

GIR KNOW HOW EXTRADITION

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# Switzerland

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## 1 Are extradition proceedings regulated by domestic legislation, treaties or both?

In Switzerland, extradition proceedings are regulated in the first place by multilateral or bilateral treaties as well as, in certain cases, by declarations of reciprocity. It is only when no treaty binding the requesting and requested states exists or when there is a lacuna in the treaty, that the Swiss Federal Act on International Mutual Assistance in Criminal Matters of 20 March 1981 (IMAC) is applicable.

Switzerland is a signatory of several multilateral treaties. It is noteworthy that a distinction must be made between two categories of multilateral treaties. The first category is that governing specific aspects of international cooperation in criminal matters (eg, extradition, mutual legal assistance, delegation of prosecution, etc). These treaties include, in particular, the European Convention on Extradition of 13 December 1957 (European Convention on Extradition) and its four Additional Protocols. The second category is that of treaties mainly pursuing law enforcement purposes in specific areas of international criminal law that also contain certain provisions relating to international cooperation (eg, the European Convention on the Suppression of Terrorism of 27 January 1977).

In addition to multilateral treaties, Switzerland is also bound by bilateral treaties in matters of extradition with other states. One notable example is the Extradition Treaty of 14 November 1990 between the Swiss Confederation and the United States of America (Swiss-US Extradition Treaty).

When states are not bound by a treaty or if a treaty exists but is lacunar, Switzerland as the requested state may require, at the time it grants extradition, a statement from the requesting state by which the latter undertakes to grant its future cooperation to the same extent and with the same conditions. Such undertakings are referred to as declarations of reciprocity. This process renders extradition possible without excessive formalities in the absence of a treaty. Cooperation remains, however, governed by the Swiss domestic law.

Finally, all questions related to international cooperation in criminal matters, including extradition proceedings, are governed in Swiss domestic law by the IMAC, which entered into force on 1 January 1983. It is supplemented by the Ordinance of 24 February 1982 on International Mutual Assistance in Criminal Matters (O-IMAC). The principle in Switzerland is that obligations arising out of bilateral and multilateral treaties supersede domestic law. In the field of extradition, this pre-eminence of international instruments is acknowledged in article 1 IMAC pursuant to which the IMAC governs all procedures of international cooperation in criminal matters “unless other federal acts or international agreements provide otherwise” (for an unofficial English translation of the IMAC). Therefore, whenever a binding treaty exists, the obligations enacted therein supersede obligations derived from the IMAC. However, the IMAC supplements such international instruments whenever its provisions are more favourable for the granting of legal assistance to a requesting state (Principle of Favour). Finally, the IMAC provides a legal basis for cooperation with states that are not bound to Switzerland by any treaty.

## 2 Is there a central register of extradition treaties that your state has entered into?

A list of conventions and treaties Switzerland has entered into may be found in section 0.353 (Extradition) of the Systematic Compendium of Swiss Federal Law (ie, the collection of Swiss legislation published by the Swiss government) (for a list of applicable conventions and treaties).

## 3 Do special extradition arrangements apply to certain foreign states, for example, states that are geographically proximate, or politically, legally or economically closely linked?

In principle, Switzerland treats foreign requests equally unless there are objective reasons for not doing so.

However, if there is a risk that the person whose extradition is sought may be exposed to a treatment that violates basic human rights, Switzerland will examine whether this risk could be eliminated – or considerably reduced to a mere theoretical level – by means of diplomatic guarantees provided by the requesting state (diplomatic assurances). If that is the case, Switzerland will make the extradition conditional upon the issuing, by the requesting state, of such assurances.

If, however, there is a clear risk that basic human rights or principles of due process will be grossly violated and that such risk cannot be mitigated by the issuing of diplomatic assurances, Switzerland will refuse extradition.

#### **4 Is extradition possible to states that have no bilateral or multilateral extradition treaty with your state if they are party to an international convention?**

If there is no bilateral or multilateral treaty binding Switzerland and the foreign state, Switzerland will rely on the IMAC for the purpose of extradition (see question 1).

