

Policy Guide on Following the Money in Trafficking in Persons Cases

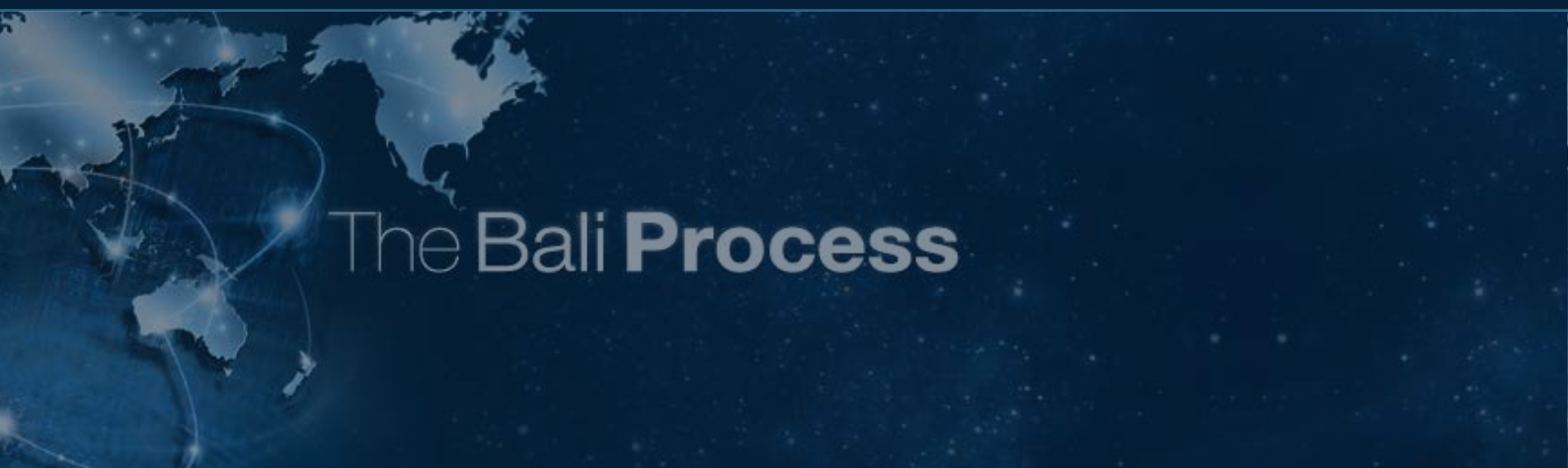


The Bali Process

on People Smuggling, Trafficking in Persons and Related Transnational Crime

An introductory guide for practitioners on using financial investigation tools in trafficking in persons cases

This policy guide may be used by all Bali Process countries, including those countries that have not signed and/or ratified the United Nations Convention against Transnational Organized Crime (Organized Crime Convention) and two of its supplementary protocols, the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The terms used in this policy guide are consistent with these three international instruments, to the extent possible. However for translation purposes, official translations of the Convention and its Protocols should be consulted as authoritative points of reference for terminology used in this policy guide.



The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process) was established in 2002 and is a voluntary and non-binding regional consultative process co-chaired by the Governments of Australia and Indonesia and comprising over 45 member countries and organizations.

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Foreword

Since its inception in 2002, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) has raised regional awareness of the consequences of people smuggling, trafficking in persons and related transnational crime, and developed and implemented strategies and practical cooperation in response. Co-chaired by Indonesia and Australia, the Bali Process has more than 48 members, including the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the United Nations Office of Drugs and Crime (UNODC), as well as a number of observer countries and international agencies.

At the Sixth Bali Process Regional Ministerial Conference in March 2016, Ministers noted the importance of States' obligations to criminalise money laundering and proceeds of crime, to target the financial incentives for people smuggling and trafficking in persons, and recommended that the Bali Process Working Group on Trafficking in Persons (Working Group) deliver training and develop regional guidance on this topic. Subsequently, in May 2016, the Working Group held the Bali Process Following the Money Forum, which recommended the Working Group develop a regional policy guide (the guide) and a related training module on using financial investigation tools in trafficking in persons cases.

At its second annual meeting in May 2016, the Working Group agreed to progress this recommendation under its *Forward Work Plan for 2016–17* and established a Drafting Committee co-chaired by the Governments of the Republic of Indonesia and Australia to draft the guide. The Drafting Committee comprised experts on anti-money laundering and trafficking in persons from Australia, Bangladesh, Indonesia, the Philippines, Thailand, and the United Nations Office on Drugs and Crime (UNODC). Draft versions of the guide were provided to Bali Process members and observers for written comments and discussed at a full Bali Process Consultation Workshop held from 23–24 May 2017 in Bali, Indonesia. The guide was subsequently finalised, and endorsed at the October 2017 Bali Process Ad Hoc Group Senior Officials' Meeting.

The guide is voluntary, non-binding and intended as a reference tool for law and justice officials responsible for investigating and prosecuting trafficking in persons cases in Bali Process member States.

Acronyms and Abbreviations

ARIN-AP	Asset Recovery Interagency Network—Asia Pacific
ASEAN	Association of Southeast Asian Nations
Bali Process	Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime
FATF	The Financial Action Task Force
FIU	Financial Intelligence Unit
ILO	International Labour Organization
IOM	International Organization for Migration
MOU	Memorandum of Understanding
NGO	Non-government organization
Organized Crime Convention	United Nations Convention against Transnational Organized Crime
RSO	Regional Support Office of the Bali Process
Trafficking in Persons Protocol	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime

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Executive summary

Trafficking in persons is a serious crime with grave human rights implications. It is also one of the most profitable business models of organised crime. It is estimated to be the second largest source of illegal income worldwide, exceeded only by drug trafficking.¹ The International Labour Organisation estimates that forced labour and trafficking in persons is a US\$150 billion industry per year worldwide.²

Despite increasing recognition of the prevalence and severe impacts of trafficking in persons, global rates of conviction remain low. Following the money can help to trace the flow of illegal profits, identify offenders and victims, collect evidence that can aid prosecutions, and enable the seizure of assets to deprive criminal networks of their illicit profits. This policy guide sets out ways to enhance law enforcement responses to trafficking in persons by incorporating a ‘follow the money’ approach—using anti-money laundering and asset recovery techniques.

States have obligations to combat money laundering and the proceeds of crime, set by the Financial Action Task Force (FATF) and contained in several United Nations conventions. These include the need to enact comprehensive money laundering offences, and to establish an effective regime for freezing, seizing, and confiscating the proceeds of crime.

This policy guide describes the process of money laundering and common methodologies employed by trafficking in persons criminal networks, informed by Bali Process member countries’ experiences. Recognising the central role Financial Intelligence Units (FIUs) play in supporting a ‘follow the money’ approach, the guide provides tips on enhancing cooperation between law and justice agencies and FIUs. The guide also steps through the key phases of conducting a financial investigation, including using international cooperation mechanisms, with best practice advice and case studies.

This guide is offered as a reference to help practitioners expand the toolkit they are using to combat trafficking in persons offences, by targeting the economic reality that this crime is driven by profit. This is a new focus for the Bali Process, and one that is consistent with the increasing global recognition of the value of applying financial investigation tools to disrupt transnational crime and target what criminals value the most—their profits.³

1 <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1016&context=forcedlabor>

2 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf

3 For example, the UN Security Council issued its first ever resolution (2331) on human trafficking and slavery on 20 December 2016, encouraging FATF, FATF-style regional bodies and States to take a variety of steps to strengthen efforts to disrupt financial flows associated with human trafficking and modern slavery.

Section 1: Rationale

1.1 What does ‘following the money’ mean?

Money is the lifeblood of organised crime. Over time, crime has become more sophisticated and international in nature, and criminals are constantly finding new ways to conceal the proceeds of crime. In response, law and justice agencies are increasingly adopting a ‘follow the money’ approach to combat serious and organised criminal activity. This involves focusing on the financial aspects of a crime.

