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HKCSS

香港社會服務聯會

Anti-Money Laundering and Counter-Terrorist Financing for
NGOs

非政府機構如何避免洗黑錢及資助恐怖活動

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 - Staff: 138 (including 24 partners)
 - Practice areas: M&A, IPO, corporate, lending, finance, financial services regulation, litigation, arbitration, intellectual property, employment, private wealth
 - Sectors: aviation, banks and banking, funds and financial services, international trade, private equity, shipping

- 羅夏信律師事務所的總部設在倫敦，並在全球擁有超過1100名員工，其中包括180多名合夥人。本所在香港設有的辦事處於1979年成立。
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 - 員工：138名 (包括24名合夥人)
 - 服務範圍：收購合併、上市、公司業務、貸款、融資、金融監管、訴訟、仲裁、知識產權、僱傭、私人財富等
 - 行業：航空、銀行和銀行業、基金和金融服務、國際貿易、私募機構、航運等

Introduction 概述

Basic concepts 基本概念



- Money laundering
- Terrorist financing
- **What is the difference?**

- 洗錢（洗黑錢）
- 恐怖分子資金籌集
- 兩者有什麼分別？

Introduction - Money laundering v terrorist financing

概述 - 洗錢與恐怖分子資金籌集的分別



- **ML:** concealing origins of funds obtained from illegal activities and integrating it into the financial system.
- **TF:** using funds to finance terrorist acts to terrorists or terrorist organisations.

Which is more relevant to your NGO?

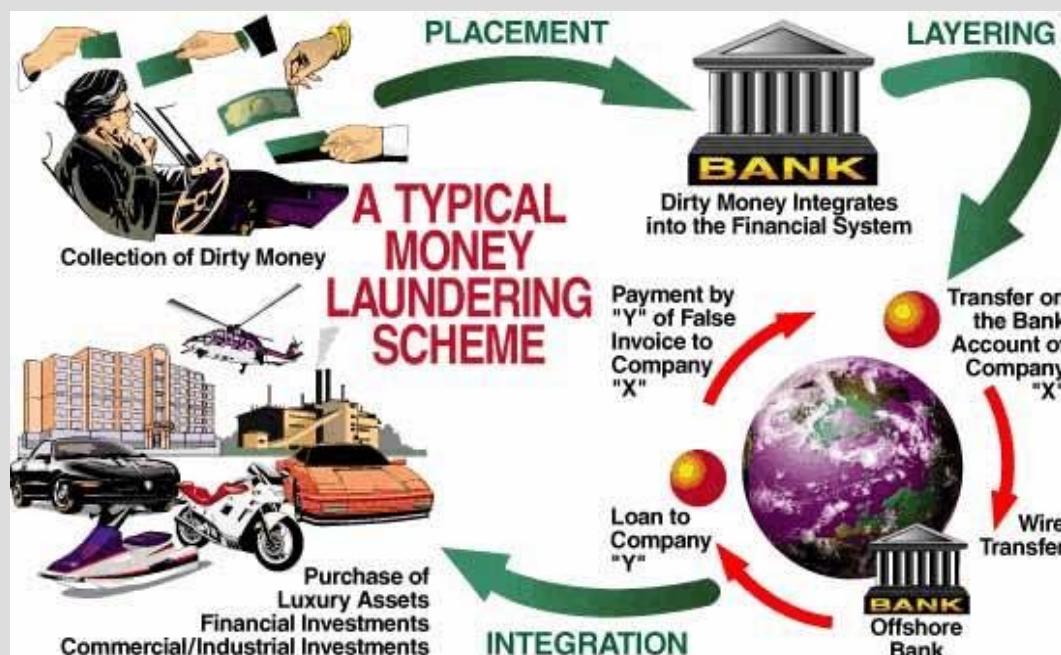
- **洗錢:** 隱藏犯罪收益來源並將其納入金融體系
- **恐怖分子資金籌集:** 利用資金以資助恐怖行為、恐怖分子或恐怖組織

那樣對閣下的非政府機構較為有關?