#### **5 Is extradition possible to states that are not extradition treaty partners as an ad hoc arrangement?**

If there is no bilateral or multilateral treaty binding Switzerland and the foreign state, Switzerland will rely on the IMAC for the purpose of extradition (see question 1).

#### **6 For which offences is extradition from your state allowed?**

International cooperation in matters of extradition is granted in connection with the repression of criminal offences. The behaviour that may give rise to the surrender of a person to a foreign state should, therefore, be criminally punishable.

Switzerland has chosen to adopt a general clause allowing extradition as a matter of principle – subject to certain limitations and exceptions – which is not limited to a specific list of extraditable offences. This is referred to as the “eliminative system” (as opposed to the “enumerative system”), which is found in the IMAC as well as in bilateral treaties signed by Switzerland.

The IMAC defines extraditable crimes in terms of a minimum threshold of penalty. Thus, extradition is not dependant on a specific offence, but on the seriousness of the crime committed. Under the IMAC, extraditable offences are those that are punishable by deprivation of liberty for a maximum period of at least one year or a more severe sentence both under the law of Switzerland and under the law of the requesting state (article 35, paragraph 1, let. a IMAC).

Switzerland may grant extradition for offences which do not comply with this requirement provided the request for extradition is made for several different charges, one of which is and extraditable offence (article 36, paragraph 2 IMAC provides that if one of two or more offences is extraditable, extradition may be granted for all offences). The rationale of this rule is that if an individual is to be extradited for a serious offence, there should be no obstacle to his or her prosecution for minor offences that would not have entailed extradition per se.

The European Convention on Extradition, which Switzerland is also a signatory of, also follows these principles (see article 2, paragraphs 1 and 2, European Convention on Extradition).

#### **7 Is there a requirement for double (dual) criminality? How is this assessed?**

Swiss extradition law requires that the condition of dual criminality is met. Under the IMAC (article 35, paragraph 1, let. a IMAC) and the current approach of Swiss courts, it is sufficient that the conduct described in the request for extradition is punishable under the laws of both the requested and requesting states.

According to Swiss case law, the requirement of dual criminality has to be examined in an “abstract” way. The review of dual criminality implies, for the Swiss authorities, transposing into domestic law the statement of facts presented in the foreign request in order to ascertain whether the facts described therein (with the only reservation being obvious errors, omissions or contradictions that are evident and can immediately be established) correspond both objectively and subjectively to facts that constitute an offence punishable under the Swiss Criminal Code or other specific legislation of a criminal nature. In other words, Switzerland has to answer the following question: “If Swiss law were to apply to the facts submitted by the requesting state, would these facts amount to an offence under Swiss law?”

The offence described in the request for extradition does not have to be defined in the same terms or designated in the same manner under the legislation of both states. Thus, it is not necessary for there to be a strict correspondence between the conditions underlying the crime alleged in the request and an equivalent crime acknowledged by the legislation of the requested state, as long as the conduct qualifies as an extraditable offence.

The Swiss authorities need not concern themselves with the criminal law of the requesting state when addressing the question whether the offence described in the request is an extraditable offence, since the "principle of trust" is one of the cornerstones of international cooperation in criminal matters. Therefore, Switzerland will trust that the request is made in accordance with the requesting state's own law.

The review of the punishability of the alleged offender under Swiss law includes the review of both the objective and subjective constituent elements of the alleged offence. However, particular conditions such as the absence of legal liability, statutes of limitations, defences or aggravating circumstances should not be taken into account.

## **8 How would your state deal with a request that includes an offence for which extraterritorial jurisdiction is claimed?**

Switzerland may refuse to cooperate when the offence for which extradition is requested has been committed outside the territory of the requesting state and Swiss law does not allow such an offence to be prosecuted if the facts were transposed to Switzerland or does not authorise extradition for the offence that is the subject of the request for extradition (see article, 7 paragraph 2 of the European Convention on Extradition).