A financial investigation is any investigation into the finances of a person, people or business. The key objective of a financial investigation is to identify and record the movement of money during the course of suspected criminal activity, with the ultimate goal of detecting and prosecuting the criminals and recovering the proceeds of crime. The link between the sources of the money, beneficiaries, when the money is received, and where it is stored or deposited, can provide valuable information about and evidence of criminal activity.

A ‘follow the money’ approach employs two key components: anti-money laundering strategies and asset recovery tools. Money laundering is the criminal offence of dealing with the proceeds of crime to conceal the identity, source, ownership or destination of illegally gained money. Asset recovery is a process for investigating, restraining and forfeiting the proceeds of all crime types.

1.2 Why follow the money?

As with other organised crimes, trafficking in persons networks use a range of money laundering techniques to conceal the illicit source of their profits and enable the successful operation of their business. As a result, there are benefits to incorporating a ‘follow the money’ approach in trafficking in persons cases.

- Tracing the financial flows associated with trafficking in persons can help investigators to identify members and victims of a criminal network and collect evidence that can aid prosecutions.
 - This can help to reduce some of the reliance on the testimony of victims.
 - It also helps to identify the key players and beneficiaries of an illegal network, who profit from, but distance themselves from, the crime.
- Money laundering offences can provide another avenue for prosecution against criminals involved in trafficking in persons. This is useful where there is insufficient evidence to mount a successful prosecution using trafficking in persons offences. It can also uncover other violations of financial regulations.
- Confiscation of the benefits derived can have a deterrent effect, discouraging offenders who may be prepared to risk serving time in jail if they are confident that the profits from their criminal activities will be available to them upon release.
- Effective confiscation of the proceeds associated with trafficking in persons can prevent the profits from being reinvested into criminal activity and can enable proceeds to be applied to improving anti-trafficking efforts and providing support to victims.
- The implementation of non-conviction based asset confiscation frameworks⁴ can also result in significantly improved results across a broad range of crime types, including trafficking in persons. These measures provide greater opportunity for countries to target those who profit from but distance themselves from the criminal act by not requiring a criminal conviction.

⁴ There are two means by which proceeds of crime can be recovered: conviction based recovery, which enables the recovery of assets associated with a crime after a conviction for that crime has been secured; and non-conviction (or civil) based recovery, which allows the restraint and recovery of assets suspected of criminal origins without the necessity of securing a criminal conviction.

1.3 How much is trafficking in persons worth?

Trafficking in persons is a lucrative business conducted on a global scale. In 2014, the International Labour Office (ILO) estimated that the total illegal profits obtained from trafficking in persons and slavery worldwide was US\$150.2 billion per year.⁵ Almost two thirds of the profits—US\$99 billion—came from forced sexual exploitation⁶. Exploitation of non-domestic labour generated US\$43.4 billion in profits and nearly US\$8 billion came from exploited domestic workers. The profits were highest in Asia, where most victims originated from. The annual profit per victim was highest in the developed economies (approximately US\$34,800 per victim).

1.4 A new way of thinking—opportunities and challenges

Efforts to combat trafficking in persons have traditionally focused on pursuing the trafficking in persons offence, and not on the proceeds derived from and invested in the crime.⁷ Strengthening our focus on the financial aspects of the offenders' conduct presents a range of opportunities, but also challenges. A key issue will be to expand our understanding of what constitutes success in a trafficking in persons case, to include recognition of the contribution that asset confiscation and the use of money laundering as an alternative prosecution avenue can make to combating this crime type.

Tip

Collect statistics on assets recovered and use of money laundering offences to disrupt trafficking in persons networks. Consider including these as performance indicators for your State's response to trafficking in persons cases.

Tip

Provide high-level demonstrations of support for adopting a 'follow the money' approach in trafficking in persons investigations to encourage take-up at all levels of your organisation. For example, senior officials may release public statements of support for this approach.

Another issue is that the anti-trafficking and anti-money laundering communities often work in isolation. Law enforcement agencies are often unaware of or not trained to handle financial activity related to trafficking in persons, and financial investigators may lack detailed knowledge of trafficking in persons business models, markets, and preferences for moving illicit funds. Bringing these perspectives together yields tremendous potential to advance our efforts to combat trafficking in persons, but it will require a strong commitment from States to breaking down organizational silos. Awareness raising and capacity-building activities will be necessary to assist States and their agencies to employ this approach.

Tip

Develop operational strategies that bring together the expertise of all relevant agencies (including police, prosecutors, and FIUs) to ensure trafficking in persons offences are fully investigated.

⁵ State-imposed forced labour not included

⁶ *Profits and Poverty: The economics of forced labour*, p. 12–13

⁷ Leveraging Anti-Money Laundering Regimes to Combat Trafficking in Human Beings (2014), Office for Security and Cooperation in Europe (OSCE) <https://www.osce.org/secretariat/121125?download=true>

Improving the use of anti-money laundering techniques to combat trafficking in persons will also require close co-operation between countries, to enable the swift exchange of financial case-related information. Trafficking in persons investigations could benefit from using networks for international cooperation on money laundering issues, such as information exchanges between FIUs. States will also need to work in partnership with the private sector, as a key stakeholder in moving the profits associated with trafficking in persons from one location to another.

1.5 Case study

On 1 May 2015, a joint military-police taskforce discovered at least 30 bodies at an abandoned camp in the Sadao district of Songkhla province, close to the Thai-Malaysian border. To support the police investigation into a suspected human trafficking and smuggling network, the Royal Thai Police contacted Thailand's financial intelligence unit, the Thai Anti-Money Laundering Office (AMLO) to investigate the financial activities associated with the case.

Using AMLO's database of financial transaction records, officers from AMLO searched for wire transfer records (both domestic and international), border currency reports, suspicious transaction reports, cash transaction reports, and property transaction reports.

In addition to searching their database, AMLO requested a range of information from other entities that report to AMLO, including:

- account holder details and customer transaction details (including account statements), from different financial institutions
- records of land ownership, acquisition, and sale relating to the suspects, from the Thai Land Office
- records concerning the tax-payer status of key suspects in the case, including records of their declared earnings, personal and business tax payment records, and declared banking arrangements, from the Thai Tax Revenue Office, and
- details of companies and persons linked to identified businesses, including addresses, shareholders, and financial profiles, from the Department of Business Development.

Using the bank statements and wire transfer details, AMLO were able to trace financial transactions from the arrested suspects in the case to additional key suspects. These showed the money being transferred from the arrested suspects to the new suspects via direct account transfer within Thailand. AMLO were then able to demonstrate that other payment methods, including cash couriers and illegal remitters, were used to transfer money between Thailand and Malaysia. AMLO were able to piece these transactions together by gathering financial information and human intelligence from the Royal Thai Police and undertaking a detailed funds transfer analysis.

Among the key suspects identified using financial investigation and intelligence were senior officials, the suspected organizer of the criminal network, the former head of a provincial administrative organization, a mayor, and a significant businessman. Charges were brought against the suspects for the crimes of human trafficking and money laundering. AMLO also sought court orders to seize the illicit profits associated with these offences.

This case shows how financial investigation methods were able to reveal a broader network of offenders and evidence, and the links between them, than would have otherwise been available to investigators.

Section 2: Legal frameworks

2.1 International standards

The Financial Action Task Force (FATF) is a 37-member inter-governmental body with responsibility for setting international standards on money laundering, and assessing how countries perform in implementing them.⁸ There are also a range of UN conventions that include obligations for states in relation to money laundering and the proceeds of crime.⁹ The key obligations for States outlined in these standards include the need to enact comprehensive money laundering offences, and to establish an effective regime providing for the freezing, seizing and confiscation of the proceeds of crime.