Introduction - Money Laundering

概述 - 洗錢

The process whereby the origin of the proceeds of crime is concealed to allow their use in legitimate activities 隱藏犯罪收益來源以允許其用於合法活動的過程



Source:
United Nations Office
on Drugs and Crime

Introduction - Terrorist Financing

概述 - 恐怖分子資金籌集



Provision or collection of any property for use to commit a terrorist act

提供或收集用於進行恐怖行為的任何財產



Supply of any property / financial services to / for the benefit of a terrorist / its associate

恐怖分子或其有聯繫者的利益提供任何財產/金融服務



Collection of property / Solicitation of financial services for the benefit of a terrorist / its associate

為恐怖分子或其有聯繫者籌集財產/尋求金融服務

Overview 主題



- What are the laws?
- Why is it relevant to NGOs?
- What should NGOs do?
- What is crowdfunding?
- Conclusion
- Q&A

- 法律框架
- 為何與非政府機構有關？
- 非政府機構該做什麼？
- 什麼是眾籌？
- 結論
- 問答



What are the laws
Why is it relevant to NGOs?
法律框架
為何與非政府機構有關？

What are the laws 法律框架

Main legislation 主要條例



- United Nations (Anti-Terrorism Measures) Ordinance
- Organised and Serious Crimes Ordinance / Drug Trafficking (Recovery of Proceeds) Ordinance
- Anti-Money Laundering and Counter-Terrorist Financing Ordinance
- United Nations Sanctions Ordinance
- Weapons of Mass Destruction (Control of Provision of Services) Ordinance
- National Security Law

- 《聯合國(反恐怖主義措施)條例》
- 《有組織及嚴重罪行條例》 / 販毒(追討得益)條例》
- 《打擊洗錢及恐怖分子資金籌集條例》
- 《聯合國制裁條例》
- 《大規模毀滅武器(提供服務的管制)條例》
- 《國安法》

What are the laws 法律框架

United Nations (Anti-Terrorism Measures) Ordinance 《聯合國(反恐怖主義措施)條例》



- The UNATMO implements decisions contained in United Nations Security Council Resolutions aimed at preventing the financing of terrorist acts and combating the threats posed by foreign terrorist fighters.
- The UNATMO criminalises:
 - the provision or collection of property; and
 - the making of any property or financial (or related) services available to terrorists or terrorist associates.

- 《聯合國(反恐怖主義措施)條例》旨在實施相關的聯合國安全理事會決議(安理會決議)中關於防止向恐怖主義行為提供資金及對抗外國恐怖主義戰鬥人員造成的威脅的決定。
- 《聯合國(反恐怖主義措施)條例》訂明:
 - 向恐怖分子或與恐怖分子有聯繫者提供或籌集財產; 及
 - 向他們提供任何財產或金融(或有關的)服務, 均屬違法。

What are the laws 法律框架

Organised and Serious Crimes Ordinance / Drug Trafficking (Recovery of Proceeds)

Ordinance 《有組織及嚴重罪行條例/販毒(追討得益)條例》



- **Dealing offence:** a person commits the offense of money laundering if he deals with any property, including money, which he knows or **has reasonable grounds to believe** to be proceeds of drug trafficking / indictable offence / terrorist property.
- **Dealing** involves:
 - (a) receiving or acquiring the property;
 - (b) concealing or disguising the property;
 - (c) disposing of or converting the property;
 - (d) bringing into or removing from Hong Kong the property;
 - (e) using the property to borrow money, or as security

- **處理罪行:** 任何人如知道或有合理理由相信任何財產(包括金錢)是販毒或可公訴罪行得益或屬恐怖分子所擁有而仍處理該財產, 該人便干犯清洗黑錢罪行。
- **處理, 包括 —**
 - (a) 收受或取得該財產;
 - (b) 隱藏或掩飾該財產;
 - (c) 處置或轉換該財產;
 - (d) 將該財產運入香港或調離香港;
 - (e) 以該財產借貸, 或作保證

What are the laws 法律框架

Organised and Serious Crimes Ordinance / Drug Trafficking (Recovery of Proceeds)

Ordinance 《有組織及嚴重罪行條例/販毒(追討得益)條例》



- **Dealing offence** : what are “**reasonable grounds to believe**” that property represents proceeds of an indictable offence”?
- **Test:** CFA’s 2019 decision in *HKSAR v Harjani Haresh Murlidhar*:
 - (1) What facts or circumstances, including those personal to the defendant, were known to the defendant that may have affected his/her belief as to whether the property was the proceeds of crime (“tainted”)? (a **subjective** test)
 - (2) Would any reasonable person who shared the defendant’s knowledge be bound to believe that the property was tainted? (an **objective** test)
 - (3) If the answer to question (2) is “yes”, the defendant should be guilty. If “no”, the defendant should not be guilty.

