, identify additional and higher level violators, and obtain further evidence.
■ 擴大調查範圍、辨識額外、高階罪犯以及獲得進一步的證據。
- Establish evidentiary proof that the suspects were knowingly in possession of contraband or currency.
■ 確立能夠證明嫌疑犯故意持有違禁品或通用貨幣的證據。
- Identify the violator's assets for consideration in asset forfeiture.
■ 辨識嫌犯資產，以執行資產刑事沒收。

81. Although controlled delivery can be a successful technique, there are serious risks that should be adequately addressed. For example, there is a risk of losing the evidence during the course of the controlled delivery. Countries should ensure that their competent authorities are properly trained in using this technique, that clear policy and procedural guidelines are established and followed and that proper operational oversight is conducted at the managerial level.

81. 雖然控制下交付可為一成功調查技巧，但應適當提出其存在的重大風險。例如，在執行控制下交付的過程中，可能存在遺失證據的風險。各國應確保其權責機關受到控制下交付調查技巧的訓練、制定並遵循清楚的政策與程序指導方針以及在管理層面上執行適當的操作監督。

82. **Intercepting communications:** Electronic surveillance techniques, such as electronic intercepts of wire, oral communications, electronic media and the use of tracking devices can be very useful in financial investigations. This technique can help identify co-conspirators, provides insight into the operations of the criminal organisation, provides real time information/evidence that can be acted upon using other investigative techniques and can lead to the discovery of assets, financial records and other evidence.

82. **通訊監察：**電子監察技術，例如：監聽有線通訊、口頭對話與電子媒體，以及監聽裝置的使用皆對財務調查有相當大的幫助。此技術有助於辨識共犯和洞悉犯罪組織運作，並提供可運用於其他調查且有助於發現資產、財務紀錄與相關證據的即時資訊或證據。

83. Countries should train their competent authorities to properly intercept communications in furtherance of financial investigations in accordance with the basic principles of their domestic laws, policies and procedures. Countries should ensure that their competent authorities are properly resourced so that such operations are available to the competent authorities as a viable investigative technique. However, intercepting communications is intrusive, coercive and resource intensive measure, thus countries should put in place mechanisms that ensure the usage of this technique is used lawfully, effectively and efficiently.

83. 各國應依據國內法律、政策與程序的基本原則訓練權責機關正當執行通訊監察，以促進財

務調查。各國應確保其權責機關具有可執行此調查技術的實力。因通訊監察具有侵入性、強制性且需提供相關執行措施，各國應建立合適機制以確保此技術用途經合法、有效且有效率地使用。

84. **Undercover operation:** This is an investigative technique that can be effective regarding financial investigations but also has inherent risks. Undercover operations typically allow investigators access to key evidence that cannot be obtained through other means. An undercover operation is an investigative technique in which a law enforcement officer or operative of a law enforcement authority, under the direction of a law enforcement authority, takes action to gain evidence or information. Properly conducting undercover operations often requires substantial resources, extensive training and significant preparatory work. The resources, the unique and diverse required skill sets and the inherent risks typically make utilising this technique a last resort – normally after more traditional investigative techniques have been unsuccessful. The actions performed by law enforcement during undercover operations should be in accordance with the basic principles of existing laws, policies and procedures, and all undercover officers should be highly trained before engaging in such operations.

84. **臥底偵查：**此調查技巧有助於財務方面的調查，但也有其潛在風險。臥底偵查基本上允許調查員取得無法透過其他調查方法獲得的關鍵證據。臥底偵查為執行此調查技巧的執法機關或執法人員，在一執法機關的指示下採取行動，以取得相關的證據或資訊。正當執行臥底偵查，通常需要充裕的資源、大量的訓練以及有效的準備工作。因臥底偵查潛藏的風險、資源需求以及應具備獨特與多樣技能，此調查技巧的使用，通常在傳統調查技巧失敗後成為調查的最後手段。執法機關應依照現行法律、政策與程序的基本原則採取臥底偵查行動。所有臥底偵查員應在執行臥底偵查前接受大量訓練。

85. There are various significant factors that should be considered when contemplating the use of an undercover operation. The investigators should determine motive/reliability of informant(s) (if applicable), research applicable laws and policies, conduct background investigation(s) of the potential subjects and determine that an undercover operation will likely yield positive results. The investigators should continuously re-evaluate the need for an undercover operation and be prepared to terminate the operation when appropriate. Resources that are to be employed must also be considered such as the person(s) to be used in undercover capacity, other staff needed to support the operation, equipment needs and plans for locations and estimated expenses. Investigators should also establish termination criteria, secure advice from a prosecutor and obtain the necessary approvals required by the country's laws, regulations and policies.