2.2 Comprehensive money laundering offences

To comply with international standards, comprehensive money laundering legislation should:

- criminalise all of the stages of the money laundering process
- apply to the widest possible range of predicate offences,¹⁰ including trafficking in persons
- provide capacity to investigate money laundering as both a standalone offence, and in addition to predicate offending
- ensure that it is not necessary to have a conviction of the predicate offence when proving that property is the proceeds of crime
- apply criminal liability to legal persons (for example, companies)
- apply to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime,
- extend to conduct that occurred in another country, if that conduct is an offence in the foreign country and would be a predicate offence in the home country, and
- ensure that the intent and knowledge required to prove the offence of money laundering may be understood from objective facts.

Tip

To demonstrate money laundering, key elements to establish are that a person who dealt with the money **knew** or **ought to have suspected** it was generated from a crime, or was intended to be used in the commission of a crime.

⁸ See FATF Recommendations 2012 and 2013 FATF Methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of AML/CFT systems.

⁹ These include: the *UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (Vienna Convention), the *UN Convention Against Transnational Organized Crime 2000* (UNTOC or Palermo Convention), and the *UN Convention against Corruption 2003* (UNCAC).

¹⁰ A predicate offence is an action that provides the underlying resources for another criminal act. For example trafficking in persons and people smuggling may be predicate offences that provide funds for money laundering or financing of terrorism.

Tip

Ensure that money laundering and the predicate offences can be prosecuted separately. In cases where a conviction cannot be secured for a predicate offence (e.g. trafficking in persons), but where there is evidence of money laundering, this will enable law enforcement officials to target the money laundering offence separately to the predicate offence.

2.3 Effective asset confiscation frameworks

Asset confiscation or asset recovery is the investigation, temporary restraint, forfeiture and management of the proceeds of crime. Confiscation can be conviction-based (requiring an offender to be convicted of an offence in criminal proceedings before confiscation can occur) or non-conviction based. A comprehensive asset confiscation regime will enable you to investigate, preserve, seize and restrain the proceeds of crime. It will also include measures for consideration of third-party (or innocently held) interests in assets, and measures to allow the forfeiture of assets to government. Many countries which have implemented non-conviction based legal frameworks have achieved significant improvements in disruption efforts, and have been able to use confiscated money to help prevent future crimes—for example, through crime prevention, education and enforcement programs.

Tip: Establish non-conviction based forfeiture

Non-conviction based forfeiture can improve the effectiveness of a proceeds of crime regime. Non-conviction based recovery allows the restraint and recovery of assets suspected of criminal origins without the necessity of securing a criminal conviction. It can:

- allow assets to be frozen or restrained at an earlier stage in the investigation process, which helps to prevent assets from being disposed while an investigation or prosecution is underway
- provide a successful outcome where an offender has died, cannot be located, or cannot be identified
- enable confiscation of criminal proceeds from those who profit from, but distance themselves from, the criminal act by not requiring a criminal conviction, and
- enable forfeiture of property held by a third party where it is tainted property (property used, or intended to be used, by a person in, or in connection with, committing a criminal offence) or under the effective control of the offender.

2.4 What assets can be restrained and recovered?

Assets used in the commission of a crime (instrumentalities) and those gained from a crime (proceeds of crime) or their worth may be able to be restrained and recovered. It may also be possible to restrain property the criminal has placed in another person's name but which they exercise effective control over. For many criminals, protecting the profits of their crime is a key objective and the measures criminals take to conceal the source and ownership of their property have become a complex challenge for investigators. Domestic legislation should be flexible enough to meet the challenge of foreign-held property and to be able to untangle complex ownership structures in order to establish who the beneficial owner actually is.

Proceeds of crime may include economic gains from the property and property converted or transformed, in full or in part, into other property. For example, a motor vehicle, house or boat purchased with funds obtained from the proceeds of trafficking in persons may be able to be confiscated because it was purchased using proceeds of crime.

An **instrumentality** (or instrument) of crime is the property used to facilitate a crime and may include, for example, a car or boat used to traffic people, or monies used to fund criminal activity. There may be no evidence to indicate the vehicle was the proceeds of crime or that it was acquired with funds derived from earlier criminal offences. However, if it is used in the commission of an offence, it can be confiscated as an instrumentality of the crime.

Effective control of property means property that is controlled by a person whether or not they have a legal or equitable interest in the property or a right or power in connection with the property. When determining whether a person has effective control of property, several factors are considered including:

- shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property
- a trust that has a relationship to the property
- family, domestic and business relationships between persons having an interest in the property.

Tip: Establishing effective asset confiscation

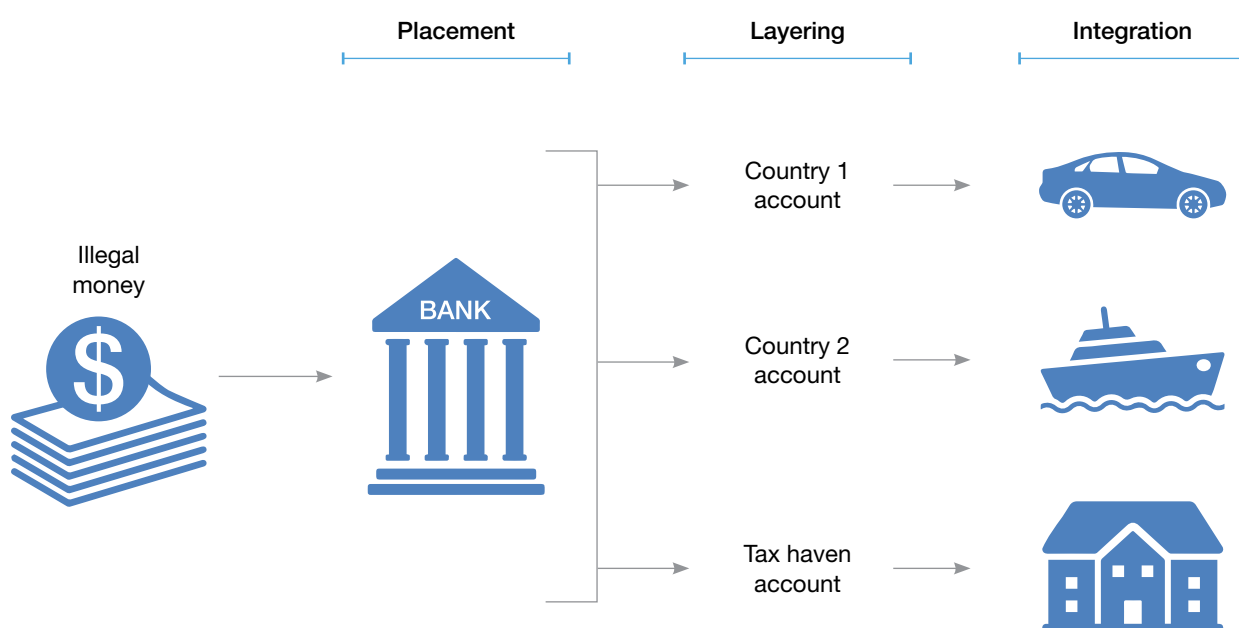
Criminal asset confiscation outcomes can be improved through:

- Providing comprehensive information and training to all law enforcement agencies, financial intelligence units, and prosecutors.
- Developing specialist investigation and prosecution teams or units with a priority focus on asset confiscation.
- Fostering closer collaboration at the earliest possible stage between investigators and prosecutors to plan for all aspects of asset confiscation.
- Reviewing and strengthening all elements of your asset confiscation legal frameworks including;
 - investigation powers to locate assets and establish beneficial ownership
 - freezing, restraint and confiscation provisions, and
 - mutual legal assistance.

Section 3: Money laundering methods associated with trafficking in persons

3.1 How is money laundered?

While the money laundering process can include various steps, it is usually separated into three stages: **placement**, **layering** and **integration**, as set out below.



- **Placement** involves bringing the illegal funds or assets into the financial system. For example, this can be done by depositing cash into bank accounts or using cash to purchase assets.
- **Layering** involves concealing the illegal origin of the placed funds by moving or disguising them. For example, this can be done by having professionals act as intermediaries (such as lawyers or accountants) or by creating complex company and trust structures to transfer money.
- **Integration** occurs once the funds are layered and distanced from their origins, and they can be made available to criminals to use and control as apparently legitimate funds. The apparently 'clean money' is made available for activities such as investment in further criminal activity or legitimate businesses (such as shares in companies), or the purchase of high value assets (such as property) and luxury goods (such as expensive cars).

