



MINISTÉRIO DA JUSTIÇA E SEGURANÇA PÚBLICA
SECRETARIA NACIONAL DE JUSTIÇA E CIDADANIA
DEPARTAMENTO DE RECUPERAÇÃO DE ATIVOS E COOPERAÇÃO JURÍDICA INTERNACIONAL
COORDENAÇÃO-GERAL DE RECUPERAÇÃO DE ATIVOS

Ofício nº 8585/2017/CGRA-DRCI-SNJ-MJ

Brasília, 23 de outubro de 2017.

A Sua Excelência o Senhor
SENADOR ATAÍDES OLIVEIRA
Presidente da Comissão Parlamentar Mista de Inquérito - JBS
Procuradoria da República no Distrito Federal
Praça dos Três Poderes – Senado Federal - COCETI, Anexo II, Ala Senador Alexandre Costa,
Sala 15, Subsolo
70165-900 – Brasília/DF

Assunto: **Cooperação Jurídica Internacional em Matéria Penal Brasil/EUA – Caso JBS (CPMI)**

Nossa referência: **2017/04619.**

Senhor Senador,

1. Referimo-nos aos Ofícios n. 109/2017 e 110/2017, de 18 de outubro de 2017, por intermédio dos quais foram encaminhados Requerimentos solicitando cooperação jurídica internacional em matéria penal com os Estados Unidos da América, a fim de se obter documentos e informações relativos à empresa Blessed Holding LLC e ao Grupo J&F, com a finalidade de auxiliar nas investigações envolvendo a empresa JBS e suas operações realizadas com o BNDES.
2. Informamos, preliminarmente, que cumpre ao Departamento de Recuperação de Ativos e Cooperação Jurídica Internacional – DRCI – exercer a função de Autoridade Central brasileira para tramitar pedidos de cooperação jurídica internacional, bem como instruir, opinar e coordenar sua execução, consoante os termos do art. 12, IV, do Anexo I, do Decreto nº 9.150, de 04 de setembro de 2017.
3. Desse modo, na qualidade de Autoridade Central, o DRCI gerencia o envio e o recebimento de pedidos de cooperação jurídica internacional, adequando-os e os remetendo às respectivas autoridades nacionais e estrangeiras competentes. Outrossim, no Brasil, a Autoridade Central examina os pedidos de cooperação ativos e passivos, sugerindo adequações e exercendo juízo de admissibilidade administrativo, com vistas a acelerar e melhorar a qualidade dos resultados da cooperação.

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4. Dessa forma, informamos a Vossa Excelência que as solicitações de assistência jurídica em matéria penal dirigidas aos Estados Unidos da América encontram-se, atualmente, regidas pelos termos do Acordo de Assistência Judiciária em Matéria Penal entre o Governo da República Federativa do Brasil e o Governo dos Estados Unidos da América (Decreto nº 3.810/09 de 02 de maio de 2001), disponível no sítio eletrônico http://www.planalto.gov.br/ccivil_03/decreto/2001/D3810.htm.

5. Cabe destacar que, até o presente momento, o DRCI não possui registro de pedido realizado por Comissões Parlamentares de Inquérito e que tenha sido atendido pelos Estados Unidos da América, pois, segundo o entendimento das autoridades estadunidenses, tais Comissões não estariam compreendidas no conceito de autoridades penais, e, consequentemente, o pedido estaria fora do âmbito do Acordo Bilateral em Matéria Penal anteriormente mencionado. Entretanto, o DRCI se dispõe a tentar o cumprimento de tal solicitação de assistência internacional junto às autoridades estrangeiras, esgotando todas as possibilidades, caso seja necessário e haja interesse dessa Comissão.

6. Nesse caso, para a correta tramitação do pedido de cooperação jurídica aos EUA, sob o prisma das mencionadas normas, faz-se necessário o preenchimento de alguns requisitos, quais sejam: **(i) destinatário; (ii) autoridade requerente; (iii) referência dos autos em que serão utilizadas as provas obtidas no exterior; (iv) descrição fática que evidencie o nexo causal entre o pedido e o cometimento de crime; (v) transcrição dos dispositivos legais que baseiam a investigação; (vi) descrição clara da assistência solicitada e quais diligências devem ser tomadas pelas Autoridades estrangeiras; (vii) qualificação das partes investigadas e envolvidas no pedido de cooperação e, no caso de empresas, indicar representante que possa responder às diligências solicitadas; (viii) objetivo da solicitação explicando sua importância para as investigações no Brasil; (ix) se existem procedimentos específicos a serem observados, tais como sigilo e urgência; (x) tradução de todos os documentos enviados para o idioma do Estado Requerido.**

7. Insta esclarecer que esses requisitos são necessários para a correta tramitação do pedido de cooperação jurídica, sob pena de seu não cumprimento por alegação de ausência de pressuposto pelo Estado rogado.

8. Nesse sentido, segue em anexo o nosso formulário de cooperação jurídica internacional, que auxilia na confecção desse tipo de diligência. Nele, encontram-se todas as informações necessárias a serem prestadas, de modo a aumentar a probabilidade de cumprimento dos pedidos de auxílio internacional e de forma célere.

