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**IPA 2010  
FIGHT AGAINST ORGANISED CRIME AND CORRUPTION: STRENGTHENING THE PROSECUTORS' NETWORK**

## **Mutual Legal Assistance in Criminal Matters**

**OAG - COMPETENCE CENTRE FOR MUTUAL LEGAL ASSISTANCE CC RIZ**

## Mutual Legal Assistance in Criminal Matters

- ◆ International cooperation in criminal matters as an important and crucial instrument to combat transnational crimes
- ◆ Switzerland as an important financial centre with corresponding responsibilities for combating money laundering and restituting illicit assets to countries of origin: **Switzerland is not a safe haven for illicit gains**
- ◆ The **banking secrecy as such does not exist** in cases of criminal investigations and/or execution of requests for assistance in criminal matters

## Mutual Legal Assistance in Criminal Matters - Legal Basis

- ◆ **Multilateral Conventions** (Council of Europe: European Convention on Mutual Assistance in Criminal Matters; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, UNTOC and UNCAC)
- ◆ **Bilateral Treaties** between Switzerland and other States worldwide
- ◆ **Swiss domestic legislation:** the Federal Act on International Mutual Legal Assistance in Criminal Matters (IMAC) allows Switzerland to cooperate with countries worldwide without a treaty based on the **principles of trust and reciprocity**

## Mutual Legal Assistance in Criminal Matters – Competences

- ◆ The **Federal Office of Justice (FOJ)**: Central Authority and Supervising Authority in MLA matters (for incoming and outgoing MLA requests)
- ◆ The **Office of the Attorney General of Switzerland**: competent to investigate complex cases of corruption/money laundering/organized crime/terrorism and to execute incoming MLA requests concerning complex cases of corruption/money laundering/organized crime/terrorism financing

The competences of the Office of the Attorney General according to art. 23 and art. 24 of the Code of Criminal Procedure (CP) for crimes against the State and for complex cases of participation in a criminal organization, money laundering, corruption as well as economic crimes

- ◆ The **Cantonal Prosecutor's Offices**
- ◆ **Swiss Federal Customs Directorate**

## Police cooperation vs. Mutual Legal Assistance



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## **Legal basis for the delegation of the execution of incoming requests to the OAG:**

Art. 17 par. 4 IMAC (as well as art. 79 par. 2 IMAC): „The Federal Office of Justice ***may transfer the carrying out of a proceeding partly or completely to the Federal Authority which would be competent for punishing the offence if it had been committed in Switzerland***“.

## Execution of MLA requests by the Swiss competent authority - OAG (1)

- ◆ Examination of the **formal and material requirements**
- ◆ Indication of the **Legal Basis** and **Requesting Authority** with contact details
- ◆ Description of the **facts** underlying the request, person object of the criminal investigation in the requesting State and **mention of the offenses** in question according to the criminal law provisions of the requesting State
- ◆ Specification of the **requested assistance**, as specific as possible
- ◆ **Translation** of the request into one of the official languages of Switzerland (German, French or Italian)

### cf. Checklist

## Execution of MLA requests by the Swiss competent authority - OAG (2)

- ✦ Execution in application of the IMAC and the Swiss Code of Criminal Procedure
- ✦ The OAG respectively the competent Federal Prosecutor issues the relevant orders (e.g. production of documents, search and seizure, interviews/interrogations, freezing of bank accounts)
- ✦ Possibility for the parties to the procedure to **file appeals** during execution of the request and before documents/evidence are transmitted to the requesting State
- ✦ **Transmission of evidence** with the consent of the parties to the procedure (art. 80c IMAC) or after the competent Courts (Federal Criminal Court (first instance) and Federal Supreme Court (second and last instance) have rejected appeals
- ✦ **Handing over of frozen assets** on the basis of an **executory and final confiscation decision** of a Court in the requesting State

## Particular topics

- ◆ **Spontaneous information:** Switzerland can provide information on a spontaneous basis regarding the existence of assets appearing to be laundered through Swiss accounts to countries of origin according to Art. 67a IMAC in order to „trigger“ a MLAT request
- ◆ **Tracing and freezing of assets** in the context of mutual legal assistance: exclusion of fishing expedition
- ◆ Mutual legal assistance in **money laundering** cases – predicate offence
- ◆ **Return of illicit assets:** With CHF 1.7 billion returned over the last decade, Switzerland has a solid experience in the area of the restitution of assets, in particular regarding the assets of politically exposed persons. For the past 20 years the political will has been very strong and several amendments were made in the legislation. New legislation is in progress to fill the still existing loopholes.



## Useful links:

### Mutual legal assistance tools, european judicial network, compendium

- ◆ [www.rhf.admin.ch](http://www.rhf.admin.ch)
- ◆ [www.bj.admin.ch](http://www.bj.admin.ch)
- ◆ [www.unodc.org](http://www.unodc.org)
- ◆ [www.europa.eu](http://www.europa.eu)
- ◆ [www.coe.int](http://www.coe.int)
- ◆ [www.eurojust.europa.eu](http://www.eurojust.europa.eu)

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