85. 欲採取臥底偵查時，應考量諸多重要因素。調查員應確認資料的目的或可信度（如適用）、研究適用的法律與政策、進行可疑對象的背景調查，並且確定臥底偵查的執行能夠產生積極正向的結果。調查員應持續評估臥底偵查的必要性，並作好在適當時機終止偵查的準備。調查員也須考量臥底偵查時的使用資源，例如臥底偵查人員、設備需求、地點規劃及預估費用。調查員也應建立終止臥底偵查的標準、取得檢察官保證以及依照國內法律、規範與政策的規定獲得必要的批准。

86. Given the inherent risk with this technique, undercover operations proposals should be *reviewed and authorised* by designated officials from the competent law enforcement authorities. These officials should be knowledgeable on all aspects of undercover operations. Moreover, the proposal should indicate that traditional investigative techniques have been utilised and have been largely unsuccessful and that the undercover operation is likely the only technique available to gather evidence of the suspected criminal activity. Only highly trained undercover agents should be used in undercover operations²⁰.

²⁰ See US Department of Homeland Security (n.d.), for more information about undercover operations.

²⁰ 更多臥底偵查資訊，請參閱美國國土安全部（日期不詳）。

86. 因臥底偵查具有潛在的風險，其提案應由法定執法機關指派的官員 **審查與授權**。受指派的官員應具備臥底偵查各方面的知識。此外，提案中應提及已使用所有傳統調查技巧並且徹底失敗，而臥底偵查則成為蒐集可疑犯罪活動證據的唯一可行方法。臥底偵查僅能使用經高度訓練的秘密特工²⁰。

87. **Methods of Proving Income:** A key component of financial investigations is the determination of the financial gain or profit derived from the predicate offence. Establishing the amount of the illegal proceeds often supports the motive for the crime and provides circumstantial evidence of the predicate offence. For this reason, it is essential that financial investigators be proficient in the various methods of proving income and determining which method is applicable, based on the facts and circumstances of a particular investigation.

87. **所得證明方法：**財務調查的關鍵要素之一為金融收益或從前置犯罪利得或利潤的判定。非法收益金額的建立經常支持犯罪動機，並且提供前置犯罪的間接證據。因此，財務調查員應根據特定調查的事實與情況，精通各種提供所得證明的方法以及確認適用的方法。

88. This guidance encompasses two general evidentiary ways of proving income. These include using direct evidence, as in the *specific items method*, or circumstantially, as in the three indirect methods of proof: (1) *net worth and expenditures*, (2) *sources and applications* and (3) *bank deposits*. These methods are discussed in more detail in the Annex to this report.

88. 此指引包含兩個提供所得證據的方法。方法包括使用逐項交易核對法的直接證據，或視情況而定，使用下列三種間接證明法：(1) 財產淨值與支出；(2) 來源與運用；(3) 銀行存款。上列方法將詳述於此報告附錄。

89. While financial investigators are conducting financial criminal analysis using the indirect method of proof, they should be cognizant that all *indirect method* investigations are subject to evidentiary difficulties, which can be addressed by properly completing the following investigative steps:

89. 財務調查員採用間接證明法分析金融犯罪時，應瞭解所有 **間接證明法** 調查皆易遭受到舉證困難，可透過完成下列調查步驟解決此困難：

- Account for all sources of funds such as inheritances, loans and transfers between accounts. Non-income sources need to be identified in order to accurately compute unreported income for serious income tax evasion cases or illicit source income for other predicate offences.
- 所有資金來源的帳戶，包括遺產、貸款以及帳戶轉帳。須辨識非法所得來源，以精確計算重大規避所得稅案例或前置犯罪非法所得的未申報收益。
- Address defences raised by the suspect. Indirect methods of proof are based on circumstantial evidence. Any reasonable defence raised by the suspect needs to be investigated in order to determine whether or not it has merit.
- 對付嫌疑犯提出的抗辯。間接證明法以間接證據為基礎。須調查嫌疑犯提出的任何合理抗辯，以判定其法律依據。
- Establish a likely source of income for the understated income in a tax evasion investigation or the predicate offence as a source of the unexplained income.
- 為逃漏稅調查時少報的所得或不明的前置犯罪收益建立可能的所得來源。