3.2 Common money laundering methods

Money laundering methods (or ‘typologies’) in any given location are heavily influenced by the economy, financial markets, and anti-money laundering regimes. Criminals can also be very creative in developing methods to launder money.

Common money laundering methods are set out below.

Overseas banks Money can be sent through ‘offshore accounts’ in countries that have bank secrecy laws, which can result in anonymous banking.
Cash smuggling Cash can be physically transported across borders to distance the criminal proceeds from the offences that generated them.
Alternative/informal remittance transfers Some countries in Asia have well-established, legal alternative banking systems that allow for undocumented deposits, withdrawals and transfers.
Shell companies These are companies that have been created with the sole purpose to launder money by taking in illicit profits as ‘payment’ for goods or services that do not actually exist and creating the appearance of legitimate transactions through fake invoices and balance sheets.
Structuring or ‘smurfing’ Large amounts of money are broken into smaller, less-suspicious amounts to avoid reporting thresholds of FIUs. The money is then deposited into one or more bank accounts either by multiple people (smurfs) or by a single person over an extended period of time.
Investing in legitimate companies Illicit profits can be placed into legitimate businesses—particularly cash-based businesses, like restaurants and bars—to disguise its source. These businesses may be ‘front companies’ that actually do provide a good or service but whose real purpose is to clean the launderer’s money.
High value assets High value goods and assets such as art, antiques, jewelry, precious metals and stones, boats or vehicles and real estate can be purchased as a way of reinvesting or concealing criminal proceeds.
Trade-based money laundering Legitimate trade can be used to disguise criminal proceeds. This is a sophisticated method of money laundering and may include moving illicit goods, falsifying documents, misrepresenting financial transactions, and under—or over—invoicing the value of goods.

3.3 Money laundering in trafficking in persons cases

The report *Financial Footprints: An Analysis of Financial Investigations to Combat Trafficking in Persons in the Asia Pacific Region* was developed to inform this section of the guide. The report provides an overview of key global literature on financial flows associated with trafficking in persons, and recent global experiences in using financial tools in combatting trafficking in persons. It also analyses responses to a questionnaire, including case studies, from Bali Process member countries.

The report highlighted that there is limited data and statistics available on trafficking in persons and its related financial flows both globally and in the Asia Pacific region. There are two potential avenues of inquiry related to the financial flows associated with trafficking in persons: the flow of illicit funds laundered by traffickers; and the flow of funds from trafficked persons, particularly through the use of money transfer services to provide remittances to family in countries of origin, or through the use of bank accounts or money transfer services for the purpose of paying 'debts' to traffickers.

There is particularly limited data available on the flow of funds from trafficked persons. This information could be highly valuable to inform a victim-centred approach, and when considering particular types of trafficking (for example, sexual exploitation). Current studies and government publications also focus more on money laundering methods, and consider trafficking in persons and migrant smuggling under the one umbrella. This results in very broad descriptions of methods and indicators of these crimes. Better data and analysis is vital in supporting risk assessments that can guide criminal justice responses and private sector contributions to those responses.

The *Financial Footprints* report also showcased recent international examples of public private sector partnerships to detect trafficking in persons, support successful prosecution of traffickers, and harden the financial system against its use for illicit purposes. These partnerships demonstrate a significant potential to better engage the private sector as a line of defence against trafficking in persons, and to use relevant knowledge and expertise to support investigations and prosecutions.

The questionnaire responses from Bali Process member countries identified the following key methods of laundering the proceeds of trafficking in persons in the region:

- use of low value transactions (often below reporting thresholds)
- use of money or value transfer service providers
- combining proceeds with legitimate business income, and
- the transfer of proceeds to others.

The questionnaire responses also identify that a key financial indicator is where a person's lifestyle does not match their reasonable source of income. Investigations by law enforcement agencies, suspicious transaction reports filed by financial institutions and victim complaints are the most common methods by which trafficking in persons, or money laundering related to trafficking in persons, have been detected.¹¹

¹¹ Ibid p.35

Section 4: Financial Intelligence Units (FIUs)

4.1 How does the government identify money laundering activity?

FIUs play a key role in facilitating an effective 'follow the money' approach. To find out that a person or entity is laundering money, the government needs information from financial institutions and other non-financial institutions and professionals, such as casinos, company service providers, lawyers and accountants. Anti-money laundering standards set out which entities must report transactions that appear suspicious, and these are called reporting entities. The government, through its FIU, then gets information from reporting entities through reports called suspicious transaction or matter reports. The FIU analyses this information, and provides it to other law enforcement agencies. The diagram below shows the flows of information to and from an FIU.

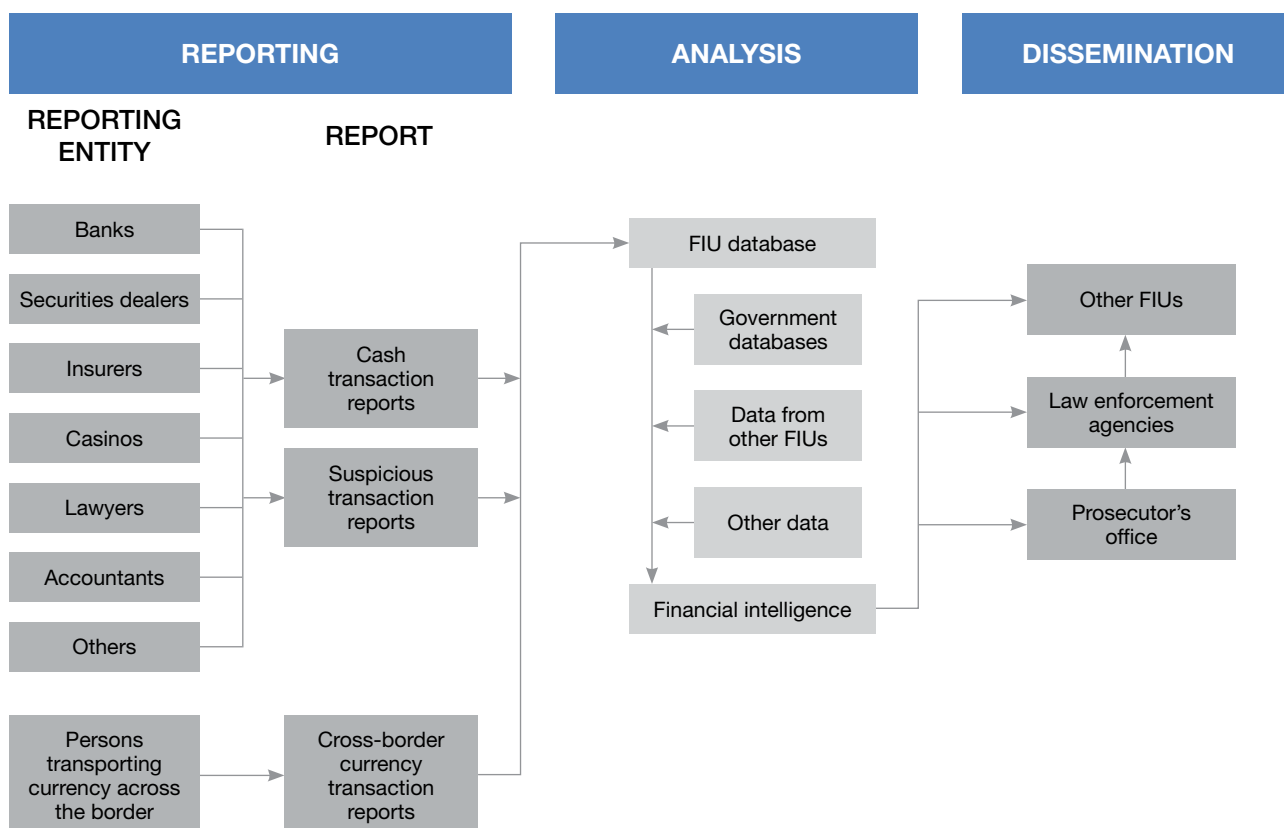


Diagram from: *Financial Intelligence Units: An Overview*, IMF World Bank, 2004¹²

¹² <https://www.imf.org/external/pubs/ft/FIU/fiu.pdf>

4.2 What do FIUs do?

Different States have different types of FIUs, dependent on what best suits their context and requirements. All FIUs have responsibility for the receipt, analysis, and dissemination of financial intelligence.