- **處理罪行**: 什麼是「有合理理由相信財產是可公訴罪行得益」?
- **驗證**: 香港終審法院於2019年在 *香港特別行政區訴 Harjani Haresh Murlidhar* 裁定:
 - (1) 被告人知悉什麼可影響他/她對財產是否罪行得益 (「受污」) 的信念的事實或情況 (包括與被告人有關的個人情況)? (**主觀**驗證)
 - (2) 任何合理人士擁有被告人的知悉是否必須相信財產已受污? (**客觀**驗證)
 - 若問題(2)的答案為「是」, 被告人罪名成立。若答案為「否」, 被告人罪名不成立。

What are the laws 法律框架

Organised and Serious Crimes Ordinance / Drug Trafficking (Recovery of Proceeds)

Ordinance 《有組織及嚴重罪行條例/販毒(追討得益)條例》



- **Tipping off:** A person commits an offence if, knowing or suspecting that a disclosure has been made, he discloses to any other person any matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.
- **Failing to report suspicious transactions:** A person commits an offence for not reporting knowledge or suspicion that property represent an indictable offence, etc.

- **通風報訊:** 任何人如知道或懷疑已曾作出披露, 而仍向其他人披露任何相當可能損害為跟進首述披露而進行的調查的事宜, 即屬犯罪。
- **知情不報:** 任何人如知悉或懷疑任何財產牽涉可公訴罪行而沒有作出披露, 即屬犯罪。

What are the laws 法律框架

Anti-Money Laundering and Counter-Terrorist Financing Ordinance 《打擊洗錢及恐怖分子資金籌集條例》



- Not applicable to NGOs (incl. charities)
- Imposition of customer due diligence (CDD) and record-keeping requirements
- Those subject to the AMLO (e.g. financial institutions) must take all reasonable measures to comply with CDD and record-keeping requirements under Schedule 2 of the AMLO

- 不適用於非政府機構(包括慈善機構)
- 實施客戶作盡職審查及備存紀錄的規定
- 《打擊洗錢條例》規定的有關人士及機構需(如金融機構)採取所有合理方法遵從《打擊洗錢條例》附表2的客戶作盡職審查及備存紀錄的規定

What are the laws 法律框架

Others 其他



- **United Nations Sanctions**
Ordinance: Imposition of sanctions against persons and against places outside the PRC
- **Weapons of Mass Destruction (Control of Provision of Services)**
Ordinance: Control of the provision of services relating to weapons of mass destruction

- 《聯合國制裁條例》：針對中華人民共和國以外的人士及地方實施制裁
- 《大規模毀滅武器(提供服務的管制)條例》：管制有關提供大規模毀滅性武器服務的條例

What are the laws 法律框架

National Security Law 國安法



- How does NSL tie in with the other legislation?
- Indictable offences under NSL:
 - Secession
 - Subversion
 - Terrorist activities
 - Collusion with a foreign country or with external elements to endanger national security
- So if NGOs **deal** with donations that are the **proceeds** of the above...OR
- If donations will be used to **finance** any of the above...
- The NGO may have committed a money laundering offence

- 國安法與其他法例有什麼關連?
- 國安法列明的可公訴罪行:
 - 分裂國家
 - 顛覆國家政權
 - 恐怖活動罪
 - 勾結外國或者境外勢力危害國家安全罪
- 如果非政府機構**處理**的捐款是有關上述罪行的**收益**.....或
- 如果非政府機構的捐款將**資助**上述罪行.....
- 非政府機構有可能犯洗錢罪行

Why is it relevant to NGOs? 與非政府機構有關?



- UNATMO, OSCO, DT(RP)O and NSL applies to everybody (incl. NGOs)
- Serious consequences for breach, e.g.:-
 - Dealing: 14 years / HK\$5,000,000
 - Failing to report: 3 months / HK\$50,000
 - Tipping off: 3 years / HK\$500,000

- 《聯合國(反恐怖主義措施)條例》、《有組織及嚴重罪行條例》、《販毒(追討得益)條例》及《國安法》適用於所有人 (包括非政府機構)
- 違反上述條例的嚴重後果, 例如:-
 - 處理: 14 年 / HK\$5,000,000
 - 知情不報: 3個月 / HK\$50,000
 - 通風報訊: 3年 / HK\$500,000

What should NGOs do? 非政府機構該做什麼?



The 3 “Know your” principles:

1. Donors
2. Beneficiaries
3. Partners

三個「認識你的.....」原則：

1. 捐款人
2. 受益人
3. 合作夥伴

What should NGOs do? 非政府機構該做什麼?