- The investigator must identify all cheques payable to cash and determine whether or not there are any missing checks, particularly when using the *bank deposit method* of proof. This is because cheques payable to cash and missing cheques should be considered a source of currency deposited, hoarded or spent, unless there is compelling evidence to refute it.
- 使用銀行存款證明法時，調查員務必辨識所有可兌現的支票和確認有無遺失的支票。因為可兌現或遺失的支票應視為已存入、已積蓄或已支出的通用貨幣來源，除有令人信服的證據可加以反駁外。

VII. TRAINING

VII. 訓練

90. Training and education programmes should be standardised within the competent authorities, basic training should be envisaged at entry level, and specialised training on select officers should be conducted at both entry level and throughout the investigator's career. However, such specialisation would differ between the tasks of a financial investigator and those of a financial analyst. Officers on such specialised career paths should be provided career and pay incentives. Basic financial investigative skills should be routinely included in training for entry level police officers and other competent investigators.

90. 權責機關應將教育訓練計畫標準化，基礎訓練應設定為入門程度，而對指派的人員實施的專業訓練應涵蓋入門等級和調查員全職涯訓練。然而，此專門化將依調查員與金融分析師的任務而做不同的安排。從事此專業工作的人員應享有職業與薪資獎勵。新進警員及其他合格調查員的訓練皆應納入基本財務調查技巧。

91. The training structure should follow operational needs. Formal selection of staff should be followed by formal instruction in the three primary disciplines: financial intelligence, evidence gathering, and asset tracing/freezing. Further training should be given on money laundering investigation, enhanced financial intelligence, criminal confiscation and non-conviction based confiscation. Where possible, the training should be aligned with training for line managers and specialist prosecutors. Moreover, the judiciary should be trained on appropriate laws and how to properly adjudicate on financial investigative matters.

91. 訓練結構應符合執行需求。人員正式選拔之後應在三個主要領域進行正式指導：金融情報、證據蒐集與資產追查／凍結。應針對洗錢調查、強化金融情報、犯罪刑事沒收和非定罪為基礎的刑事沒收提供相關訓練。若可行，此類訓練應配合部門經理和專責檢察官訓練。此外，審判人員應接受相關法律訓練，瞭解如何正確判決財務調查事件。

92. Training should not be exclusive to law enforcement but should include those sectors that are required to report suspicious activity and others that may pose a risk. The FATF and FATF-style regional bodies have developed typologies reports describing various ML/TF methods and techniques. This material may also be a useful to include in training on financial investigation.

92. 訓練不可僅限於執法，應包括為回報可疑活動而須進行的訓練，以及針對可能招致風險的行動而進行的訓練。防制洗錢金融行動工作組織與其他區域性防制洗錢組織已擬定態樣報告，描述各種洗錢/資恐的方法和技巧。此資料具實用性，可納入財務調查訓練。

93. Training may also include multiple jurisdictions in order to share best practices, learn differences in legal procedures and enhance co-operation. Moreover, staff should be vigilant in staying current to new trends and typologies. Countries should encourage their financial investigators to attend regional and international training workshops with their foreign counterparts.

93. 為分享最佳實務、學習法律程序之間的差異以及促進合作，相關訓練可涵蓋多個管轄區域。另外，相關人員應隨時留意最新情勢與型態。各國應鼓勵其財務調查員以及外國對等機關參與區域性和國際性的訓練研討會。

94. Reports are an integral part of financial investigations, thus report writing should be part of the training curriculum for financial investigators and intelligence analysts. The ability to convey concepts, findings and conclusions in a clear, concise and informative manner is essential to the success of complex financial investigations. Countries should dedicate the necessary resources to train their competent authorities properly in the skill of report writing. In financial investigations, report writing takes on an even greater importance because the investigations can be lengthy, complex and multi-jurisdictional.

Accurate, timely and concise reports will assist, for example, in drafting the necessary background information to meet evidentiary requirements in domestic court proceedings as well as MLA requests for evidence. It is imperative that practitioners document their findings periodically throughout the entire investigation, as well as after significant events. Reports should be written in a clear and concise manner, preferably on the same day as the event being described, and should include all relevant information and events. They should be reviewed and approved by a supervisor as soon as possible.