9. Ademais, informamos que o Departamento de Recuperação de Ativos e Cooperação Jurídica Internacional se prontifica a analisar, previamente, minuta de solicitação de assistência jurídica em matéria penal, procurando adequá-la às exigências do Estado Requerido. Para tanto, a minuta poderá ser enviada preferencialmente para o endereço de correio eletrônico cooperacaopenal@mj.gov.br.

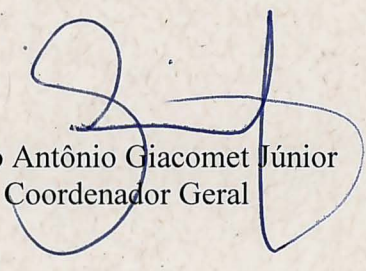
10. Nessa hipótese, após análise, este Departamento devolveria a minuta com as eventuais sugestões de alterações, colocando-se no aguardo de sua versão definitiva, acompanhada da respectiva tradução para o idioma do Estado Requerido.

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11. Ainda, informamos que a realização da tradução dos documentos relativos aos pedidos de cooperação jurídica internacional compete à autoridade requerente. Nesse sentido, cabe frisar que a tradução de documentos não se encontra entre as atribuições do DRCI, elencadas no Decreto nº 9.150/2017, uma vez que não possui corpo técnico de tradutores.

12. Isto posto, ao tempo em que restituímos a documentação para as providências julgadas cabíveis, permanecemos à disposição de Vossa Excelência para todo e qualquer esclarecimento que se fizer necessário.

Respeitosamente,


Isalino Antônio Giacomet Júnior
Coordenador Geral

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FORMULÁRIO DE AUXÍLIO JURÍDICO EM MATÉRIA PENAL

Tramitação em SIGILO? (Observação: caso não seja informada a necessidade de tramitação sigilosa deste pedido de cooperação jurídica internacional, as partes, se por elas solicitado, poderão ter acesso ao conteúdo do mesmo, com base na Lei nº 12.527/2011. Ademais, se porventura, no decorrer no processo penal, o pedido passe a ser classificado como sigiloso pela autoridade requerente, este DRCI deverá ser informado imediatamente.)

☐ SIM

☐ NÃO

As localidades de origem e destino da(s) solicitação(s) são FRONTEIRIÇAS entre si?

☐ SIM

☐ NÃO

1. **DESTINATÁRIO (PARA):** Autoridade local competente ou quem suas vezes fizer.

2. **REMETENTE:** Departamento de Recuperação de Ativos / Secretaria Nacional de Justiça / Ministério da Justiça do Brasil.

3. **AUTORIDADE REQUERENTE:** Indicar o órgão e autoridade competente encarregada do inquérito, da investigação ou da ação penal em curso, informar dados de contato.

4. **REFERÊNCIA:** Identificar nominalmente o caso. (ex: Caso Propina da Serra, Caso João da Silva e outros, etc.) e incluir um o **número** da investigação, do inquérito policial ou da ação penal em curso, bem como informações que ajudem na identificação do caso.

5. **FATOS:** Elaborar uma narrativa clara, objetiva e completa dos fatos, descrevendo elementos essenciais, nos quais constem o lugar, a data e a maneira pela qual a infração foi cometida, apresentando o nexo de causalidade entre a investigação em curso, os suspeitos e o pedido de assistência formulado. As autoridades estrangeiras necessitam de uma premissa factual e do nexo causal para o cumprimento do pedido de assistência.

6. **TRANSCRIÇÃO DOS DISPOSITIVOS LEGAIS:** Referência e cópia literal dos dispositivos legais previstos em legislação esparsa, infraconstitucional ou constitucional que envolvam a medida solicitada. A finalidade é demonstrar ao país requerido os termos da legislação vigente no Brasil.

7 DESCRIÇÃO DA ASSISTÊNCIA SOLICITADA: Informar de forma precisa, as medidas ou diligências solicitadas. Ver abaixo as informações a serem incluídas de acordo com a diligência solicitada: (Atenção! Quadro meramente exemplificativo)

Diligência	Requisitos necessários
Citação/Notificação/Intimação:	✓ <u>Qualificação completa</u> da pessoa a ser citada, notificada ou intimada, incluindo, nome completo, nome dos pais (se houver) e documento de identidade. ✓ <u>Endereço completo</u> para localização da pessoa.
Oitiva de testemunhas, réus ou vítimas:	✓ <u>Qualificação completa</u> da pessoa a ser ouvida, incluindo, nome completo, nome dos pais (se houver) e documento de identidade. ✓ <u>Endereço completo</u> para localização da pessoa. ✓ <u>Quesitos para a inquirição</u> (perguntas a serem realizadas). ✓ Relação da pessoa com o crime apurado e de que forma ela seria útil para o esclarecimento do caso.
Provas:	✓ Indicar de forma clara e precisa as provas requeridas e as diligências solicitadas.
Quebra de sigilo bancário e obtenção de documentos bancários:	✓ Nome do Banco. ✓ Endereço do Banco ou código de Identificação (ABA, IBAN). ✓ Número da conta. ✓ Titular da conta. ✓ Período referenciado, tendo em vista o período máximo de retenção de documentos bancários, que varia de acordo com a jurisdição. ✓ Tipos de documentos solicitados. ✓ Relação da conta e de seu titular com os crimes apurados. ✓ Decisão judicial (se houver) de afastamento do sigilo bancário do titular da conta.
Quebra de sigilo telemático:	✓ Solicitar com antecedência a preservação dos dados. ✓ Número do IP. ✓ Endereço eletrônico completo. ✓ Período de acesso, especificando data(s) e fuso horário do local de acesso. ✓ Localização do servidor de rede.
Medidas de urgência como decretação de indisponibilidade (bloqueio), seqüestro, arresto, busca e apreensão de bens, documentos ou valores:	✓ Cópia da decisão judicial que decreta a medida cautelar. ✓ Informações detalhadas sobre os bens, documentos ou valores. ✓ Localização dos bens, documentos ou valores. ✓ Explicação sobre a necessidade de se proceder com a medida de urgência.
Repatriação de ativos:	✓ Cópia da decisão judicial que decreta o confisco