- **Advisory Guideline on Preventing the Misuse of Charities for Terrorist Financing** and the **Checklist for identifying Terrorist Financing Risks**
- The guidelines encourage adoption of a “risk-based approach” (RBA) – what is RBA?

- 《防止慈善團體被利用作恐怖分子資金籌集指引》及《核對清單：識別恐怖分子資金籌集的風險》
- 以上的指引及核對清單鼓勵採用「以風險為本」的方法 - RBA是什麼？

What should NGOs do? 非政府機構該做什麼?



- **RBA:** preventative measures commensurate with level of risk
- **Goal:** Reduce risk of committing ML/TF offences
- No hard and fast rule
- No concrete answer, every situation must be assessed on a case-by-case basis
- Establish a decision making process, keep records
- Do what you can
- Use common sense

- **風險為本:** 預防措施與風險程度成正比例
- **目的:** 減低觸犯洗錢 / 恐怖份子資金籌集罪行的機會
- 無清楚界線
- 沒有具體答案, 每情況須根據具體情況評估
- 建立決策過程, 保留紀錄
- 盡你所能
- 使用常識

What should NGOs do? 非政府機構該做什麼?



Front 層面	Risks 風險	How to reduce risk 如何減低風險
Donor 捐款人	ML/TF	KYD
Beneficiaries 受益人	ML/TF	KYB
Partner 合作夥伴	ML/TF	KYP

What should NGOs do? 非政府機構該做什麼?

“Know Your Donors” 「認識你的捐款人」



- **Do you know where your donations and support come from?**

- Know your donors
- RBA
- Identify and verify
- Remain alert to red flags and suspicious activities

- **你知道捐款及支持來自哪裏?**

- 認識你的捐款人
- 「風險為本」
- 識別和核實
- 對不尋常或可疑活動保持警覺

What should NGOs do? 非政府機構該做什麼?

“Know Your Donors” 「認識你的捐款人」



RBA

- Who are the donors? What do they do? Where are they from?
- Source of wealth/funds?
- Size of the donation?
- What is known about the donor? Politically-exposed-person?
- Well established relationship with the donors?
- Is public information on the donors available?
- Are the donors HK taxpayers? Are they from outside HK?
- Form of donation - cash, cheque, bank transfer? Third party payor?
- Single or regular donation? Prior donations?
- Is the donation conditional? Is a refund possible?
- Any specific requests on who and how the donation should be used or paid to?
- Will the donation be returned to the donor in the future?
- Currency?
- What is their specific business with your charity? Is their business in line with your values/objectives?

「風險為本」

- 捐款人是誰？他們的職業是什麼？他們來自哪裏？
- 財富/資金來源？
- 捐款的數額？
- 捐款人的身份是什麼？捐款人與政治人物有關？
- 與捐款人建立了良好的關係？
- 有關捐款人的公共資訊？
- 捐款人是否香港納稅人？他們是否來自香港以外的地方？
- 捐款形式 - 現金、支票或銀行轉賬？第三方付款人？
- 單次或定期捐款？之前有捐款記錄？
- 捐款是否帶有條件？可以退款？
- 是否對受益人或捐款的運用有特定要求？
- 捐款將來是否會交回到捐款人？
- 貨幣？
- 他們跟你的慈善機構有什麼具體業務？他們的業務是否符合你的價值觀/目標？

What should NGOs do? 非政府機構該做什麼?

“Know Your Donors” 「認識你的捐款人」



Risk categorization

- **Very low risk**
 - Selling flags
 - Small donations
 - “Kai-fong”
- **Low risk**
 - Well established relationship, regular donor
 - Bank transfer
 - Clear source of wealth/funds
- **Medium risk**
 - Corporate donor, UBO unclear, some public information online
 - Large sum of cash
 - Non-local donor
- **High risk**
 - No prior relationship
 - Conditional donation
 - Links with political groups (domestic or overseas)
 - Overseas company, complicated corporate structure, no public information
 - Third party donor, not in HKD
 - Unclear source of wealth/funds

風險評估

- **極低風險**
 - 賣旗
 - 金額低
 - 街坊
- **低風險**
 - 已建立關係, 經常捐款
 - 銀行轉帳
 - 明確的財富/資金來源
- **中風險**
 - 企業捐助者, 最終擁有人不明確, 網上一些公共信息
 - 大量現金
 - 非本地捐款人
- **高風險**
 - 沒有先前建立的關係
 - 有條件的捐贈
 - 與政治團體 (國內或海外) 的聯繫
 - 海外公司, 公司結構複雜, 網上沒有公開信息
 - 第三方捐助者, 非港元
 - 財富/資金來源不明

What should NGOs do? 非政府機構該做什麼?