The FATF encourages FIUs to apply for membership in the Egmont Group of FIUs—a global body of 152 FIUs.

A key element in FIUs' functions is their ability to cooperate with foreign counterparts for information sharing through the Egmont Secure Web (ESW).¹³ However, while information exchange between FIUs can enable provision of more rapid financial intelligence, it cannot be used as evidence in criminal proceedings without the consent of the providing FIU.

The key difference that influences how an FIU will be able to support an investigation or prosecution is that some FIUs have an investigative function, and others do not. This may include powers to freeze transactions and seize assets. Many FIUs also play a role in educating industry about money laundering methods, and enforcing compliance with regulatory provisions through the imposition of fines and penalties for non-compliance.

Tip: Promote proactive engagement with your FIU

- Encourage regular information sharing between agencies.
- Consider out-posted officers or embedded officers from your FIU in your investigative agency or specialist investigative teams, and vice versa, to ensure a two-way exchange of insights and experience.

4.3 How can your FIU support your investigation?

FIUs can provide valuable information and assistance to support investigations and prosecutions into trafficking in persons. Below is a list of the kinds of assistance that FIUs can provide. The model of FIU in your country will affect the kind of support that it can provide to you. FIUs can support **investigation** efforts by:

- Developing **financial intelligence reports** that can establish connections between individuals and entities suspected to be involved in money laundering and criminal activities.
- Providing **financial information** relating to suspicious transaction reports, cash transaction reports, cash cross-border reports, and other relevant information. This may help you to **identify criminal offenders** and could **support existing investigations** or **generate new cases**.
 - The **early identification of suspicious financial transactions** can be instrumental in preventing criminal actions occurring, for example, in terrorism cases, or be indicative of criminal activity currently underway, such as payment to a human trafficker.
- **In some jurisdictions, there is an ability to freeze accounts and seize assets**, and in some cases, to **block transactions for a certain time period**. This may help you to secure funds while allowing time for you to undertake further enquiries to substantiate a theory.
- **Providing financial expertise to support an investigation**—e.g., your FIU may be able to provide the services of a forensic accountant to investigate and analyse financial evidence, and in some instances, to assist in legal proceedings.

¹³ Financial Intelligence Unit: An Overview IMF-World Bank 2004. <http://www.egmontgroup.org/about/financial-intelligence-units-fius>
List of Egmont Group Members Country please see <https://www.egmontgroup.org/en/membership/list>

- **Facilitating international information sharing** through cooperating with their foreign counterparts. For example, some FIUs have authority to exchange information with foreign law enforcement agencies, and some FIUs are authorized to share information with international organizations which include INTERPOL and EUROPOL.
- In some cases, depending on the model of FIU in your state, the FIU may **conduct the actual investigation, or participate in joint taskforces**.

Tip

Engage with your FIU early in an investigation to identify how they may be able to support you.

Tip

Your suspect may already be recorded on the FIU data base. Consider sending the FIU a request seeking available reports, including requests to foreign countries where your suspect has travelled overseas or where they have sent or received money from overseas.

FIUs can support **litigation** efforts by:

- **Undertaking enquiries** to support prosecutors where there are financial information gaps.
- **Providing financial expertise to support** litigation, which may include the provision of expert evidence to explain complex financial transactions.

FIUs can support **prevention** efforts by:

- Creating **intelligence products**. This includes information from foreign counterparts, through FIU to FIU networks that can facilitate the rapid exchange of information across jurisdictions (often faster than through mutual legal assistance or diplomatic channels).
- Creating **typologies reports** and conducting research to identify financial transactions and account attributes that are indicators of a particular offence. This can help to inform preventative and investigative efforts by law enforcement and reporting entities.
- **Training staff** of reporting entities to recognise suspicious transactions.
- Providing **industry awareness programs** and ensuring industry comply with AML preventative measures through education and enforcement of regulatory requirements.

4.4 Case study

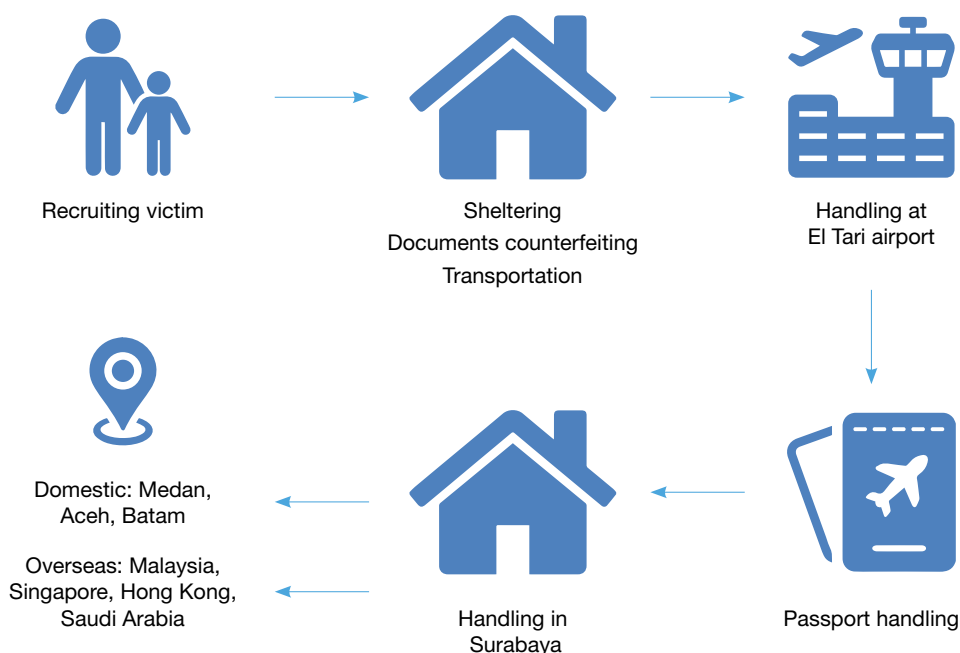
Background

In April 2016, public attention in Indonesia was drawn to the case of three migrant workers from Timor-Leste who died in Malaysia. The family of one worker was not aware that she was employed abroad since disappearing on 2 September 2015. East Nusa Tenggara (NTT) is the 9th largest province in Indonesia to send workers overseas and has suffered the highest number of migrant worker casualties in Indonesia. Between 2015 and 2016, an estimated 4144 NTT people had been sent abroad. It is estimated that 99 migrant workers from NTT died in the period 2015 to 2017. The Indonesian President instructed the Indonesian National Police to investigate the problem, resulting in the establishment of the Human Trafficking Task Force and a direction to the Chief of District Police of Kupang to investigate the case. During the investigation, 12 human trafficking networks were identified, spread across Indonesia and Malaysia.

The Money Flows

During the period of January 2015 to August 2016, the network had successfully dispatched 2279 migrant workers to Malaysia. The total transaction values obtained by the network from the departure of those people amounted to US\$563,446.00. Based on the financial transaction data, the offender who managed the handling of illegal agents at Eltari Airport received US \$244,125.69 during the period of 1 January 2015 to 8 August 2016. This related to the movement of 1787 people to Malaysia, Singapore, Hong Kong and Saudi Arabia including 48 children.