	dos bens. ✓ <i>Affidavit</i> (declaração) da autoridade requerente sobre a situação processual da ação penal, principalmente confirmando que já houve trânsito em julgado e que a decisão é final.
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8. OBJETIVO DA SOLICITAÇÃO: Incluir o objetivo almejado por meio da assistência solicitada, explicar a relevância da medida solicitada para o caso em questão.

a) Exemplo para os casos de citação e interrogatório: O processo criminal instaurado somente terá andamento uma vez consumada a citação do réu, ato por meio do qual tomará conhecimento da acusação contra ele (ela) formulada, e mediante o interrogatório judicial do(a) réu(ré), em audiência a ser designada, quando poderá ele(ela) confessar ou negar os crimes que lhe são atribuídos. Na mesma audiência, o(a) réu(ré) deverá indicar, se for da sua vontade, advogado(a) que possa promover sua defesa.

b) Exemplo no caso de obtenção de documentos bancários: Localizar os recursos desviados para possibilitar a sua caracterização da origem criminosa, bem como o bloqueio desses recursos, e ainda verificar a ocorrência de outros beneficiários e a persistência do crime de lavagem de dinheiro.

9. PROCEDIMENTOS A SEREM OBSERVADOS: Observações pertinentes a serem solicitadas ao Estado requerido, por exemplo:

a) A importância e a razão do sigilo na tramitação do pedido;

b) O direito constitucional reservado ao(à) interrogado(a) de permanecer em silêncio durante o interrogatório;

c) Caso o alvo da diligência não seja encontrado, solicitar pesquisa junto às concessionárias de luz, água e telefone; cadastros municipais; lista telefônica do Estado requerido; e

d) Outras informações julgadas relevantes sobre o funcionamento do processo penal brasileiro quanto à obtenção e manuseio das informações e(ou) documentos relativos ao pedido de assistência.

10. ANEXOS: Listar todos os documentos que instruem a solicitação, tais como: denúncia, queixa-crime, inquérito policial, laudos periciais, documento no qual conste o arrolamento de testemunha etc.

[TODA A DOCUMENTAÇÃO DEVE SER ENCAMINHADA EM DUAS VIAS – SENDO UMA VERSÃO EM PORTUGUÊS, DEVIDAMENTE ASSINADA PELA AUTORIDADE REQUERENTE, E UMA VERSÃO TRADUZIDA PARA O IDIOMA DO ESTADO REQUERIDO]

[Cidade, data]

[Assinatura]

[Cargo]



SENADO FEDERAL

Secretaria-Geral da Mesa

Secretaria de Comissões

Coordenação de Comissões Especiais, Temporárias e Parlamentares de Inquérito

CADM/DRCI/SNJ/MJ	
PROCESSO REGISTRADO NO SEI	
Nº PROTOCOLO	08009.015201/2017-28
Nº DO SEI	5296711
EM	18 / 10 / 2017
DIVISÃO DE PROTOCOLO	

Ofício nº 109/2017 - CPMIJBS

Brasília, 18 de outubro de 2017

A Sua Senhoria o Senhor

Luiz Roberto Ungaretti de Godoy

Diretor do Departamento de Recuperação de Ativos e Cooperação Jurídica Internacional
do Ministério da Justiça

Assunto: **Pedido de Cooperação Internacional – CPMI JBS**

Senhor Diretor,

No intuito de instruir os trabalhos da Comissão Parlamentar de Inquérito criada pelo Requerimento nº 1 de 2017, do Congresso Nacional, com a finalidade de investigar *”irregularidades envolvendo a empresa JBS em operações realizadas com o BNDES, ocorridas entre os anos de 2007 e 2016”*, e com fulcro no art. 148 do Regimento Interno do Senado Federal, e no art. 2º da Lei nº 1. 579, de 1952, **solicito** a V. Sa. os bons préstimos no sentido de formalizar pedido de cooperação aos Estados Unidos da América, especificamente ao *Federal Bureau of Investigation* (FBI) e ao *Federal Reserve System* (FED), nos termos da documentação anexa.

Saliento que esta solicitação decorre do Requerimento nº 210/2017 – CPMI-JBS, aprovado pelo Plenário desta Comissão em 21 de setembro de 2017.