“Know Your Donors” 「認識你的捐款人」



The higher the risk, the more you should do to identify and verify.

- **Very low risk:**
 - No action
- **Low risk**
 - Face-to-face communication
 - Basic information (e.g. copy of HKID)
- **Medium risk**
 - Terrorist gazette screening
 - Internet searches / company searches
 - Identify ultimate beneficial owner
 - Understand source of wealth/funds
- **High risk**
 - Advanced screening (sanctions and compliance databases)
 - Certification of documents by a notary, lawyer or accountant
 - Certificate of good standing (overseas company)
 - Understand group structure and identify ultimate beneficial owner
 - Thoroughly understand background, affiliations and source of wealth/funds

風險越高, 識別和核實步驟要做得更多。

- **極低風險:**
 - 無需採取措施
- **低風險:**
 - 面對面溝通
 - 基本資料 (如香港身份證副本)
- **中風險:**
 - 憲報的恐怖份子名單
 - 互聯網搜索 / 翻查公司註冊紀錄
 - 識別最終實益擁有人
 - 了解財富 / 資金來源
- **高風險:**
 - 進一步審查 (制裁和各種合規 / 黑名單數據庫)
 - 會計師、律師或公證人的文件核實
 - 良好聲譽證明書 (海外公司)
 - 了解組織結構及的最終實益擁有人
 - 徹底了解背景, 隸屬關係和財富/資金來源

What should NGOs do? 非政府機構該做什麼?

“Know Your Beneficiaries” 「認識你的受益人」



- Do you know how your money and resources are used?

- Know your beneficiaries
- RBA
- Identify and verify
- Remain alert to red flags and suspicious activities

- 你知道你的金錢及資源是如何使用的?

- 認識你的受益人
- 「風險為本」
- 識別和核實
- 對不尋常或可疑活動保持警覺

What should NGOs do? 非政府機構該做什麼?

“Know Your Partners” 「認識你的合作夥伴」



- Do you know your partners and their affiliations?
- Know your partners
- RBA
- Identify and verify
- Understand what they do
- Conflicts of interest
- Entering into written agreements
- Remain alert to red flags and suspicious activities

- 你是否認識你的合作夥伴及其相關聯繫?
- 認識你的合作夥伴
- 「風險為本」
- 識別和核實
- 了解他們的工作
- 利益衝突
- 簽訂書面協議
- 對不尋常或可疑活動保持警覺

What should NGOs do? 非政府機構該做什麼?

“Know Your Beneficiaries/Partners” 「認識你的受益人 / 合作夥伴」



- **Key details**

- Are you satisfied with the beneficiary's / partner's status and governance? Screen it against databases.
- Carry out internet searches.
- Conflict of interest?

- **Structure**

- Who are their key senior staff / owners?
- Consider its size and structure.
- Can you be reasonable sure they will achieve your charitable goals / deliver the services required?
- How easy is it to contact them?

- **Working relationship**

- What do you know about them?
- Have you worked with them before?
- Does your experience of working with them in the past raise any concerns?
- Are its aims and values compatible with those of your charity? Are there likely to be any language, communication or cultural problems?
- Are there arrangements in place to enable you to monitor the use of proceeds / services provided?

- **關鍵資料**

- 你是否滿意受益人 / 合作夥伴的狀況及管治? 在數據庫進行篩查
- 進行互聯網搜索
- 利益衝突?

- **結構**

- 誰是它的主要高級職員 / 擁有人 (識別和核實身份) ?
- 應考慮它的規模及結構
- 你是否合理地肯定他們能實現你的慈善目標 / 提供所需服務?
- 能容易與他們聯繫?

- **合作關係**

- 你對他們有多了解?
- 你是否以前與他們合作過?
- 你與他們以前的合作經歷有引起任何顧慮?
- 它的目標及價值觀是否與你的慈善機構的目標及價值一致? 是否有可能存有任何語言、溝通或文化的問題?
- 是否有任何安排來監管捐款用途 / 所提供的慈善服務?

What should NGOs do? 非政府機構該做什麼?

