

There are four steps to returning assets in Switzerland that have been obtained by unlawful means:

1. Identification:

Every asset recovery case begins by locating and identifying assets which are thought to have been obtained unlawfully, in the country in which the possible crime-related circumstances have been discovered and are being investigated. Financial investigations may be routed through the special channels set up for this purpose (FIUs¹, CARIN² etc.) and the trail often leads to other countries, including Switzerland. Assets that have been obtained unlawfully must be located before they can be frozen.

2. Precautionary freeze:

A provisional freeze may be ordered as the next step. If the assets are found in Switzerland, an application for them to be frozen may be made via the international mutual assistance route. Art. 18 IMAC states that, at the express request of another state, the competent authority in Switzerland may order provisional measures even before a formal request is made, to prevent the assets being transferred to a different location. This form of provisional freeze is possible if any subsequent mutual assistance proceedings would not obviously be inadmissible or inappropriate. Precautionary measures must be lifted if the foreign state does not submit a formal request for mutual assistance within the set deadline³. With a formal request for mutual assistance, the requesting state can ask that information on flows of funds, or on who holds power of disposal over the assets, be collected for use as evidence. The request for mutual assistance pursues two aims: first, to maintain the status quo and to prevent suspected criminals from continuing to exercise powers of disposal over the assets in question. Second, to collect the evidence necessary to obtain a forfeiture ruling from a court in the requesting state.

3. Forfeiture/return to the rightful owners:

The bank and other documents supplied by Switzerland are used as evidence in the requesting state. Based on this evidence, the requesting state may obtain an order for the assets to be forfeited, and then deposited with its treasury or returned to their rightful owners. From Switzerland's perspective, ownership of the assets thus passes from the current holder to the person(s) designated in the ruling, or to the state.

4. Handover:

The assets in question remain frozen during the three prior phases of the process described above. The competent authority in Switzerland cannot order the precautionary freeze lifted and the assets in question handed over until a final and legally enforceable judgment has been passed, and the state of origin has submitted a new request for mutual assistance.

¹ Financial Intelligence Unit

² Camden Asset Recovery Interagency Network

³ It is also possible for the assets in question to be frozen provisionally and in respect of certain individuals, on the basis of a decision by the Swiss Federal Council. As these are administrative proceedings, even such cases a specific request for mutual assistance is required to seize the assets under the IMAC.

Recovering unlawfully obtained assets located in Switzerland




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Introduction

For many years now, Switzerland has supported other states with the recovery of assets that have been obtained unlawfully. We have not only helped to draft, and have ratified, a variety of multilateral conventions in this area, but have also enacted the Federal Act on International Mutual Assistance in Criminal Matters (the Mutual Assistance Act, IMAC). This gives Switzerland its own domestic legal foundation from which it can cooperate with other countries by providing legal support in criminal cases. Specifically, the IMAC enables Switzerland to hand frozen assets over to their rightful owners in the context of mutual assistance proceedings.

The Federal Office of Justice (FOJ) is the supervisory authority for mutual assistance matters, and the central point of contact for domestic and international authorities and their representatives. Depending on the details of the case in question, either the cantonal public prosecutors' offices or the federal criminal prosecution authorities may then be responsible for conducting the mutual assistance proceedings themselves.

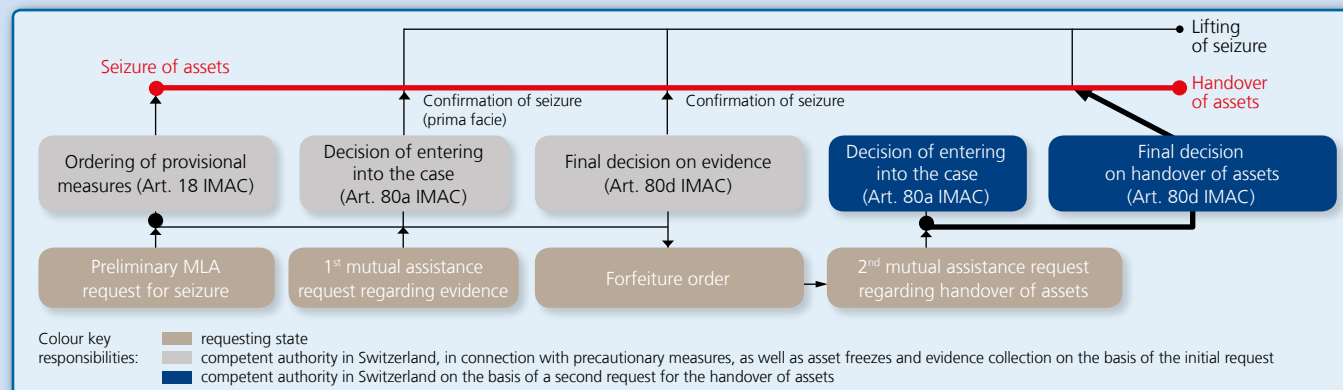
This Federal Office of Justice publication provides an overview of the judicial procedure in Switzerland to recover assets that have been obtained unlawfully.