Moreover, Switzerland may refuse to extradite a person sought for an offence which is regarded by its law as having been committed in whole or in part in its territory or in a place treated as its territory (see article 35, paragraph 1 let. b IMAC and article 7, paragraph 1 of the European Convention on Extradition).

The Swiss authority need, however, not verify the jurisdiction of the requesting state, subject to a manifestly abusive claim by the latter.

## **9 What must be included as part of a valid extradition request made by the foreign state?**

Articles 28 and 41 IMAC provide for the information that must be contained in the written formal request for extradition.

The request must be made in writing (article 28, paragraph 1 IMAC). All foreign requests and their enclosures must be submitted to the Swiss Federal Office of Justice (FOJ; the Swiss Central Authority) either in German, French or Italian or in their original language accompanied by an officially certified translation (article 28, paragraph 5 IMAC).

The foreign request must indicate (i) the requesting authority (and, if applicable, the authority which has criminal jurisdiction), (ii) the subject matter and the reason for the request, (iii) the legal qualification of the alleged offence and (iv) as exact and comprehensive details regarding the person who is the subject to the foreign criminal proceedings.

In addition, in order to allow for the legal assessment of the offence, the requesting state must provide a summary of the relevant facts of the case, a copy of the criminal provisions applicable in the requesting state and an original or officially authenticated copy of the enforceable foreign judgment or of the warrant of arrest.

The facts alleged in the request do not have to be proven. As long as the Swiss authorities are able to understand the request and consider they have sufficient information to carry out the dual criminality review, the request can be accepted. In other words, Swiss authorities will, in principle, not question the facts set out in the request and case law is very strict in this regard.

## 10 What are the stages of the extradition process?

Extradition proceedings typically begin with the receipt of a foreign request for provisional arrest. If it is satisfied that the minimum requirements are met, the Extradition Unit of the FOJ will issue a provisional arrest warrant pending extradition. The arrest warrant pending extradition or any decision of the FOJ regarding detention may be appealed before the Swiss Federal Criminal Court (FCC).

Within a few hours following the arrest by law enforcement agents, the person sought is brought before the officials of the FOJ for an initial legal hearing. The FOJ may also resort to Cantonal authorities (usually a Cantonal Public Prosecutors Office) to obtain assistance in conducting extradition proceedings, which is quite common.

Unless the person sought consents to his or her immediate extradition (simplified extradition), "ordinary" extradition proceedings are initiated. The requesting state is given a deadline which starts to run on the day of the arrest to formally request the extradition of the sought individual (18 days under the IMAC and the European Convention on Extradition and 40 days under the Swiss-US Extradition Treaty). The deadline may exceptionally be extended if there are special causes. If the formal extradition request is not received within the (potentially extended) deadline, the person sought must be released.

Once the formal request for extradition is received by the FOJ, a copy is handed to the person sought in a new hearing. The latter is granted "reasonable time" (ordinarily approximately 14 days, but with a possibility of extension) to file written submissions (comments) to object to extradition.

The FOJ will then assess the matter, relying on the information and documentation provided by the requesting state and on any submissions filed by the person sought to oppose extradition. It is noteworthy that extradition proceedings are very formal in Switzerland. The FOJ will examine whether all the formal and material conditions for extradition are fulfilled. It will, in particular, examine whether the dual criminality condition is fulfilled. However, the merits of the foreign case (ie, questions of guilt and facts), are not considered. In its capacity as the competent authority, the FOJ will ultimately rule on the extradition, granting or denying the requesting state's request.

The person sought may then appeal any decision granting extradition before the FCC. A further appeal to the Federal Tribunal (the Swiss Supreme Court) is possible in very exceptional cases (ie, if the matter is considered to be of "particular importance").

It is noteworthy that the requesting state has no standing in the proceedings and may not appeal any decision denying extradition.

The diagram below, published by the FOJ, illustrates the steps of Swiss extradition proceedings.

[View diagram](#)

Source: Federal Office of Justice

## 11 If an initial political decision is required, what factors can be considered?

No initial political decision is required.