Know Your Beneficiaries / Partners” 「認識你的受益人 / 合作夥伴」



- **Internal control**

- Are their financial controls generally adequate and reliable?
- Are its financial policies and procedures documented?
- What recording and audit systems are in place?
- Will you be able to inspect their financial records? Is it publicly available?
- Do they have adequately trained and qualified staff to manage funds, maintain accounts and report back to the charity?
- How closely do their senior staff monitor its junior staff?

- **External risk factors**

- What is the political, economic and social environment?
- Is there any potential or actual instability, unrest or conflict?
- Are there health and safety concerns for charity representatives?
- Do external factors affect your ability to monitor them effectively?

- **內部控制**

- 它們的財務控制整體上是否充足及可靠?
- 它是否有文件列明它的財務政策及程序?
- 有什麼記錄及審計系統?
- 你是否能審查它們的財務記錄?是否公開資料?
- 它們的是否安排了充足的訓練及合資格的職員來管理基金、維持賬目及向慈善機構匯報?
- 它們的高級職員對基層職員的監督有多密切?

- **外部風險的因素**

- 政治、經濟及社會環境的狀況
- 是否存有任何潛在或實際的不穩定、動亂或衝突的風險?
- 慈善機構的代表是否有任何健康及安全方面的顧慮?
- 外部因素是否有影響你它們的的監管?

What should NGOs do? 非政府機構該做什麼?

Know Your Beneficiaries / Partners” 「認識你的受益人 / 合作夥伴」



- **Your corporate governance**

- Do you have objective conditions/criteria to select your beneficiaries/partners? Is it in line with your goals?
- Do you have rules to determine which beneficiaries/partners to select if there are only limited services you can provide/receive?

- **Red flags**

- Fake or suspicious identities
- Multiple identities with similar names or characteristics
- Signs that they may be providing kickbacks or bribes to officials

- **你的企業管治**

- 你是否有選擇受益人/合作夥伴的客觀條件或準則？它是否符合你的目的？
- 如果你只能提供/收取有限的服務，你是否有規則來決定如何選擇受益人/合作夥伴？

- **不尋常或可疑活動**

- 虛假或可疑身份
- 利用相似的名稱或特徵製造多重身份
- 可能向官員提供回扣或賄賂的跡象

What should NGOs do? 非政府機構該做什麼?

The checklist 清單



- **Where is the gazette terrorist list?**

- List: [Terrorist List in the Gazette | Joint Financial Intelligence Unit \(jfiu.gov.hk\)](http://jfiu.gov.hk)
- Screening

- 在哪裏可以找到憲報的恐怖份子名單?

- 連結: [Terrorist List in the Gazette | Joint Financial Intelligence Unit \(jfiu.gov.hk\)](http://jfiu.gov.hk)
- 審查

What should NGOs do? 非政府機構該做什麼?

The checklist 清單



- **What is a “good understanding” of the background, identity and affiliations of your board members, employees and volunteers?**

- Unclear guidelines
- Suggestion: background checks following the SFC’s standard

- 如何界定對管治組織成員、僱員及義工的背景身分和與他們有聯繫的組織的「充分了解」?
- 指引有欠清晰
- 建議：根據證監會標準進行背景審查

What should NGOs do? 非政府機構該做什麼?

The checklist 清單



What are “clear internal policies” for financial controls?

- Have a handbook / code of conduct in place (see the ICAC’s Best Practice Checklist – Management of Charities and Fund-Raising Activities)
- Clear lines of authority / internal committees (see the ICAC guidance)
- Approval of payments should be performed by staff independent of those involved in collecting donations
- Who has access to your bank accounts?
- Paper trail, record keeping
- Staff training

如何界定就財務監管方面備有「清晰的內部政策」？

- 編撰指南或紀律守則（請參閱防止貪污處公布的《防貪錦囊 - 慈善機構及籌款活動的管理》）
- 指定清晰職級或成立內部委員會（請參閱防止貪污處的指引）
- 批核付款應由與募捐人員無關的職員執行
- 誰能使用你的銀行戶口？
- 書面紀錄、資料紀錄存檔
- 職員培訓



STRs

可疑交易報告

Submitting STRs 提交可疑交易報告

STRs 可疑交易報告



- STRs
- Recap of offences
- Purpose
- “SAFE”
- How to report
- Record keeping

- 可疑交易報告
- 回顧有關罪行
- 目的
- 「SAFE」方法
- 如何做出舉報
- 備存記錄

Submitting STRs 提交可疑交易報告

STRs – Recap of offences 可疑交易報告 - 回顧有關罪行



- **Suspicious transactions report (STR):** when a person knows or suspects that any property:-
 - belongs to proceeds of drug trafficking/ indictable offence/ terrorist property;
 - was used in connection with drug trafficking / an indictable offence / terrorist act; or
 - is intended to be used in drug trafficking / indictable offence / terrorist act,he must report his or her knowledge or suspicion to an authorized officer (i.e. JFIU) as soon as practicable.