Atenciosamente,

Senador Ataídes Oliveira

Presidente da CPMI-JBS



NATIONAL CONGRESS

Joint Parliamentary Committee
of Investigation – JBS
00210/2017

**JOINT PARLIAMENTARY COMMITTEE OF INVESTIGATION
ESTABLISHED BY MEANS OF REQUEST No. 1, OF 2017 - CN, TO
INVESTIGATE ALLEGED IRREGULARITIES REGARDING JBS S.A. AND
J&F INVESTIMENTOS S.A. IN OPERATIONS WITH BNDES AND BNDES-
PAR, BETWEEN 2007 AND 2016, WHICH RESULTED IN DAMAGE TO THE
PUBLIC INTEREST; INVESTIGATE THE PROCEEDINGS OF THE
STATE'S EVIDENCE AGREEMENT BETWEEN THE BRAZILIAN
FEDERAL PROSECUTION SERVICE AND THE SHAREHOLDERS OF JBS S.A.
AND J&F INVESTIMENTOS S.A.**



REQUEST No. , OF 2017

We hereby request the submission to the plenary of this Joint Parliamentary Committee of Investigation of a petition of COOPERATION to the persons legally in charge at the Federal Bureau of Investigation (FBI) and at the Federal Reserve System (FED) to investigate the acquisitions carried out by J&F INVESTIMENTOS S.A. in the United States of America.

Mr. Chairman,

In accordance with constitutional provisions (article 58, paragraph 3 of the 1988 Federal Constitution), legal provisions (article 2 of Law 1,579/52) and standing rules (article 148 of the Standing Rules of the Federal Senate in conjunction with article 151 of the Standing Rules of the National Congress), I hereby request the submission to the plenary of this Joint Parliamentary Committee of Investigation of a petition of COOPERATION to the persons legally in charge at the Federal Bureau of Investigation (FBI) and the Federal Reserve System (FED) to investigate the acquisitions carried out by J&F INVESTIMENTOS S.A. in the United States of America.

JUSTIFICATION

JBS S.A. was the beneficiary of the so-called National Champions policy of BNDES to finance the internationalization of Brazilian groups. In addition to financing the group, BNDES acquired an interest in JBS S.A. through BNDESPar. BNDES currently owns 21% of JBS S.A.





NATIONAL CONGRESS

The J&F Group, capitalized with BNDES funds, announced in March 2007, the acquisition of U.S. Swift for US\$ 1.4 billion, thus becoming the world's largest producer of bovine products. With this, the company's vertiginous international expansion started. It would also include the acquisition of Pilgrim's Pride (a chicken producer in the U.S.) and of Brazilian food processing companies Bertin and Seara. This turned JBS S.A. into the world's largest poultry producer.

These facts are included in the main scope of this sub-rapporteurship. The cooperation of the U.S. authorities is vital to elucidate those acquisitions and dispell any doubts about potential irregularities in the use of BNDES funds.

Meeting Room, in September 2017.

Deputy Delegado Francischini
Solidariedade/PR



Translated by Livia Aguiar Salomão and revised by Maria Iracema Lima Martin
Federal Senate Translation Service – SETRIN/SGIDOC
September 29, 2017





CONGRESSO NACIONAL

CPMI - JBS
00210/2017

COMISSÃO PARLAMENTAR MISTA DE INQUÉRITO CRIADA POR MEIO DO REQUERIMENTO N.º 1, DE 2017 – CN, DESTINADA A INVESTIGAR SUPOSTAS IRREGULARIDADES ENVOLVENDO AS EMPRESAS JBS E J&F EM OPERAÇÕES REALIZADAS COM O BNDES E BNDES-PAR OCORRIDAS ENTRE OS ANOS DE 2007 A 2016, QUE GERARAM PREJUÍZOS AO INTERESSE PÚBLICO; INVESTIGAR OS PROCEDIMENTOS DO ACORDO DE COLABORAÇÃO PREMIADA CELEBRADO ENTRE O MINISTÉRIO PÚBLICO FEDERAL E OS ACIONISTAS DAS EMPRESAS JBS E J&F.

CD/17092.00506-67

REQUERIMIENTO N° , DE 2017

Requer seja solicitado à deliberação do Plenário desta Comissão Parlamentar Mista de Inquérito o pedido, a título de COOPERAÇÃO, a quem de direito couber, do Federal Bureau of Investigation – FBI e do Federal Reserve System - FED americanos para investigar as aquisições do Grupo J&F S/A realizadas nos Estados Unidos da América.

Senhor Presidente,

Nos termos das disposições constitucionais (§ 3º do art. 58 da CF/88), legais (art. 2º da Lei 1.579/52) e regimentais (art. 148 do Regimento Interno do Senado Federal c/c o art. 151 do Regimento Interno do Congresso Nacional), requeiro seja submetido à deliberação do Plenário desta Comissão Parlamentar Mista de Inquérito o pedido, a título de COOPERAÇÃO, a quem de direito couber, do Federal Bureau of Investigation – FBI e do Federal Reserve System - FED americanos para investigar as aquisições do Grupo J&F S/A realizadas nos Estados Unidos da América.