## 12 Is provisional arrest, before the extradition request is received, possible?

Extradition proceedings typically start with a request from a foreign state in order to locate and arrest a wanted individual. Such a request can be provided through various channels: notice in the Schengen Information System (SIS), from an Interpol National Central Bureau (NCB) or directly from the Ministry of Justice of the requesting state.

It is noteworthy that pursuant to Swiss legislation and longstanding case-law, detention is the rule in extradition proceedings. While a person in provisional arrest pending extradition is entitled to make a petition for release from custody at any time during the proceedings, conditions for such a release are much stricter than in cases of pure domestic proceedings.

### 13 Must a domestic arrest warrant be issued or can an Interpol red notice be used to carry out a provisional arrest?

A foreign request for provisional arrest or an Interpol red notice can only be the basis for an initial provisional arrest. The Swiss authorities must, however, issue a domestic arrest warrant to maintain the person sought in detention pending a decision on extradition.

The FOJ will review the request to ensure that it contains the prerequisite information and, upon a prima facie basis review, that extradition is even possible. If it is satisfied that the requirements are met and the location of the person sought is known, the FOJ will order the latter's arrest by a law enforcement authority. If the location of the person is unknown, his or her details will be entered into the Swiss RIPOL automatic search system for arrest. This is not necessary if the person is already the subject of an SIS alert as law enforcement authorities have direct access to this system.

Once the person sought is arrested by Swiss law enforcement agents (eg, the Border Guards Corps), the FOJ must issue a domestic arrest warrant pending extradition as soon as possible, but by the third workday following the arrest at the latest (article 46, paragraph 2 IMAC). The foreign provisional arrest warrant will remain valid until that time.

### 14 What is required to apply for a domestic extradition arrest warrant?

To issue a domestic arrest warrant, the Swiss authorities will require a foreign request for provisional arrest. It must further appear that there is a prospect that extradition might be granted.

### 15 What rights does the requested person have while under arrest?

Any person subject to extradition proceedings has, in particular, the following rights:

- the right to appoint a lawyer of his or her choice to act on his or her behalf (article 21 IMAC) as well as to contact the consular representative of a state of which he or she is a national (article 16 O-IMAC);
- the right to make a petition for release from detention at any time during the extradition proceedings;
- the right to access the file of the proceedings and in particular to the request for extradition and communications between the requesting and requested states;
- the right to be heard and in particular the right to file submissions with the FOJ to oppose his or her extradition; and
- the right to appeal decisions taken by the authorities and courts in the course of the extradition proceedings.

### 16 Is bail available in extradition proceedings?

Article 47, paragraph 1 IMAC provides that the FOJ may decline to issue an arrest warrant pending extradition, in particular if the person sought will probably not elude extradition and will not endanger the criminal investigation. Moreover, if the person sought is unfit to remain in detention or if there are other valid reasons, the FOJ may order measures other than detention. These measures are usually referred to as "substitute measures" and also apply for a release from detention if the person sought is already detained.

The IMAC speaks of "measures other than detention" and is formulated openly (ie, it does not contain an exhaustive list of possible substitute measures). The main purpose is to ensure that Switzerland may ultimately comply with its obligations and, as the case may be, order the extradition of the person sought.

These measures may include payment of bail (ie, an amount of money to ensure that the person does not flee), but also any other measure which may ensure that the purpose is achieved (eg, house arrest, physical surveillance and monitoring, surrender of identity documents, obligation to report regularly to a police station, prohibition from exiting a given geographical perimeter, etc).

### 17 If so, what are the factors that a court will take into account in deciding whether to grant bail?

Several factors are taken into account in deciding whether to grant bail. If it is established that the person sought is unfit to be detained – eg, due to health issues –, he or she should be released on bail. Moreover, the main purpose of detention pending extradition is to ensure that there is no risk of flight or collusion so as not to jeopardise the extradition of the person sought. If this risk can be mitigated, then bail may be granted.