- **可疑交易報告 (STR):** 任何人如知道或懷疑任何財產：
 - 屬販毒或可公訴罪行的得益或屬恐怖分子所擁有; 或
 - 曾在與販毒、可公訴罪行或恐怖主義行為有關的情況下使用; 或
 - 擬在與販毒、可公訴罪行或恐怖主義行為有關的情況下使用,

必須盡快將其所知悉或感到懷疑的交易內容, 向獲授權人員報告

Submitting STRs 提交可疑交易報告

STRs – Recap of offences 可疑交易報告 - 回顧有關罪行



- **OSCO/DTRPO:** Offence to **deal** with property when person knows or has reasonable grounds to believe that property (any part or directly / indirectly) represents proceeds of an indictable offence / drug trafficking (**dealing offence**)
- **OSCO/DTRPO:** Offence to **fail to disclose** when a person knows or suspects that property represents proceeds of drug trafficking or an indictable offence
- **UNATMO:** Offence to **fail to disclose knowledge or suspicion** of terrorist property
- OSCO/DTRPO/UNATMO: Offence to **tip-off**

- 《有組織及嚴重罪行條例》 / 《販毒(追討得益)條例》：處理已知道或相信為代表從可公訴罪行/犯毒的得益的財產（**處理罪行**）
- 《有組織及嚴重罪行條例》 / 《販毒(追討得益)條例》 / 《聯合國（反恐怖主義措施）條例》：知悉或懷疑任何財產牽涉犯罪/犯毒得益而沒有作出披露（**知情不報罪行**）
- 《有組織及嚴重罪行條例》 / 《販毒(追討得益)條例》 / 《聯合國（反恐怖主義措施）條例》：通風報訊罪行

Submitting STRs 提交可疑交易報告

STRs – Purpose 可疑交易報告 – 目的



- Filing an STR provides you with a statutory defence, provided that:
 - (1) the report was made before you undertook the disclosed acts and the acts are undertaken with the JFIU's consent; or
 - (2) the report is made after you performed the disclosed acts and the report is made on your own initiative and as soon as it is reasonable for you to do so

- 遞交可疑交易報告可為你提供法定免責辯護, 但前提是:
 - (1) 你是在作出被披露作為之前作出報告, 而且就該作為已得到聯合財富情報組的同意; 或
 - (2) 你是在已作出被披露作為之後作出報告, 而且報告是你主動作出的及是在合理範圍內盡快作出的。

Submitting STRs 提交可疑交易報告

STRs – SAFE approach 可疑交易報告 – SAFE方法



- **Screen** for suspicious indicators: recognition of suspicious activities or indicator(s)
- **Ask:** Ask donor/beneficiary/partner the appropriate questions
- **Find** out the donor/ beneficiary/ partner's records: review of information already known when deciding if the apparently suspicious activity is to be expected
- **Evaluate** all the above information: is the transaction suspicious?

- **Screen:** 識別一項或以上可疑交易的指標
- **Ask:** 向捐款人/受益人/合作夥伴作出恰當的提問
- **Find:** 翻查捐款人/受益人/合作夥伴的已知紀錄, 以判斷應否如機構所預期一樣會從事該宗看來是可疑交易的活動
- **Evaluate:** 交易是否可疑?

Submitting STRs 提交可疑交易報告

How to submit an STR to the JFIU? 怎樣向聯合財富情報組舉報？



- E-reporting system
- Email: jfiu@police.gov.hk
- Fax: 2529 4013
- Mail: Joint Financial Intelligence Unit, GPO Box 6555 Hong Kong
- Telephone: 2866 3366
- STR Form:
(<https://www.jfiu.gov.hk/en/str.html>)

- 網上舉報
- 電郵: jfiu@police.gov.hk
- 傳真: 2529 4013
- 郵遞: 香港郵政總局信箱6555號聯合財富情報組收
- 電話: 2866 3366
- 可疑交易報告表:
(<https://www.jfiu.gov.hk/en/str.html>)

Submitting STRs 提交可疑交易報告

STRs – Record Keeping 可疑交易報告 – 保存記錄



- You should record:
 - all internal reports (incl. date, staff member who made assessment, result of assessment, etc.); and
 - all disclosures made to the JFIU (incl. date of disclosure, person who made disclosure, information to locate relevant information).
- Register of internal reports and reports to the JFIU can be kept together.