Core provision for the return of objects and assets obtained unlawfully: Art. 74a of the Mutual Assistance Act

Art. 74a IMAC governs the handing over of assets in clear and simple terms. It states that objects or assets that have been seized for the purposes of securing them may be handed over to the competent foreign authority on request at the end of mutual assistance proceedings, for forfeiture to the state or return to their rightful owners. These objects or assets may comprise, in particular, the product or the proceeds from a criminal act, their replacement value and any unlawful advantage gained, or even a claim for damages. The handover may be made at any stage in the foreign proceedings, but is generally based on a final and enforceable forfeiture decision from the requesting state. If the frozen objects or assets are obviously of unlawful origin, under certain circumstances they may even be handed over without a legally enforceable order.

The handing over of objects and assets will generally be the subject of a separate request for mutual assistance, once the requesting state has ordered the disputed assets forfeited on the basis of the bank information and other evidence provided under its original request. The entire judicial process can be divided into four phases, each of which is described in brief below.

The process in brief



1. Under Art. 18 IMAC, assets located in Switzerland may be frozen on a precautionary basis, i.e. even without a formal request for mutual assistance having been submitted, if any subsequent mutual assistance proceedings would not obviously be inadmissible or inappropriate. These precautionary measures must be lifted if the foreign state does not submit a formal request for mutual assistance within the set deadline.
2. A formal request for mutual assistance must be submitted to have the assets frozen and the corresponding evidence (land register extracts, bank documents, etc.) collected. If non-disclosure to the person concerned has not been requested, that person will be informed of the request.
3. The person concerned will be given a legal hearing at the latest at the end of mutual assistance proceedings in Switzerland in which the mutual assistance authority orders that evidence be handed over and the freeze maintained.
4. The evidence that has been collected will be supplied to the requesting state as soon as mutual assistance proceedings have been concluded successfully. The assets themselves remain frozen in Switzerland. Based on the evidence it has received, the requesting state should be able to obtain a forfeiture order for these assets.
5. The forfeiture order constitutes a decision on the ownership of the frozen assets, and on whether those assets will be forfeited to the state or returned to their rightful owner. As soon as the forfeiture order has become final and legally enforceable, the requesting state may use it as a basis to request the handover of the assets via mutual assistance channels. The assets will be handed over to the state or to the rightful owner (as per the forfeiture order) as soon as all conditions have been fulfilled.

Requests for mutual assistance that are submitted to Switzerland must contain the following information:

1. **The name of the authority** making the request.
2. **The object of the foreign proceedings and the grounds for the request.** The requesting authority must establish a concrete relationship between the facts in the foreign proceedings, the measures it is requesting, and the assets that are located in Switzerland. It does not need to provide evidence. However, the foreign authority may not embark on a fishing expedition in which it requests that assets be frozen or evidence collected, but does not provide any further element. The measures that are being requested should be described in as much detail as possible.
3. **As far as possible, precise and complete identifying details of the person who is the subject of the criminal proceedings,** or information that would be useful in identifying the suspect. However, assistance can also be requested where the perpetrators are unknown.
4. **Legal description of the offence** in the requesting state.
5. **A brief description of the key facts,** to allow the Swiss authorities to review whether or not the offence committed abroad is also punishable under Swiss law. This „dual criminality“ is a major condition for coercive action – such as the freezing of assets – to be ordered. The presentation of facts must, as a minimum, state the place, date and nature of the offence committed. With this information, the requested authority can decide whether and to what extent it is able to provide mutual assistance. The criminal offence described in the request is not to be considered as a political or fiscal offence and fulfilling the request mustn't compromise the sovereignty, security, public order or other significant interests. If mutual assistance is requested to prosecute the criminal offence of money laundering, the request must contain sufficient indication of a precursor offence.

Requests for mutual assistance must be submitted **in writing** via the correct channel and **translated** into one of Switzerland's official languages.