This being said, according to long-standing case law of Swiss courts, detention is the rule in extradition proceedings.

### 18 Can the court impose conditions when granting bail? What conditions can be, and usually are, imposed?

Article 47, paragraph 1 IMAC provides that the FOJ may decline to issue an arrest warrant pending extradition, in particular if the person sought will probably not elude extradition and will not endanger the criminal investigation. Moreover, if the person sought is unfit to remain in detention or if there are other valid reasons, the FOJ may order measures other than detention. These measures are usually referred to as “substitute measures” and also apply for a release from detention if the person sought is already detained.

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### 19 What bars can be raised to resist extradition?

The defences to resist extradition are based on the nature of the offence, the nature of the treatment or penalty that may be inflicted on the person sought and the prohibition against double jeopardy. The person sought may provide any evidence to convince the authority or court that extradition should be denied for one of these reasons. However, questions of guilt and facts are not reviewed in extradition proceedings.

Defences based on the nature of the offence:

- Political offences: Switzerland will deny extradition if the subject of the proceedings is an act that, in Swiss views, is of a “predominantly political nature” (article 3, paragraph 1 IMAC). The “political offences exception” is, however, precluded if the act for which extradition is requested is genocide, crimes against humanity, war crimes or if the act appears particularly reprehensible because the offender, for the purpose of extortion or duress, has endangered or threatened to endanger the life or limb of persons, especially by hijacking aircraft, using means of mass extermination, causing a catastrophe or taking hostages (article 3, paragraph 2 IMAC).
- Disguised purpose of the proceedings: pursuant to the “non-discrimination clause”, Switzerland will deny extradition if there are reasons to believe that a request for extradition for a “common” offence has in reality been made for the purpose of prosecuting or punishing a person on account of his or her political opinions, his belonging to a certain social group, his or her race, religion or nationality, or if his or her position may be prejudiced for any of these reasons (article 2, let. b and c IMAC).
- Military offences: a request for extradition will be denied if the subject of the proceedings constitutes a violation of the obligation to perform military or similar service (eg, refusal to serve in the armed forces or desertion) or appears to be directed against the national security or military defence of the requesting state (article 3, paragraph 1 IMAC). The exemption does, however, not apply to offences perpetrated by members of the armed forces where the offences will be considered to be common offences subject to the ordinary provisions of criminal law;

- Fiscal offences: pursuant to Swiss law, extradition will not be granted if the subject of the proceedings is an offence which appears to be aimed at reducing fiscal duties or taxes or which violates regulations on currency, trade or economic measures (article 3, paragraph 3 IMAC). Issues of fiscal offences are of extreme complexity, and we will not elaborate further on this topic. It is, however, noteworthy that extradition can nevertheless be granted in particularly serious cases.

Defences based on the nature of penalty and on considerations of Human Rights and on fair trial:

- Death penalty: the prohibition of the death penalty is explicitly inscribed in article 10, paragraph 1 of the Federal Constitution of the Swiss Confederation of 18 April 1999 (Federal Constitution). Extradition will be denied if the requesting state fails to guarantee that the person sought will not be sentenced to death or that an already pronounced death penalty will not be carried out (article 37, paragraph 3 IMAC).
- Human rights: the prohibition of extradition when there are reasons to believe that the person sought could be subject – notwithstanding diplomatic assurances (see question 3) – to torture or inhuman and degrading treatment or punishment is explicitly provided for both in article 25, paragraph 3 of the Federal Constitution and in article 2, let. a IMAC.
- Fair trial: Switzerland will deny extradition if there are reasons to believe that the foreign proceedings do not meet the procedural requirements of the European Convention on Human Rights or the International Covenant on Civil and Political Rights of 16 December 1966 (article 2, let. a IMAC) or “have other serious defects” (article 2, let. d IMAC). The purpose of these provisions is to avoid providing assistance in the context of proceedings that do not guarantee a minimal standard of protection.