- 你應記錄：
 - 所有內部報告（包括報告的日期、其後處理報告的人員及評估結果等資料）；及
 - 所有向JFIU作出的披露紀錄（包括披露的日期、作出披露的人士及存放地點等資料）。
- 內部報告紀錄冊可與JFIU報告紀錄冊一併保存。



Crowdfunding

眾籌

What is crowdfunding? 什麼是眾籌?

Recent news 最近新聞



South China Morning Post

Hong Kong / Politics

When can Hong Kong banks freeze accounts, and should you worry?

- Cases involving former opposition lawmaker and church spark concern over confidence in city's financial institutions
- Financial regulator says mechanisms and legislation in place align with international standards and practices

「捐款給香港社運組織，反對派被警方審查及凍結賬戶，指稱洗錢活動」

「就前議員許智峯及教會的案例引起有關眾籌的問題」

「警方必須調查可疑的罪行，但律師聲稱凍結的資產會長時間被鎖上」

南華早報

「香港的銀行什麼時候能凍結賬戶，及你應擔心嗎？」

「有關反對派議員及教會的案例影響對金融機構的信心」

「金融監管機構聲稱現有的機制及條例符合國際標準」

Hong Kong / Politics

Donations to Hong Kong activist groups, opposition scrutinised as police freeze bank accounts, allege money-laundering activities

- Cases involving ex-lawmaker Ted Hui, church are the latest to raise questions about crowdfunding
- Police must probe suspicions of wrongdoing, but lawyers say frozen assets are locked up a long time

What is crowdfunding? 什麼是眾籌?



- What is crowdfunding?
- Is crowdfunding legal? Any licence required?
- What are the pitfalls? How do you avoid them?

- 什麼是眾籌?
- 眾籌合法嗎? 需否持有牌照?
- 眾籌有什麼注意事項? 如何避免誤墮法網?

What is crowdfunding? 什麼是眾籌?

Four main models 四種主要模式



Four main models 四種主要模式



What is crowdfunding? 什麼是眾籌?

Is it legal? Any licence required? 合法嗎? 需否持有牌照?



- **No specific crowdfunding legislation**
- What type of crowdfunding are you doing? Any licence required?
 - Securities and Futures Ordinance?
 - Money Lenders Ordinance?
 - Banking Ordinance? Others?
 - NGO – public subscription permit (“PSP”) required? (Summary Offences Ordinance)

- 香港沒有有關眾籌的特定條例
- 你現時進行哪種類型的眾籌? 需否持有牌照?
 - 《證券及期貨條例》? 《放債人條例》? 《銀行業條例》? 其他條例?
 - 非政府機構 – 需否持有公開籌款許可證? (《簡易程序治罪條例》)

What is crowdfunding? 什麼是眾籌?

What are the pitfalls? How do you avoid them? 有什麼注意事項? 如何避免誤墮法網?



- Donation-model crowdfunding itself is **NOT** illegal (subject to PSP licensing requirement)
- When can it become illegal?
 - What is the purpose of crowdfunding? Is the purpose legal?
 - How are the crowdfunding proceeds used? Does it match the intended purpose?

- 捐贈眾籌本身並不屬非法活動 (唯需考慮要否申請公開籌款許可證)
- 什麼情況下眾籌屬於非法活動?
 - 眾籌的目的是什麼? 該目的是否合法?
 - 將如何使用眾籌的收益? 使用方法是否符合原定用途?

What is crowdfunding? 什麼是眾籌?

AML/TF risks 洗黑錢或資助恐怖活動的風險



- Increased risk of dealing with proceeds of an indictable offence
- Harder to find out who your donors are
- If donations can be refunded or are conditional, increased risk of money laundering
- Higher risk of terrorist financing depending on how the donations are to be used
- Technology-related risks

- 增加處理可公訴罪行得益的風險
- 更難找出誰是你的捐款人
- 如果捐款設有退款或條件, 會增加洗黑錢的風險
- 增加資助恐怖活動的風險(取決於捐款的用途)
- 有關科技的風險



Conclusion

摘要

Conclusion 摘要



- Understand the law
- Understand your legal obligations
- Understand the risks
- Prevention is better than cure

- 了解法律框架
- 了解你的法律責任
- 了解存在的風險
- 預防勝於治療

Q&A 問答

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