JUSTIFICATIVA

A empresa JBS foi beneficiada pela chamada política de campeões nacionais do BNDES, que tinha como objetivo financiar a internacionalização de grupos brasileiros. Além de financiar o grupo, o BNDES comprou uma participação na JBS por meio da



CONGRESSO NACIONAL

BNDESpar. Hoje o BNDES é dono de 21% da JBS.

O Grupo J&F, capitalizado com crédito do BNDES anunciou, em março de 2007, a compra da norte-americana Swift por US\$ 1,4 bilhão, se tornando a maior empresa do mundo de alimentos de origem bovina. Inicia-se, então, a vertiginosa expansão internacional, que incluiria ainda a aquisição da Pilgrim's Pride (empresa de frangos nos EUA) e dos frigoríficos brasileiro Bertin e Seara, passando a ser também a maior produtora mundial de carne de aves.

Estes fatos estão inseridos no escopo principal desta sub-relatoria, sendo de suma importância a cooperação das autoridades americanas no sentido de elucidar estas aquisições e dirimir quaisquer dúvidas sobre possíveis ilícitos realizados com dinheiro do BNDES nestas operações.

Sala das Sessões, em de setembro de 2017.

Deputado Delegado Francischini
Solidariedade/PR



CD/17092.00506-67



SENADO FEDERAL

Legislative Advisory Office

INFORMATION NOTE No. 3,014, 2017

Reference: STC No. 2017-08868, of the Joint Parliamentary Committee of Investigation on JBS, requesting an Information Note on the legal nature of Parliamentary Committees of Investigation.

The Joint Parliamentary Committee of Investigation on JBS requests an Information Note on the legal nature of Parliamentary Committees of Investigation (CPIs, in the Brazilian acronym). This request is based on the need to support the Brazilian Central Authority within the scope of the treaties on legal cooperation in criminal matters, in the event of the need to explain to foreign central authorities the legal duties of a CPI within our legal framework. This circumstance may be necessary since not all countries have within their legal systems CPIs with such broad powers as ours.

1. Introduction

This note aims to identify the legal nature, purpose and competencies of Parliamentary Committees of Investigation within both Houses of the National Congress (Chamber of Deputies and Federal Senate), according to the Brazilian legal system.



The Brazilian Parliament, as in other countries, has two main functions. The first one is the legislative function, which enables the creation of new rules within the Brazilian legal system. The second one is the oversight function, which allows the Parliament to assess the constitutionality, legality and merit of acts performed by public or private agents. To fulfill its duties, the authority to investigate and scrutinize cases of public interest is inherent to the Legislative Branch.

As one of the instruments at the disposal of the oversight function of the National Congress, article 58, paragraph 3 of the Brazilian Federal Constitution, defines the Parliamentary Committees of Investigation as follows:

“Art. 58

.....

Paragraph 3. Parliamentary committees of investigation, which shall have the powers of investigation inherent to the judicial authorities, in addition to other powers set forth in the regulations of the respective Houses, shall be created by the Chamber of Deputies and by the Federal Senate, jointly or separately, upon the request of one-third of their members, to investigate a given fact and for a certain period of time, and their conclusions shall, if applicable, be forwarded to the Public Prosecution Service to determine the civil or criminal liability of the offenders.”

From the above provision, the following features of CPIs are worthy of note:

- a) They are composed of members of the National Congress (Federal Deputies and/or Senators);
- b) Their purpose is to investigate both civil or criminal violations; and



- c) They have powers of investigation, which are inherent to judicial authorities.

These three aspects will be further examined below.

2. Composition of the Parliamentary Committees of Investigation

Following in Brazilian constitutional tradition, the 1988 Federal Constitution maintained the authority of both Houses of the National Congress (Chamber of Deputies and Federal Senate) to create CPIs. As regards the composition of these Committees, there are three possibilities:

- a) Federal Deputies only; b) Senators only; or c) joint composition with both Deputies and Senators.

CPIs are fundamental for the Brazilian democracy, as they are decisive instruments for the Houses of the National Congress to perform effectively their oversight role, especially as regards the acts of the Executive Branch.

Within the Brazilian Law, CPIs are created by means of a request, submitted by one third of the members of the Chamber of Deputies or the Senate; or one third of both Houses, in the event of a Joint Parliamentary Committee of Investigation (CPMIs, in the Brazilian acronym). The request does not need to undergo deliberation in any of the plenaries. Thus, once the request is submitted, the establishment of the Parliamentary Committee of Investigation is mandatory.

It is noteworthy that Parliamentary Committees of Investigation are foreseen in the legal systems of several other countries. Examples are Germany (article 44 of the Basic Law of Germany); Spain (article 76 of the Constitution of Spain); United States of America; United Kingdom; Italy (article 82 of the Constitution of the Italian Republic); and Portugal (article 178 of the Constitution of the Portuguese Republic).

As of Constitutional Law No. 2008-724, of July 23, 2008, the Constitution of the French Republic has also introduced, in its article 51-2, the existence of the Parliamentary Committees of Investigation (“*comissions d’enquête*”), which can be established within the National Assembly or the Senate.