Article 5, paragraph 1 let. a IMAC provides that extradition will be denied if, in Switzerland or in the state where the offence was committed, a court has acquitted the person sought or abandoned the proceedings for material reasons or if it has permanently or provisionally dispensed with imposing a sentence. Cooperation is furthermore denied if the sentence was executed or cannot be executed under the laws of the state where sentence was passed (article 5, paragraph 1, let. b IMAC). However, the *ne bis in idem* principle does apply if the requesting state claims that there are grounds for a review of the final sentence (article 5, paragraph 2 IMAC).

## 20 Does your state extradite its own nationals and residents?

Both article 7, paragraph 1 IMAC and article 25 of the Federal Constitution of the Swiss Confederation of 18 April 1999 prohibit the extradition of a Swiss national, unless the latter gives his or her written consent thereto.

This rule does not apply to Swiss residents who are not nationals and is reviewed at the time extradition is ordered.

This rule is nevertheless mitigated. First of all, Swiss law provides that the non-extradition of nationals does not apply to “transit or return of a Swiss national who is temporarily surrendered by a third state to the Swiss authorities” (article 7, paragraph 2 IMAC). Then, the person sought may consent, in writing, to extradition (article 7, paragraph 1 IMAC). This consent may be withdrawn up to the time when the surrender to the requesting state is ordered. Finally, the *aut dedere aut iudicare* principle is applicable, providing that if the person is not extradited, the requested state must ensure his or her prosecution in the domestic courts.

## 21 Are potential breaches of human rights after extradition considered in the extradition process?

Pursuant to article 2, let. a IMAC, a request for extradition will be denied if there are reasons to believe that the foreign proceedings do not meet those set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (European Convention on Human Rights), or the International Covenant on Civil and Political Rights of 16 December 1966.

Moreover, extradition will be denied if there are suspicions that the foreign proceedings are being carried out to prosecute or punish a person on account of his or her political opinions, his or her belonging to a certain social group, race, religion or nationality (article 2, let. b IMAC).

See question 19.

## **22 Can a person consent to extradition, and what is the procedure? Is consent irrevocable?**

A person sought can consent to his or her extradition, thus formally renouncing formal (ordinary) extradition proceedings. This opens up "simplified extradition" proceedings. Unless there are special motives to refuse extradition notwithstanding consent, the extradition may be immediately approved by the FOJ and the person sought can be transferred to the requesting state within a few days (article 54 IMAC).

Article 54, paragraph 2 IMAC provides that the consent may be revoked as long as the FOJ has not authorised the surrender to the requesting authority. Switzerland has also made a declaration with respect to the European Convention on Extradition whereby the consent is revocable as long as the FOJ has not authorised the extradition. Pursuant to article 18 of Swiss-US Extradition Treaty, if the person sought irrevocably agrees in writing to extradition after personally being advised by the competent judicial authority of the right to formal extradition, the requested state may grant extradition without formal extradition proceedings.

## **23 Is there a speciality protection? How is it provided? Does it apply if a person consents to extradition?**

Extradition from Switzerland is subject to the rule of speciality.

Under the rule of speciality, the extradited person may only be detained, prosecuted, sentenced or re-extradited to a third state for the offences for which extradition was requested and granted (article 38, paragraph 1 IMAC). The principle of speciality thus imposes restrictions on the sovereignty of the requesting state. It protects the rights of the person sought to the extent that it prevents him or her from being requested for one offence and tried for another.

Once extradition has been carried out, the requested state may nonetheless approve an extension to criminal prosecution on the basis of a subsequent application.

Article 54, paragraph 3 IMAC provides that simplified extradition proceedings shall have the effect of an "ordinary" extradition and are subject to the same conditions. Thus, the rule of speciality also applies thereto.

A waiver of the rule of speciality is possible pursuant to the IMAC (article 38, paragraph 2 let. a IMAC).

## **24 If there is a political decision at the end of the extradition process, what factors can be considered?**

There is no political decision in the extradition process.