FLOW OF TRAFFICKING



Indonesia's Financial Intelligence Unit, PPATK conducted analysis of 64 suspicious transaction reports which showed:

- The amount of US\$13.5 million was paid in connection to 48 parties who were investigated by the District Police of Kupang.
- The linkages of human trafficking networks operating in NTT.
- The analysis helped to identify the financiers who funded the operations of human trafficking in East Nusa Tenggara.
- The analysis supported the investigators in mapping the networks through the use of a follow the money approach.

RED FLAGS			
No.	Red Flags Indicators	Variables	Examples
1	Profiles of customers	Private sectors	• owners/employees of PPTKIS (both legal and illegal) • money changers • owner/employee of tour and travel business • aviation services • freight/transportation services • rental services
		Public sectors	• immigration officers • aviation security • military personnel • police officers
2	Underlying transactions	Keywords	Children/child; people; ticket; meal allowance; housemaids; passports fee; travel; maids; RM; pay fee; child salary etc.
3	Channel of transactions	Banking system	• overbooking • transfer by ATM • transactions via IB/MB • telegraphic transfers
4	Transaction patterns	Co-mingling	The mixture of legitimate business profits with the proceeds of crime, found in the accounts of several parties known as PPATKIS owners/employees. Indication of disguising/concealing the origins of criminal proceeds.
5	Financial transaction analysis also contributed in <u>matching the stages of trafficking activities</u> since the stage of field recruitment, shelter, travel from hometown to transit and destination cities/countries, documents forgery, to the allegations of bribes to government apparatus. The investigation applied the matching method by utilising information from the profiles of account holders, transaction date, transaction amount and locations of transactions.		

Outcomes

Investigators of Kupang District Police managed to dismantle 11 networks and identify 32 suspects. Of the 32 suspects, 11 suspects have been convicted by the court for human trafficking, with sentences of imprisonment of 2 to 9 years. The court also imposed fine sanctions amounting between US\$9,230.00 to US\$153,800.00 and provided restitution to the victims and the family of the deceased victims amounting between US\$77.00 up to US\$4,230.00. An Airport Immigration officer in the trafficking in persons case, received 4 years' imprisonment, a fine of US\$15,300.00 and restitution to the victim's family of US\$77.00.

Section 5: Investigation

5.1 What is a financial investigation?

A financial investigation is an investigative technique used to gather information, intelligence and evidence from a wide range of sources about the financial history and activity of a suspect or witness in criminal proceedings. A financial investigation looks at all the financial elements relating to a crime, including money invested into the preparation and commission of the crime, costs incurred during the conduct of the crime, and the payments and profits received from the commission of the crime.

The offence of money laundering can apply at any stage of the financial process, with the key requirement being to establish that the person who dealt with the money **knew or ought to have suspected it was generated from a crime or was intended to be used in the commission of a crime**. This can be achieved by bringing together different sources of information to infer suspicious or unusual activity.

Tip

The key goals in financial investigation are to identify and record the **movement of money** during the course of the commission of an offence, and to identify other participants in the offence and the proceeds. The link between where money comes from, who receives it, when it is received, and where it is stored or deposited **can provide proof of criminal activity**.

5.2 How can you demonstrate how and where money has moved?

Any record that relates to or shows the trail of events involving money is important. While some countries remain largely cash-based economies, increasingly, people are making use of electronic banking systems, wire transfers, bank cards and internet banking—all of which leave some kind of a trace. However, even in a cash-based transaction there can still be a record created, such as an invoice, contract, receipt or books of account, etc. The nature of these transactions, electronic or otherwise, and their associated records, provides investigators with an almost endless source of information or evidence

The source of the information, intelligence or evidence concerning the movement of money, or the value of money, will vary depending upon the nature of the investigation. However, in most investigations, a number of common sources are used regularly. They include, but are not limited to:

- The suspect (pocket litter)
- Transport / shipping carrier
- Other businesses and professions
- Mobile phones
- Financial Institutions
- Utilities
- Insurance companies
- Vehicle registration departments
- Credit agencies
- Land registry
- Pension providers
- Tax authorities/social security
- Government registries and authorities
- Loyalty cards, such as airline frequent flier and hotel membership cards

Three particular sources are worth highlighting: (1) financial institutions, as they are one of the most prevalent sources of information; (2) utility bills; and (3) loyalty cards, as they provide valuable information, but may be under-utilised.

Financial institutions

Information obtained from financial institutions can include the account opening records (useful for stated identification, employment and declared income), together with the full history of the account. Copy bank statements showing credits, debits and balances together with cheques, credit vouchers and other transaction documentation will be available, as will any written notes bank officials may have made over the course of the business of the account. For credit or debit card use, this information can also be useful in charting the movements of an individual, the restaurants they dine in, the commodities they purchase, places they frequent, and the clubs and social outlets they visit. This can lead to the existence of other accounts, establish or disprove alibi, calculate expenditure and lifestyle, and identify other criminal associates. When accessed in real time, the information can also be used to locate the whereabouts of individuals.

Utility bills

In addition to corroborating resident status, enquiries with utility companies may often reveal previously unknown accounts, financial dealings or the existence of other associates who may be paying for the services. In a similar way, the case of internet and telephone providers can also lead to the identification of other people of interest and other criminal associates.

Loyalty cards

An airline frequent flyer members' card such as One World, Star Alliance or Sky Team, or a hotel chain loyalty card from Hilton, Starwood or Marriott Hotels can provide a wealth of information. This includes: the customer profile, such as his or her name, address, email and mobile telephone numbers and the details of bank/credit card accounts used to pay for services. Details of flights flown, hotels visited and who accompanied the traveller during these times will also be available.

Tip

Your suspect may be concealing money under identities of family members or close personal and business associates. Ensure your searches include these people who may hold or move money on behalf of your suspect.

5.3 Information and evidence gathering

It is good practice to establish parallel financial investigations as part of the overall trafficking in persons investigation. Coordination between investigators, FIUs and prosecutors will bring added value to the trafficking in persons criminal investigation, and will also help your country meet international standards on anti-money laundering.

Tip

Develop a **proactive parallel financial investigation** in conjunction with your investigation for all trafficking in persons offences. The evidence you obtain could assist to prove the predicate offence, and could also substantiate a separate offence of money laundering.

This could be achieved by including a **financial investigation checklist** as part of your standard operating procedures for an investigation.

Tip

Ensure that your response brings together the **expertise of all relevant agencies** (investigators, FIUs, and prosecutors) to ensure offences are fully investigated.

Information can be either obtained from open-source or closed-sources, such as the internet and company or land registry records (open) and financial institutions or tax records (closed).

In all cases, when accessing information, financial investigators should operate within their domestic legal framework and be able to justify such enquiries as being proportionate, legitimate, accountable and necessary (PLAN) to the investigation being undertaken. These are important points to demonstrate given that the intrusive powers available to investigators affords them the ability to overcome client confidentiality and breach a person's fundamental right to privacy. Strict controls and access conditions should be maintained at all times.

Tip: Ensure you can demonstrate that your enquiries are:

- **Proportionate**
 - Is the action proportionate to the threat?
 - Is there a less intrusive method of achieving the objective?
- **Legitimate**
 - Is there a legal basis for the action?
 - Is the action consistent with legal obligations, including human rights, privacy, data protection and confidentiality requirements?
- **Accountable**
 - Are decisions accountable?
- **Necessary**
 - Is the action necessary?
 - Will the information be of significant value to the investigation?

The effective use of a case management system, no matter how basic, is essential for a financial investigation. Often the volume of information being obtained will be considerable. A clear record of what is obtained and from where will assist in eliminating any difficulties later on in the investigation or at trial. Having some kind of policy or decision record will also help when being asked to account later why certain intrusive actions were taken.

WARNING

Many cases have been lost through poor document management due to the inability to demonstrate the lawful basis for seizure or the chain of custody from when and where the document was seized.

Tip

Use a case management system to track the financial information that you have obtained throughout your investigation.