3. Purpose of the Parliamentary Committees of Investigation

As mentioned in article 58, paragraph 3 of the Federal Constitution, CPIs are constitutionally competent to investigate “a given fact”. This means that a set of concrete facts that involve possible civil or criminal violations are investigated, while general, disconnected facts are not.

The purpose of a CPI is to identify these violations, which, due to their gravity and extension, cause a political and social commotion. If the perpetrators are identified, the Committee forwards its conclusions to the competent authorities to adopt the applicable judicial or extrajudicial measures.

CPIs investigate facts related to the conduct of public and private agents that cause damage to the Brazilian society.

In such cases, the investigation carried by the National Congress has been decisive to identify perpetrators and adopt the applicable legal proceedings, as well as to improve the correlated legislation. Two examples follow below of Parliamentary Committees of Investigation established by the National Congress, which had positive outcomes.

In 1993, a Joint Parliamentary Committee of Investigation was created to investigate alleged misuse of public funds of the Union Budget. The misapplication of public funds surpassing R\$ 100 million was investigated. Supposedly, public funds were being directed to legal entities that would later transfer part of the amount to members of the Parliament. After intense activities of the Committee, six federal deputies were removed from office. In addition, budgetary transparency and control increased to prevent future misapplication of public funds.

In 2012, the Senate established the Parliamentary Committee of Investigation on Violence against Women. This Committee's starting point was the fact that Brazil ranked 12th amidst 73 countries with the highest levels of female homicide, 40% of which committed in the domestic environment. After a survey of the flaws of public policies in this area, several draft bills to protect women were presented, such as priority treatment within the public health system and the right to temporary social security assistance in cases of domestic violence. One of the outcomes of this Committee was Law No. 13,104, of March 9, 2015, which typified the crime of femicide.

4. Investigative Powers of the Parliamentary Committees of Investigation

Paragraph 3 of article 58 of the 1988 Federal Constitution expressly determined that Parliamentary Committees of Investigation have “powers of investigation inherent to the judicial authorities, in addition to other powers set forth in the regulations of the respective Houses.” This strengthened the investigative powers of the Committees, since the previous Constitutions did not provide for such broad competence.

As a result, the 1988 Constitution granted the CPIs the same investigate powers of judicial authorities to investigate civil and criminal violations. It is noteworthy that other countries also expressly grant their committees the investigative powers inherent to judicial authorities. Italy and Portugal are examples of such countries.

Non-constitutional rules also specify some of the powers inherent to CPIs. Article 2 of Law No. 1,579, of March 18, 1952 provides:

“Article 2. In the fulfillment of their duties, Parliamentary Committees of Investigation may determine measures considered necessary and summon Ministers of State; take the testimony of any federal, state or municipal authority; hear defendants; probe any witnesses under oath; request information and documents from the direct or indirect public administration or any of its foundations; and travel to places where their presence is necessary.”

As regards access to documents under bank secrecy, article 4 of Supplementary Law No. 105, of January 10, 2001 provides:

“Article 4. Within their respective jurisdiction, the Central Bank of Brazil and the Brazilian Securities and Exchange Commission, and the financial institutions shall provide the Federal Legislative Branch with the confidential information and documents that are undoubtedly necessary for the fulfillment of their respective constitutional and legal duties.

Paragraph 1. The parliamentary committees of investigation, in the fulfillment of their constitutional and legal duties of broad investigation shall obtain the necessary confidential information and documents directly from the financial institutions or through the Central Bank of Brazil or the Brazilian Securities and Exchange Commission.

Paragraph 2. The information requests referred to in this article shall be subject to prior approval by the plenary of the Chamber of Deputies, of the Senate, or of their respective parliamentary committees of investigation.”

In addition to that, the Constitution itself determines that the internal rules of both Houses of the National Congress may establish other investigative powers for the Parliamentary Committees of Investigation.

In this regard, article 148 of the Standing Rules of the Federal Senate provides:

“Article 148. To perform its duties, the parliamentary committee of investigation shall have the investigative powers inherent to judicial authorities, as well as authority to proceed with any inquiry deemed necessary. It may summon Federal Ministers, take the testimony of any authority, probe witnesses under oath, hear defendants, request from public agencies information or documents of any nature, and request that the Federal Audit Court conduct inspections and audits deemed necessary.”

In view of the above constitutional and legal provisions and internal rules, the precedents of the Federal Supreme Court (STF, in the Brazilian acronym) — the Brazilian Highest Court within the Judicial Branch — settled the opinion that Parliamentary Committees of Investigation of the Federal Senate may,

among other things (see STF, Writ of Mandamus 25.668, En Banc Court, Rapporteur Justice Celso de Mello, j. March 23, 2006):

- a) Call upon witnesses and suspects to be heard;
- b) Request any documents from public or private bodies;
- c) Determine the breaking of bank, tax or telephone secrecy (records of telephone numbers which received or made calls) of suspects; and
- d) Carry out inspections and take other measures of an investigative nature.