94. 態樣報告為財務調查中不可或缺的一部分，因此，報告寫作也應納入財務調查員和情報分析員的訓練課程中。具備將調查概念、結果和結論以清楚、簡潔及具情報價值的方式傳達出來的能力，對於成功的財務調查至關重要。各國應致力投入必要資源，適當訓練權責機關的報告寫作技能。財務調查可能冗長、錯綜複雜以及涵蓋多個管轄區域，因此，報告寫作在調查中扮演著相當重要的角色。準確、及時和簡要的報告可協助描繪必要的背景資訊，以符合國內法院訴訟的證據要求以及 MLA 對於證據的要求。執行者必須在整個調查過程中和重大事件發生後，定期將調查結果歸檔。報告應以清楚、簡要的方式書寫，最好在事件描述的當天紀錄報告，並應涵蓋所有與調查相關的資訊和事件。報告應盡快接受監理機關的審查與批准。

95. A sample curriculum of training courses for financial investigators is available²¹. This list and types are not exhaustive but cover many skills required to be a high-quality financial investigator.

95. 有財務調查訓練的課程範例可供參考²¹。此課程範例清單與類型雖未詳盡，但已包含許多高階財務調查員所應具備的技能。

²¹ See (NPIA (National Policing Improvement Agency), n.d. a-g; Golobinek, R., 2006).

²¹ 請參閱（警政發展署 NPIA），日期不詳 a-g；Golobinek, R., 2006。

VIII. INTERNATIONAL CO-OPERATION VIII. 國際合作

96. Recommendation 40 states that countries should ensure that their competent authorities can rapidly, constructively and effectively provide the widest range of international co-operation in relation to money laundering, associated predicate offences and terrorist financing. This guidance note recognises the importance of international co-operation for successful financial investigations. Financial investigations often reach beyond domestic borders; therefore, it is important that competent authorities immediately focus on both formal and informal international co-operation efforts and ensure they are maintained for the duration of the case. Establishing early contact aids practitioners in understanding the foreign legal system and potential challenges, in obtaining additional leads and in forming a common strategy. It also gives the foreign jurisdiction the opportunity to prepare for its role in providing co-operation.

96. 建議第 40 項聲明各國應確保其權責機關對於洗錢、前置犯罪以及資助恐怖份子的相關調查，能夠快速、具有建設性和有效地提供最大範圍的國際合作。此指引備忘錄說明國際合作對於財務調查成功的重要性。財務調查通常需跨國進行，因此，權責機關應立即著手致力於正式與非正式的國際合作，並確保其在調查過程中的持續性。建立早期階段的接觸有助於執行者瞭解國外的法律制度以及潛在挑戰，並取得額外線索以及形成共用策略。此接觸亦給予國外管轄權事先準備其在提供國際合作時，應扮演的角色。

97. There are particular channels for international co-operation which can be used by financial investigators:

97. 財務調查員可利用特定管道進行國際合作：

- Contact existing liaison officers²² in or of the foreign jurisdiction.
- 聯繫國外管轄區域目前聯絡官。²²
- Exchange information between national (or regional) police units using channels such as INTERPOL, Europol and other regional law enforcement bodies.
- 國內或區域內警察單位間的資訊交換管道，例如國際刑警組織（INTERPOL）、歐洲刑警組織（Europol）和其他區域的執法組織。
- Inform the national FIU which has a possibility to contact its foreign counterparts and collect further intelligence through the Egmont Secure Web or by other means.
- 通知國內金融情報中心可聯繫的國外對等單位並透過安全網路（Egmont Secure Web）或其他方式蒐集進一步的情報。
- Through the central authority for transmitting MLA requests to foreign countries.
- 透過中央機關傳送司法互助請求至國外。

²² This should include multinational bodies such as EUROJUST (a European agency with some non EU liaison officers) or multinational judicial or police networks that may exist in some regions of the world (in the European Union for instance the European Judicial Network).