Tip

Ensure documents you seize are individually labelled and recorded on a property seizure record and kept in a secure location with a chain of custody log recorded.

5.4 Case study

Mae Ja Kim, convicted in Australia of money laundering and living off the proceeds from prostitution

Mae Ja Kim lived a lavish lifestyle on a proportion of the earnings of over 100 female sex workers she recruited from Southeast Asia and brought to Melbourne, Australia with the promise of good pay and conditions. She was not licensed to operate a sex worker business or take any of the earnings, but she did. Unlicensed 'overseers' were appointed by Kim to supervise the sex workers and Kim would have meetings with them, discussing how to maximise the amount of work the women did and imposed fines for those who underperformed. She was using 12 mobile phones held in false names at the time police were investigating. Kim's co-offenders helped her run day-to-day operations involving the sex workers, including collecting earnings and organising rosters. Analysis of the worker payment summaries provided the basis to calculate how much money Kim made from her crimes and resulted in a pecuniary penalty order of AU\$2,509,000.00.

By 'following the money', investigators could show that Kim was directly involved in the management of brothels and the trafficking in persons to operate the brothels. The profit from these crimes was tracked, as was her luxurious lifestyle. This included three apartments and a house in Melbourne, and numerous luxury cars including an Audi 6, Mercedes Benz E500 and a Grand Jeep Cherokee. Key elements to the success of the case were the reconstruction of her 'notes' showing amounts to be paid for each girl based on the number of clients seen, and the cooperation between Australian law enforcement agencies.

Photographs taken in Ms Kim's luxury Southbank apartment at the time of her arrest in 2013 show massed rows of perfume bottles, racks of luxury shoes, designer handbags, and two safes.



Of the \$2.5m profit from her crime, financial investigators could show that Kim had spent \$202,000 on Prada products, \$115,000 on Gucci and \$24,000 on Hermes. These profits and assets including the apartments, house and cars were all seized and ultimately confiscated under Australia's *Proceeds of Crime Act 2002*.

Section 6: International cooperation

Note: This section does not aim to go into detail on how to conduct international cooperation, noting the range of existing material on this subject. It is focused on how best to use international cooperation mechanisms to support a financial investigation.

6.1 Why is international cooperation important?

Effective international crime cooperation mechanisms are an essential tool to address transnational crimes, and a key feature of an effective anti-money laundering system. Key reasons that international cooperation is often required to support financial investigation are:

- to obtain **evidence** from another jurisdiction to support financial investigation, and
- to identify, restrain, confiscate and repatriate **the proceeds of crime** and/or the **instrumentalities**, and/or assets for restitution or to provide compensation.

6.2 Forms of international cooperation commonly used to support financial investigations

Informal mechanisms are very useful to help officers establish peer-to-peer connections to obtain information across international borders. Informal cooperation can be beneficial prior to a formal mutual assistance request being made. Informal cooperation mechanisms include:

- **Agency-to-agency channels** (this may include police to police or FIU to FIU networks)
- **Interpol channels** (this will include the issuance of notice to locate a person, so her/his financial activity is traceable)
- **Memorandum of Understanding or similar agreements**, and
- **Informal networks** on anti-money laundering and asset recovery.
 - These informal mechanisms can include asset recovery networks such as ARIN-AP (Asset Recovery Inter-Agency Network for Asia Pacific), Police to Police (Overseas Police Liaison posts/ legal attachés), and FIU-to-FIU mechanisms (Egmont Secure Website).

Tip

Encourage your country to join the Asset Recovery Interagency Network—Asia Pacific (ARIN-AP) if they are not already members. ARIN-AP is an informal network of practitioners that support members' efforts, on a multi-agency level, to deprive criminals of their illicit profits.

There are no costs associated with ARIN-AP membership. Membership is completely voluntary and does not oblige countries to provide information or respond to requests.

Information can be found at www.arin-ap.org/main.do

Mutual Legal Assistance is the main method to seek formal Government-to-Government cooperation to **obtain evidence from another jurisdiction**. Mutual Legal Assistance is required when assistance cannot be provided through informal means, for example, when the assistance requires the use of coercive means, where the evidence sought will be used in court, or where the other country requires a Mutual Legal Assistance request.

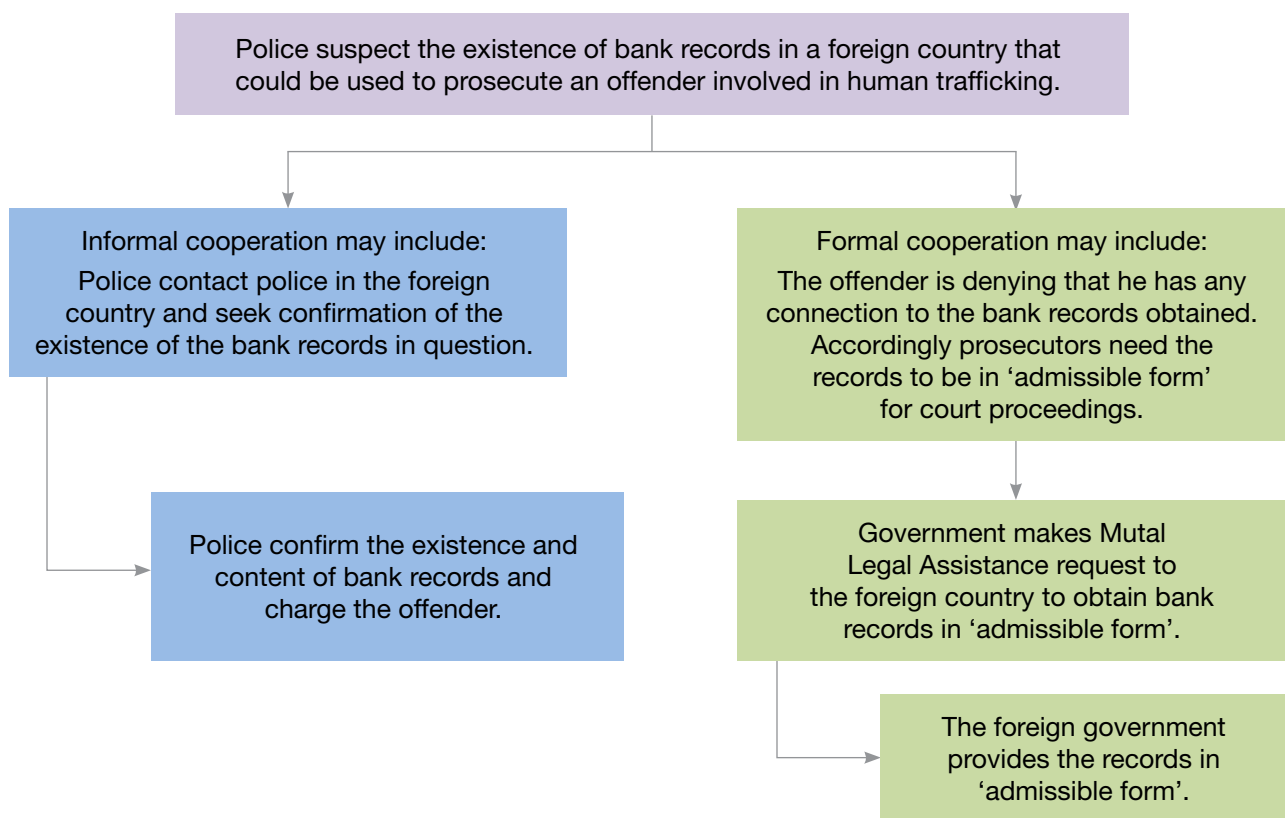
Extradition may be necessary to **bring the offender into the jurisdiction** to face a criminal prosecution or to serve a criminal sentence in relation to an extraditable offence. An extradition request may also be useful to support financial investigation for the purpose of asset tracing. Other forms of international cooperation include transfer of sentenced prisoners, cooperation using special investigative techniques, and joint investigations.