However, it is noteworthy that the Federal Supreme Court has also settled some limits to the CPIs' powers of investigation. Based on the idea that the restraint of some fundamental rights would be subject to an "exclusive jurisdiction", CPIs may not (see STF, *En Banc Court*, Writ of Mandamus No. 23,652, Rapporteur Justice Min. Celso de Mello, j. Nov. 22, 2000):

- a) Determine telephone interception (tapping of telephone communication);
- b) Determine the provisional imprisonment of suspects, except in cases of in flagrante delicto crimes.
- c) Determine search and seizure or other provisional remedies typical of criminal procedures.

An interesting issue arises as regards sharing information among CPIs and police authorities relating to investigations in progress. In the Brazilian Law, there are no limits to the subject of a CPI as regards the facts also scrutinized in criminal investigations or criminal procedures. This means that the Committee may probe into facts under investigation or in a criminal procedure in progress.



In view of this, the Federal Supreme Court adopted an opinion regarding the possibility of information sharing among several authorities, the police included, encompassing classified documents. The following decision is noteworthy:

“Habeas corpus. Parliamentary Committee of Investigation. Specific investigative activities simultaneously carried out by a judicial body and a parliamentary committee of investigation. Feasibility. The use, by CPIs, of documents from classified inquiries. Possibility. Investigation, by CPIs, of alleged participation of a judge in illegal facts unrelated to the performance of strictly jurisdictional activities. Supervening Retirement. Moot claim. Expansion of the works of the CPI to facts connected to the initially established subject matter. Feasibility. Right to silence, security against self-incrimination and communication with counsel. Full applicability. The existence of investigative criminal proceedings, under consideration before a competent judicial body, shall not prevent investigation by a Parliamentary Committee of Investigation, even if their subject matters are correlated, as each has distinct scopes, constitutionally and legally defined, in addition to diverse purposes. Precedents. Parliamentary committees of investigation have the powers of investigation inherent to judicial authorities, among which the jurisdiction to access classified data (article 58, paragraph 3 of the Federal Constitution, and article 2 of Law No. 1,579/52). Precedents. A supervening retirement moots the possibility of a CPI investigation of non-judicial acts carried out by those were judges at the time of the facts. A Parliamentary Committee of Investigation may extend the scope of its scrutiny to illegal or irregular facts that, during the course of investigations, prove to be connected to the cause that determined the creation of the CPI. Precedents. It is a settled case law before this Court to assure the person called to appear before a CPI the privilege against self-incrimination, the right to silence and to communicate with their counsel. Precedents. Order partially granted.” [STF, Tribunal Pleno (*En Banc* Court), HC 100.341, Rel. (Rapporteur) Justice Joaquim Barbosa, j. November 4, 2010 (emphasis added)].

STF has excluded from the sharing of classified data only information collected on phone interceptions and



testimonies based on state's evidence (STF, Writ of Mandamus - Provisional Measure - No. 24,483, Rapporteur Justice Cezar Peluso, j. August 14, 2008 and decisions by the trial court in the Writ of Mandamus No. 33,278, Rapporteur Justice Roberto Barroso, j. November 18, 2014 and in Claim No. 17,623, Rapporteur Justice Teori Zavascki, j. October 8, 2014).

Taking into account the deadline we had, those are the considerations regarding the issue.

We remain at Your Excellency's disposal, to assist you in any further clarification.

Legislative Advisory Office, October 2, 2017.

Victor Marcel Pinheiro
Legislative Advisor

Danilo Augusto B. Aguiar
Legislative Advisor General

Translated by Livia Aguiar Salomão and revised by Maria Iracema Lima Martin
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SENADO FEDERAL

Secretaria-Geral da Mesa
Secretaria de Comissões

Coordenação de Comissões Especiais, Temporárias e Parlamentares de Inquérito

Ofício nº 110/2017 - CPMIJBS

Brasília, 18 de outubro de 2017

A Sua Senhoria o Senhor

Luiz Roberto Ungaretti de Godoy

Diretor do Departamento de Recuperação de Ativos e Cooperação Jurídica Internacional
do Ministério da Justiça

Assunto: Pedido de Cooperação Internacional – CPMI JBS

Senhor Diretor,

No intuito de instruir os trabalhos da Comissão Parlamentar de Inquérito criada pelo Requerimento nº 1 de 2017, do Congresso Nacional, com a finalidade de investigar *”irregularidades envolvendo a empresa JBS em operações realizadas com o BNDES, ocorridas entre os anos de 2007 e 2016”*, e com fulcro no art. 148 do Regimento Interno do Senado Federal, e no art. 2º da Lei nº 1.579, de 1952, solicito a V. Sa. os bons préstimos no sentido de pedir aos órgãos competentes dos Estados Unidos da América a notificação da empresa *Blessed Holding LLC* para que forneça a esta Comissão as informações requeridas na documentação anexa.

Saliento que esta solicitação decorre do Requerimento nº 162/2017 – CPMI-JBS, aprovado pelo Plenário desta Comissão em 21 de setembro de 2017.

Atenciosamente,


Senador Ataides Oliveira
Presidente da CPMI-JBS

**Joint Parliamentary Committee
of Investigation – JBS
00162/2017**

REQUEST No. , OF 2017

As provided for in article 58, paragraph 3, of the Federal Constitution, in conjunction with the provisions of article 2 of Law 1,579, of March 18, 1952, we hereby request the notification of **Blessed Holding LLC**, headquartered in Delaware, USA, to provide their articles of organization with any subsequent amendments as well as any other documents to allow identification of the company's shareholders and partners, since its establishment.