²² 國外管轄權的跨國組織包括 EUROJUST（非歐盟聯絡官的歐洲機構）或在世界特定區域的跨國司法或治安網絡，例如歐盟的歐洲司法網絡。

98. In order to legally obtain evidence that is admissible in court, investigators and/or prosecuting authorities must make use of the applicable international arrangements which may be based on reciprocity, MoUs, bilateral or multilateral arrangements. Once a decision has been taken as to which country has responsibility for prosecuting and/or investigating which part of the case, mechanisms should be agreed ensuring that all relevant evidence can be made available in the competent country in a form that will allow production in a criminal court and which respects due process of law.

98. 為合法取得可被法院採用的證據，調查員與（或）執行機關務必根據互惠、協議備忘錄以及雙邊或多邊協定，有效運用符合的國際協定。一旦決定負責追訴的國家及／或應調查的案件部分，應就機制達成協議，確保可從負責的國家取得相關證據，其形式應能在刑事法庭提出，而且符合應進行的法律程序。

99. Forming personal connections with foreign counterparts is also important to successful financial investigations. A telephone call, an e-mail, a videoconference or a face-to-face meeting with foreign counterparts will go a long way to moving the case towards a successful conclusion. Communication is important in all phases: obtaining information and intelligence, making strategic decisions, understanding the foreign jurisdiction's requirements for assistance, drafting MLA requests or following up requests for assistance. It helps reduce delays, particularly where differences in terminology and legal systems may lead to misunderstandings.

99. 與國外對等單位建立個人聯繫亦對成功的財務調查非常重要。與國外對等單位進行電話通訊、電子郵件、視訊會議或面對面會談，對於調查案件的成功結案有相當大的幫助。在各個階段進行溝通相當重要：取得資料和情報、作策略性決定、瞭解國外管轄權要求的協助、司法互助請求或對協助採取進一步的要求。各階段的溝通亦有助於降低延遲，特別是當專業用語和法律制度有所差異時所可能導致的誤解。

100. Some important information can be obtained more quickly and with fewer formalities through direct contact with counterpart law enforcement agencies and financial intelligence units or from liaison magistrates or law enforcement attachés posted locally or regionally (agency-to-agency assistance). Such assistance may lead to a more rapid identification of evidence and assets, confirm the assistance needed and even more importantly provide the proper foundation for a formal MLA request (government-to-government assistance). Such contacts also offer an opportunity to learn about the procedures and systems of the foreign jurisdiction and to assess various options for conducting investigations, prosecutions and proceeds of crime actions.

100. 直接與對等執法機關和金融情報單位聯繫，或直接取自當地或區域法院聯絡官或專責執法人員（機關之間的協助），將有助於執法機關用較快的方式及透過較少的正式程序取得某些重要資訊。此等協助可加快證據與資產的辨識、確認需要的協助，或更重要的是，對於正式的司法互助請求（政府之間的協助）提供適當的基礎。上述聯繫亦提供執法機關熟悉國外管轄權的相關程序和制度，並取得各種執行調查、訴訟和犯罪行為收益的選擇權。

101. In order to constructively and effectively provide the widest range of international cooperation, it is essential for financial investigators to discuss issues and strategy with foreign counterparts. Such discussions should involve consideration of conducting a joint investigation or providing information to the foreign authorities so that they can conduct their own investigation. If the financial investigation is in the early stages and investigators are concerned about the integrity of the investigation, they can still engage with their foreign counterparts and discuss issues from a “hypothetical” perspective. Such discussions allow all involved parties to get a better understanding of the parameters and requirements of an investigation without having to discuss too many specific details. Such details can be shared at a later stage as necessary.

101. 為了以最大範圍提供具有建設性和有效性的國際合作，財務調查員務必和國外對等單位研討相關議題與策略。此類研討內容應考量是否進行聯合調查，或提供國外機關相關資訊，以便自行

執行調查。若財務調查在早期階段，且需保護其完整性，調查員仍可與國外對等單位聯繫合作，並以「假設」的觀點討論調查議題。上述討論讓所有參與方在未討論確切調查內容的情況下，對於調查範圍與要求有更進一步的瞭解。必要時，此類細節可在調查的後期階段分享。

102. To address the transnational nature of MLAs requests, all countries should be able to investigate, prosecute and bring to judgment cases of ML, associated predicate offences and TF regardless of whether the predicate offence occurred within its jurisdiction or abroad. If the predicate offence was committed in a foreign country, the prosecution of the money laundering offence generally requires some knowledge of the associated predicate offence in the foreign jurisdiction, and such information should be made readily available.