## **25 What ability is there to appeal against or judicially challenge decisions made during the extradition process? What are the requirements for any appeal or challenge?**

The decisions of the FOJ – in particular on detention and extradition – are subject to appeal before the Chamber of Appeals of the FCC within 30 days of the notification of the decision (article 25 IMAC). With regard to the decision ordering extradition, the person sought must give notice, within five days of the issuing of the FOJ's decision, that he or she will file an appeal, failing which extradition may be carried out (article 56, paragraph 1, let. b IMAC).

The FCC will rule on the appeal after having heard the positions of both the FOJ and the concerned person. The proceedings before the FCC are in writing and no hearings are held.

The FOJ may also appeal decisions of cantonal authorities as well as decisions of the FCC (article 25, paragraph 3 IMAC).

An appeal against the decision of the FCC may only be lodged with the Federal Tribunal in "particularly important" cases (article 84, paragraph 1 of the Swiss Act on the Federal Tribunal of 17 June 2005). A case is

deemed to be particularly important, notably, where there are indications of significant shortcomings in the criminal procedure of the requesting state (ie, violation of fundamental principles or other serious flaws). The Federal Tribunal has extended the notion of particularly important cases. Examples include, in particular: cases where the issue is of importance for the legal practice; cases where the difficulty encountered is new; cases where the case is important in itself, for instance, due to its context or its gravity; cases requiring the resolution of an issue not yet resolved by the Federal Tribunal, etc.

## **26 What are the time limits for the extradition process? How long does each phase of the extradition process take in practice?**

The FOJ will grant the requesting state 18 days from the arrest of the person sought to formally request the extradition of the concerned individual (article 50, paragraph 1 IMAC). This deadline may be extended to up to 40 days if there are “special causes”. Specific treaties (eg, the Swiss-US Extradition Treaty) may provide for longer deadlines.

Once the formal request for extradition is received by the FOJ, the person sought is granted “reasonable time” (ordinarily approximately 14 days, but with a possibility of extension) to file written submissions to object to extradition. The FOJ will then issue its decision within a few weeks.

The decision of the FOJ may be appealed to the FCC within 30 days of the notification of the decision (article 25 IMAC). There can be several rounds of party submissions. The FCC will rule within several weeks or a few months. If the person is detained, the process is accelerated.

An appeal to the Federal Tribunal must be filed within 10 days. Here again the parties may file several submissions.

If all legal remedies are used, ordinary extradition proceedings may last for over a year, particularly in complex cases.

## **27 In what circumstances may parallel proceedings delay extradition?**

The FOJ will review, in the context of the extradition proceedings, any allegations of political persecution and may deny extradition in such cases. The Swiss State Secretariat for Migration (SEM), the authority in charge of asylum proceedings, will rule on any application for asylum in separate proceedings. Where asylum proceedings are in progress, the extradition of the person sought to his or her country of origin will only be approved once a decision rejecting the request for asylum has become legally enforceable.

Moreover, Switzerland may refuse to extradite a person sought for an offence that is regarded by its own law as having been committed in whole or in part on Swiss territory (article 35, paragraph 1, let. b IMAC).

## **28 What provision is made for legal representation of the requesting state or the requested person?**

The person sought has the right to appoint a lawyer to act on his or her behalf.

The FOJ may also appeal decisions of cantonal authorities and decisions of the FCC (article 25 paragraph 3 IMAC).

However, the requesting state has no standing in the proceedings and may not lodge any appeals. This being said, the requesting state may be consulted by the FOJ before issuing its decisions.



**Paul Gully-Hart**  
Schellenberg Wittmer

Paul Gully-Hart is of-counsel (as of 2021) in Schellenberg Wittmer's dispute resolution group in Geneva, where he heads the white-collar crime and compliance group.

Paul is well versed in all aspects of common law and has developed a strong practice in complex litigation matters, including banking and commercial disputes that frequently involve an international component as well as multi-jurisdictional aspects. Paul is highly specialised in a broad range of areas including asset tracing and recovery, international legal assistance in criminal and regulatory matters, advice on compliance issues, sanctions law, corporate investigations and defence work in white-collar cases.