6.3 Important considerations

Key considerations in conducting international cooperation to support your investigation include:

- Use informal mechanisms for preliminary enquiries to determine whether there is evidence, offenders, victims, or proceeds of human trafficking located in another country.
- Consult early in your investigation with your Central Authority for international cooperation, FIU, and prosecutors early in your investigation to understand the formal and informal information sharing channels available.
- Make early contact with counterparts in the other country. This can assist to clarify whether information can be provided through informal networks, or whether Mutual Legal Assistance will be required. It can also assist to identify any legal issues which may arise, and to clarify the requirements for a Mutual Legal Assistance request.
- If Mutual Legal Assistance is required:
 - Clarify the requirements of the country you are requesting information from.
 - Make what you are trying to achieve clear, and set out the steps you will be following to achieve this.
 - This may include asset identification, establishing beneficial ownership, proving the predicate offence, and seeking restraint, forfeiture and repatriation of property.
 - Ensure your request is comprehensive and includes all of the information and documents required by the requested country.
 - Be clear about the format in which the evidence is to be provided.
 - Provide realistic timeframes for compliance with your request (discuss beforehand with the recipient).
 - If you are seeking to have a restraining or forfeiture order registered in a foreign country, ensure that your order meets the requirements of the foreign country's legal system.
- Be aware of the framework for confiscation and forfeiture in the foreign country you are engaging with and their ability to share confiscated property.

Example of using international cooperation for a financial investigation in a trafficking in persons case:



Tip

Consult with your Central Authority, prosecutors, and your FIU early in an investigation.

Tip

Use informal information sharing channels **at the beginning** of the investigation to gain access to information, clarify the types of information that may be available, ascertain how to best obtain additional relevant information, and better target any formal request for information.

Section 7: New payment methods

New technologies offer the potential for cheaper and more efficient payments across the world. These advancements also pose money laundering risks, including greater anonymity compared with traditional non-cash payment methods. Transactions using new technologies are also generally outside the regulated financial system, may operate across numerous countries, and be subject to varying degrees of oversight. For these reasons, it is important for policy makers and investigators to be aware of how they operate and how they might be used by criminal offenders. Common payment methods using new technology include:

Smart cards (stored value cards)

A plastic card that looks like a credit card with a microchip that can be used for cash payments, allowing for a payment process that does not link a purchase back to a bank account—e.g. a reloadable prepaid card that can be topped up with cash to a maximum value, is treated like cash if not registered online, can be used to withdraw cash from ATMs and for some online and in-store purchases, and is not connected to a bank account.

PayPal payments

An online 'digital wallet' that transfers funds from customers' credit or debit card, bank account and/or PayPal account to the accounts of other PayPal users, allowing buyers and sellers to send and receive payments online, by mobile device, or in-store (in some countries).

Cryptocurrency (e.g. bitcoin)

A virtual currency that operates outside of the banking system. Transactions take place between users directly, without users sharing identifying information. It enables anonymous transactions that are protected by a complex security code. There is no central authority creating currency units or verifying transactions.

Mobile phone payments

Mobile phone payment methods where a telecom operator acts as a payment intermediary to authorise, clear, and settle payments. These are common where access to traditional banking services is absent or limited. In these payments the transferred sum may be charged or pre-paid to the phone account or the value may be stored on the SIM card. Advances in mobile phone and smart device technology has resulted in the ability to use these devices to make payments through radio frequency identification (RFID), near field communication (NFC) or similar technology without the use of a card or traditional bank transfer. Apple pay and Google wallet are examples of this technology.

Internet banking and payment options

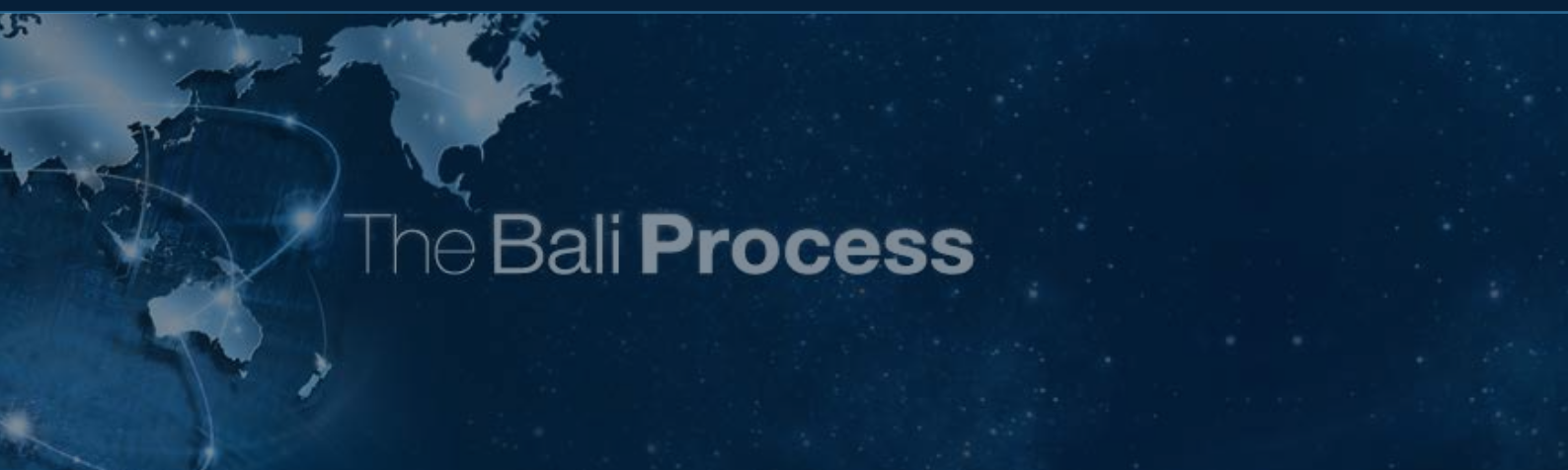
The advancement of the internet has resulted in an increase of payment services that rely on the internet to move funds to or from a bank account or from payment services by non-bank institutions operating exclusively on the internet. These services increase the risk of computers or smart devices being used to make payments with credit cards or accounts established in countries with poor adherence to customer due diligence (CDD) and know your customer (KYC) obligations.

Tip

Be aware of the range of new technologies available to transfer funds. Contact your FIU for advice on investigating these payment methods.

Section 8: Summary of tips

- ✓ Establish comprehensive anti-money laundering legislation.
- ✓ Ensure that money laundering and the predicate offences can be prosecuted separately.
- ✓ Establish non-conviction based forfeiture.
- ✓ Take active measures to ensure that parallel financial investigations become a routine part of all law enforcement inquiries related to crime with financial gain, including trafficking in persons.
- ✓ Collect statistics on assets recovered and use of money laundering offences to disrupt trafficking in persons networks. Consider including these as performance indicators for your State's response to trafficking in persons cases.
- ✓ Provide high-level demonstrations of support for adopting a 'follow the money' approach in trafficking in persons investigations to encourage take-up at all levels of your organisation.
- ✓ Ensure that your domestic framework includes the widest range of Mutual Legal Assistance in money laundering cases, and that money laundering is an extraditable offence in your domestic legislation.
- ✓ Ensure that your response brings together the expertise of all relevant agencies (investigators, FIUs, and prosecutors) to ensure offences are fully investigated.
- ✓ Use a case management system to track the financial information that you have obtained throughout your investigation.
- ✓ Ensure you consider the legal requirements that you will have to operate within to obtain information (e.g. human rights, privacy, data protection and confidentiality requirements).
- ✓ Use informal information sharing networks early in your investigation. Use financial information sharing networks. Encourage your country to join the Asset Recovery Interagency Network—Asia Pacific (ARIN-AP) if they are not already members.
- ✓ Engage with your FIU and your Central Authority early in your investigation.
- ✓ Be aware of the range of new technologies available to transfer funds. Contact your FIU for advice on investigating these payment methods.



The Bali Process



The **Bali Process**

on People Smuggling, Trafficking in Persons and Related Transnational Crime