102. 為處理 MLA 的跨國特性，不論前置犯罪是否發生在其管轄區或國外，各國應能調查、追訴和進行洗錢、相關前置犯罪與資恐的案件判決。若前置犯罪發生在國外，對於洗錢犯罪的追訴，通常須具備外國司法對前置犯罪管轄權的相關知識，而此類知識應可立即取得。

103. In the FATF best practices paper on confiscation²³, mention is made of best practices for countries to help strengthen legal frameworks and ensure that asset tracing and financial investigations can be conducted effectively. These best practices include having appropriate procedures and the legal framework to allow the informal exchange of information, the use of appropriate regional and international bodies to facilitate co-operation, the spontaneous sharing of information with proper safeguards and the entering into of asset sharing agreements.

103. 防制洗錢金融行動工作組織在其最佳刑事沒收實務報告²³中提到的最佳實務，將有助於各國強化法律架構並確保有效執行資產追查與財務調查。此最佳實務包含建立適合的程序與法律架構，允許非正式交換資訊、為促進合作而運用相關區域與國際組織、在充分的保護下自願分享資訊及簽訂資產共享協議。

²³ FATF (2010).

²³ 防制洗錢金融行動工作組織 (2010)。

ANNEX ADDITIONAL INFORMATION 附錄 額外資訊

BASIC INFORMATION THAT SHOULD BE MAINTAINED IN A CORPORATE REGISTRY

應保存於公司登記系統的基本資料

- Entity name (including governmentally unique identifier and alternative names)
■ 公司名稱（含政府獨特識別碼與替代名稱）
- Date of incorporation, formation, or registration
■ 合併、成立或登記日期
- Entity type (for example, LLC, sociedad anónima)
■ 公司類型（如：LLC 或 sociedad anónima）
- Entity status (for example, active, inactive, dissolved—if inactive or dissolved, date of dissolution and historical records of the company)
■ 公司狀態（如：營運、非營運、已解散—若公司狀態為非營運或已解散，應有解散日期與公司的歷史紀錄）
- Address of the principal office or place of business
■ 辦事處或執業地點的地址
- Address of the registered office (if different from principal office) or the name and address of the registered agent
■ 登記營業處地址（與辦事處地址不同時）或登記代理商地址
- Particulars of formal positions of control, that is, directors or managers and officers (for example, president, secretary)
■ 正式職位管理細項，董事長、經理和高級職員（總裁、秘書等）
 - —If a natural person—their full name, any former name, residential address, nationality, and birth date
 - —若為自然人—應有其全名、過去任何姓名、戶籍地址、國籍和出生地。
 - —If a corporation—the entity name, address of the principal office, address of the registered office, and (if applicable) for foreign corporations, the registered office in its country of origin
 - —若為公司—應有公司名稱、辦事處地址、登記營業處地址，（若符合）國外公司，應有原產國的登記辦事處。

- History of filings (for example, formation documents, annual returns, financial filings, change of registered office, change of registered agent, and so on)
- 存檔歷史紀錄，例如成立文件、年度申報、財務檔案、登記辦事處變更、登記代理商變更等。

- Required annual returns that verify the correctness of each particular required to be filed in the system, even if it has not changed since the last filing date
- 驗證各細項正確性的年度申報，即便自最後建檔日期後就未經變更，也應將其建檔於系統中。

- To the extent feasible and appropriate, electronic copies of filings and documents associated with the legal entity (for example, formation documents, annual returns, financial filings, change of registered office, change of registered agent, and so on).
- 在可行與適切情況下，提供法律實體相關電子檔案與文件複本，例如成立文件、年度申報、財務檔案、登記辦事處變更、登記代理商變更等。

ADDITIONAL INFORMATION ON UNDERCOVER OPERATIONS

臥底偵查的額外資訊

OPERATION STAFFING AND TRAINING

偵查人員編制與訓練

1. Article 29 (1)(g) of the Palermo convention calls on countries to initiate, develop or improve specific training programs for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel regarding the use of undercover operations. The number of employees involved with an undercover operation will naturally be dictated by the nature of the operation.

1. 巴勒莫公約第 29 條第 1 項(g) 款呼籲各國對其檢察官、執法調查機關和海關人員啟動、發展或增加特定訓練計畫，作為臥底偵查之使用。參與臥底偵查的人員數量受臥底偵查類型支配。

INDIVIDUALS PROPERLY TRAINED IN VARIOUS ROLES ARE NORMALLY INVOLVED IN EVERY UNDERCOVER OPERATION.