Examples of Paul Gully-Hart's expertise includes: senior counsel to a well-known Swiss industrialist and philanthropist, who has been involved in major Italian criminal proceedings, as a result of the use of asbestos in asbestos-cement industrial plants operated by his former group of companies in Italy; representation of a major digital vendor in the context of Swiss criminal proceedings and acting for a prominent Egyptian businessman listed by the Swiss government and whose Swiss assets have been frozen in the context of criminal investigations related to the Arab Spring; the Client has been entirely vindicated and his assets released.

Paul Gully-Hart is a former chairman of the business crime committee of the International Bar Association, where he still remains active. He speaks regularly at international conferences and seminars on topics within his areas of expertise.

**WWL says:** Paul Gully-Hart has a stellar reputation in the market having amassed considerable experience handling complex multi-jurisdictional investigations.



**George Ayoub**  
Schellenberg Wittmer

George Ayoub is a partner in Schellenberg Wittmer's dispute resolution, white-collar crime and compliance, and internal corporate investigations groups in Geneva. His key areas of expertise and practice focus on white-collar crime, international mutual legal assistance, extradition, asset tracing and recovery, and internal corporate investigations. George is also specialised in regulatory and compliance issues as well as in matters of trade sanctions, embargoes and export controls.

George acts as counsel for both individuals and corporate entities in criminal and administrative proceedings before cantonal and federal authorities and courts, including the Swiss Supreme Court.

George's expertise includes: regular advice and assistance to a large international commodity trading group in the context of domestic proceedings as well as foreign requests for mutual legal assistance in criminal matters; representation of and assistance to a prominent businessman and his group of companies in relation to Swiss criminal investigations in the context of an alleged corruption scheme and representation of an HNWI in extradition proceedings to the United States.

George is a member of the International Bar Association's anti-corruption, business crime and criminal law committees.

After graduating from the University of Lausanne, School of Law, in 2007 George worked at the Office of the Attorney General of Switzerland. He was admitted to the Geneva Bar in 2011. Prior to joining Schellenberg Wittmer in 2012, he worked at another renowned Swiss business law firm as a contract and corporate lawyer. Before embarking upon his legal profession, George accumulated several years' experience as an airline pilot for the Swiss national carrier.

**WWL says:** George Ayoub is a revered practitioner who "provides clear and pragmatic advice with a thorough approach".

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# Schellenberg Wittmer

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Schellenberg Wittmer's white-collar crime practice is renowned across Switzerland as home to the country's leading litigation partners in the white-collar crime legal sector. The firm has extensive experience in providing advice and court representation for corporations, financial institutions, boards of directors, management and other individuals in a wide variety of business crime matters and fields related to it. They include, inter alia, compliance programmes arising under regulations related to anti-money laundering, insider dealing, market conduct, anti-corruption, etc; data protection legislation and disclosure requirements; corporate and directors' criminal liability; regulatory proceedings; international assistance in criminal and regulatory matters (including exchange of tax information); Actions and proceedings to locate, freeze and recover the proceeds of national and cross-border fraud and other financial crime; Representation of victims of fraud and other business-related offenses in domestic criminal proceedings and white-collar crime defence work. Furthermore, Schellenberg Wittmer's internal corporate investigations group has extensive experience in the investigation of a broad range of legal and regulatory matters, including, for example, violation of banking and capital market rules or disclosure and accounting issues. Schellenberg Wittmer is one of the leading Swiss business law firms with more than 150 Lawyers in Zurich and Geneva, and an office in Singapore. We take care of all legal needs – transactions, advisory, disputes. The firm's areas of expertise include banking and finance, competition and antitrust, dispute resolution and international arbitration, intellectual property and information technology, mergers and acquisitions, private equity and venture capital, private clients, trusts and estates, foundations, real estate and construction, restructuring and insolvency, taxation, white-collar crime and compliance. Our Singapore office provides us with a gateway to the Asian markets, enabling us to assist clients with their inbound and outbound investments in Asia.

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