

## Mutual legal assistance: the ordinary route

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The administrative freeze described in this chapter is the exception. The ordinary route for asset recovery is international mutual legal assistance in criminal matters, governed by a federal act of 1981 and by the bilateral and multilateral conventions to which Switzerland is a party. The state of origin sends Switzerland a request based on criminal proceedings opened in its own jurisdiction. The Federal Office of Justice examines it and forwards it to the cantonal or federal executing authorities. These order the attachment of the assets, gather the banking documents and, at the end of the foreign proceedings, may hand over the confiscated assets to the requesting state, the Act providing for their handover with a view to confiscation or restitution to the rightful owners.<sup>1</sup> The sharing of confiscated assets between Switzerland and the foreign state is governed by an act of 2004, which provides in principle for an equal split unless waived, Swiss practice with regard to the assets of politically exposed persons being to return the entire amount.<sup>2</sup>

This route proved its worth in the Abacha affair, where Nigeria obtained the handover of the funds on the basis of a request for mutual assistance. It failed in the Mobutu and Mubarak affairs, for want of effective proceedings in the requesting states. Geneva plays a central role here, because the assets are located there and because its Public Prosecutor's Office has acquired, since the 1990s, an experience of African requests that few European prosecution services possess. Geneva lawyers represent sometimes the requesting states and sometimes the account holders, in proceedings that last for years and whose appeals to the Federal Criminal Court and the Federal Supreme Court have settled the case law. The practitioner who serves an African clientele must know this procedure, because his bank or his firm will one day be on the receiving end of it.

## 1 Notes

1. Federal Act of 20 March 1981 on International Mutual Assistance in Criminal Matters (IMAC; EIMP, SR 351.1), Art. 74a “Handover for the purpose of confiscation or return”; bilingual table of contents on [droit-bilingue.ch](http://droit-bilingue.ch) (accessed September 2026). ↩
2. Federal Act of 19 March 2004 on the Division of Forfeited Assets (LVPC, SR 312.4), in force since 1 August 2004: sharing agreements with foreign states as a rule provide for an equal division; Federal Office of Justice, “Loi sur le partage des valeurs patrimoniales confisquées (sharing)” (Act on the division of forfeited assets (sharing)), [bj.admin.ch](http://bj.admin.ch) (accessed September 2026); the practice of returning the entire assets of politically exposed persons emerges from the cases described in this chapter. ↩

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