經過各種角色訓練的人員通常會參與臥底偵查行動。

2. For example: The *supervisor*'s responsibilities include overall management control of the operation and will ensure that the daily activities of the other participants are directed towards the objectives of the operation. A *cover agent* should be assigned at location of the undercover operation to perform on-site liaison with the undercover agent and be primarily responsible for the safety and security of the undercover agent. The *undercover agent* must be trained and is generally brought from another location into the area where the undercover operation will be conducted. They may develop multiple cover identities so that at any given occasion they can work on undercover assignments under each identity. A *tech agent* is a trained technician who is knowledgeable in the installation and operation of audio and video monitoring equipment. The *tech agent* is a regular member of the undercover operation team and should participate in all the periodic review, preoperational and post operational meetings. The *case agent* will manage the day to day activities of the undercover operation. Other duties of the case agent involve timely reviewing, analyzing, and determining the value of all information or evidence obtained. Typically, the *case agent* is responsible for report writing, documenting evidence, duplicating and storing recordings and other record keeping functions.

2. 舉例來說：監理機關的責任在於全面控管偵查行動，並確認其他參與者的每日活動皆符合行動目的。應在臥底偵查地點指派掩護員，用以執行與臥底人員的現場聯絡，並且負責臥底人員的安全與防備。臥底人員必須接受相關訓練，一般而言，臥底人員會從另一位置被帶往臥底偵查的執行地點。臥底人員可建立多重身分，以便使用不同身分執行不同的臥底任務。技術員為受過訓練的技術人員，應具備安裝和操作相關音像監控設備的知識。技術員是臥底偵查執行小組的固定成員，應參與所有定期檢討以及任務執行前與執行後的會議。案件員將逐日管理臥底偵查的活動。案件員的其他責任為及時審查、分析和判別調查取得的所有資料和證據。基本上，案件員負責書寫報告、將證據歸檔、複製與儲存紀錄以及保存其他紀錄。

CONFIDENTIAL INFORMANTS

秘密線人

3. Undercover operations may be supported by cooperating private individuals (confidential informants) who can play an effective role in the success of an undercover operation. A well-placed cooperating private individual can assist the undercover agent in making contacts with the subject(s) of the operation, and lend credibility to the undercover agent. While the confidential informant is not a member of the investigative team, he or she is often in a fiduciary/controlled status to the law enforcement agency conducting the undercover operation. The confidential informant role is often critical to the undercover operation. However, the appropriate law enforcement personnel should closely monitor all the confidential informant's activities in any undercover operation.

3. 臥底偵查工作可由配合的秘密線人支援，其扮演的角色可影響臥底偵查的成功與否。適當設置配合的秘密線人可協助臥底人員聯繫偵查對象，並增加對臥底人員的可信度。秘密線人並非調查小組的成員，其經常於受執法機關託管／控制的狀態下執行臥底偵查。秘密線人通常在臥底偵查中扮演著關鍵性的角色。然而，適當的執法人員應於任何臥底偵查時，密切監控秘密線人的所有活動。

DEVELOPING INFORMATION GATHERED BY AN UNDERCOVER OPERATION

臥底偵查蒐集資料的建立

4. In an undercover operation, evidence and information gathered is transmitted to the cover agent by reports of activity prepared by the undercover agent. These reports detail the undercover agent's activities as it relates to the operation. They should contain the names of all people with whom the undercover agent had contact; and should include a comprehensive summary of the day's events.

4. 臥底偵查蒐集到的證據和資訊經由臥底人員準備的活動報告傳送給掩護員。活動報告詳述臥底人員關於偵查工作的所有活動。報告應包含臥底人員在執行臥底偵查時所有聯繫對象的姓名以及每日事件的完整摘要。

5. Another source of information or evidence gathering may come from electronically monitored conversations between the undercover agent and the subject(s). The content of these monitored conversations will not be included in the undercover agent's daily activity reports except for a reference to with whom and at what time the conversation took place.

5. 調查資訊或證據的蒐集也可來自電子監控下，臥底人員和偵查對象之間所進行的對話。受電子監控的對話不會列於臥底人員的每日活動報告中，活動報告僅提及進行對話的對象和時間。

6. Additional information and evidence can also be obtained by other members of the investigative team and support personnel by such investigative activities as surveillance, public record checks, law enforcement contacts, financial information analyses, etc.

6. 其他的調查資訊和證據也可由偵查小組中的其他成員或偵查活動的支援人員取得，例如監視、公開記錄檢查、執法聯絡、金融資訊分析等活動。

REVIEW AND CONCLUDING THE UNDERCOVER OPERATION

臥底偵查的檢討與結論

7. It is a good practice to have periodic reviews (*i.e.*, 90 day intervals) of ongoing undercover operations. The participants in this review should include the supervisor, case agent, cover agent and if possible, the undercover agent. This review should address and memorialize the progress of the operation within the stated objectives and any changes in strategy and/or actions needed to realize the goals.

7. 對進行中臥底偵查執行定期檢討（90天檢討一次）。參與檢討的對象應包括監理機關、案件員、掩護員和臥底人員（若情況允許）。臥底偵查的檢討應在指定目標下說明和記錄偵查工作的過程，以及為達成目標而需變更的策略及／或行動。

8. The termination of an undercover operation should generally be decided based on facts and circumstances. These include whether the stated objectives have been accomplished, cannot be accomplished or would require expending an unreasonable amount of resources. An undercover operation should also be terminated when the allegations are proven false.

8. 臥底偵查的終止通常應視事實和情況而定，包括是否達成指定目標或是需要更多超出合理數量的資源。臥底偵查也應在證明指控不實後終止。

ADDITIONAL INFORMATION ON NET WORTH METHOD COMPUTATION

其他財產淨值計算法資訊

9. The purpose of a net worth computation is to arrive at taxable or illegal income. The basic computation of net worth is assets less liabilities. The change in net worth is the difference in net worth from period to period, for example one calendar year to the next. Changes in net worth can be the result of purchasing assets, selling assets, reducing liabilities or increasing liabilities. Expenditures are then added to any change in net worth to determine the total amount of funds used by the subject in any given period.

9. 財產淨值計算是用來確定應予課稅的所得或非法所得。財產淨值的基本計算結果應為資產少於負債。財產淨值的改變為財產淨值的逐期差異，例如每年財產淨值。購買資產、銷售資產、減少負債或增加負債的結果皆會造成資產淨值的變化。所有支出也會造成財產淨值的變化，並決定調查對象在任何時間使用資金的總額。

10. A net worth statement ($\text{Assets} - \text{Liabilities} = \text{Net Worth}$) is similar to a balance sheet in its presentation ($\text{Assets} - \text{Liabilities} = \text{Owner's Equity}$).

10. 財產淨值公式（ $\text{資產} - \text{負債} = \text{財產淨值}$ ），等同於資產負債表中呈現的公式（ $\text{資產} - \text{負債} = \text{所有人資產淨額}$ ）。

11. The net worth indirect method of proof is a very effective method of determining income amounts derived from illegal activities. There are three basic steps in calculating the illegal income as follows:

11. 財產淨值間接證明法對於判定取自非法活動的所得總額非常有效。下列為計算非法所得的三個基本步驟：

12. **Calculate the change in a subject's net worth (assets less liabilities).** Determine the net worth at the beginning and end of a period (a taxable year or years), subtract the beginning period's net worth from the ending period's net worth. This computation yields the change in net worth, either an increase or decrease in net worth.

12. 計算調查對象財產淨值的變化（ $\text{資產} - \text{負債}$ ）。確定財產淨值的起始日期（一個或多個

納稅年度)，以結束日的財產淨額減去起始日的財產淨額。此計算結果得到增加或減少的財產淨額變化。

13. **Make adjustments to the net worth computation.** These include personal living expenses (expenditures), certain losses and legal income sources.
13. **調整財產淨值計算結果。** 調整包括個人生活費用(支出)、特定虧損以及合法的所得來源。
14. Illegal or unexplained income is determined through the **comparison of total income to known sources**; any unexplained income is attributed to the illegal sources.
14. **將收入總額和已知來源比對**，用以確認非法或不明所得，任何不明所得皆視為非法所得。

SELECTED SOURCES OF INFORMATION FOR FINANCIAL INVESTIGATION

財務調查資訊精選來源

FATF

防制洗錢金融行動工作組織

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