We also request that the information be rendered in a single list containing names and personal information of all shareholders and partners.

JUSTIFICATION

This Joint Parliamentary Committee of Investigation was established to investigate the grave news regarding JBS S.A. and its holding company, J&F Investimentos S.A., including their financial operations with the Brazilian National Bank for Economic and Social Development (BNDES, in the Brazilian acronym).

For such purpose, this Joint Parliamentary Committee of Investigation needs to gather all evidentiary material and information pertinent to the full elucidation of the facts.

One of the issues that need immediate clarification is the names of all shareholders of Blessed Holding LLC. According to information released by the media, this company would be a "hidden" partner of the JBS group.

Committee Room,

Senator ATAÍDES OLIVEIRA



CPMI - JBS
00162/2017

REQUERIMENTO Nº , DE 2017

Nos termos do art. 58, § 3º, da Constituição Federal, combinado com o disposto no art. 2º da Lei nº 1.579, de 18 de março de 1952, requeremos que seja oficiada a *offshore* **Blessed Holding LLC**, com sede em Delaware, nos Estados Unidos da América, para que forneça estatuto, contrato social, posteriores alterações e demais documentos que permitam identificar a composição de sua participação acionária, bem como todos os sócios, desde a sua criação.

Requer, ademais, que as informações sejam prestadas também pelo fornecimento de uma lista única, com o nome e informações pessoais dos referidos acionistas/sócios.

JUSTIFICAÇÃO

A presente Comissão Parlamentar Mista de Inquérito foi instaurada para investigar os graves fatos noticiados na imprensa envolvendo a empresa JBS e sua holding, a J&F, incluindo as operações financeiras com o Banco Nacional de Desenvolvimento Econômico e Social (BNDES).

Para tal desiderato, a CPMI necessita reunir todos os elementos de prova e informações que se revelem pertinentes para a mais completa elucidação dos fatos.

Um dos pontos que necessita imediato esclarecimento é a composição acionária da *offshore* Blessed Holding LLC. De acordo com informações prestadas pela imprensa, a referida empresa seria sócia “oculta” do grupo JBS.

Sala da Comissão,

Senador ATAÍDES OLIVEIRA



SF/17250.24459-26



Department of State: Division of Corporations

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Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

<u>File Number:</u>	4765553	<u>Incorporation Date / Formation Date:</u>	12/16/2009 (mm/dd/yyyy)
<u>Entity Name:</u>	BLESSED HOLDINGS LLC		
<u>Entity Kind:</u>	Limited Liability Company	<u>Entity Type:</u>	General
<u>Residency:</u>	Domestic	<u>State:</u>	DELAWARE

REGISTERED AGENT INFORMATION

<u>Name:</u>	INCORPORATING SERVICES, LTD.		
<u>Address:</u>	3500 S DUPONT HWY		
<u>City:</u>	DOVER	<u>County:</u>	Kent
<u>State:</u>	DE	<u>Postal Code:</u>	19901
<u>Phone:</u>	302-531-0855		

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SENADO FEDERAL
Legislative Advisory Office

INFORMATION NOTE No. 3,014, 2017

Reference: STC No. 2017-08868, of the Joint Parliamentary Committee of Investigation on JBS, requesting an Information Note on the legal nature of Parliamentary Committees of Investigation.

The Joint Parliamentary Committee of Investigation on JBS requests an Information Note on the legal nature of Parliamentary Committees of Investigation (CPIs, in the Brazilian acronym). This request is based on the need to support the Brazilian Central Authority within the scope of the treaties on legal cooperation in criminal matters, in the event of the need to explain to foreign central authorities the legal duties of a CPI within our legal framework. This circumstance may be necessary since not all countries have within their legal systems CPIs with such broad powers as ours.

1. Introduction

This note aims to identify the legal nature, purpose and competencies of Parliamentary Committees of Investigation within both Houses of the National Congress (Chamber of Deputies and Federal Senate), according to the Brazilian legal system.



The Brazilian Parliament, as in other countries, has two main functions. The first one is the legislative function, which enables the creation of new rules within the Brazilian legal system. The second one is the oversight function, which allows the Parliament to assess the constitutionality, legality and merit of acts performed by public or private agents. To fulfill its duties, the authority to investigate and scrutinize cases of public interest is inherent to the Legislative Branch.

As one of the instruments at the disposal of the oversight function of the National Congress, article 58, paragraph 3 of the Brazilian Federal Constitution, defines the Parliamentary Committees of Investigation as follows:

“Art. 58

.....

Paragraph 3. Parliamentary committees of investigation, which shall have the powers of investigation inherent to the judicial authorities, in addition to other powers set forth in the regulations of the respective Houses, shall be created by the Chamber of Deputies and by the Federal Senate, jointly or separately, upon the request of one-third of their members, to investigate a given fact and for a certain period of time, and their conclusions shall, if applicable, be forwarded to the Public Prosecution Service to determine the civil or criminal liability of the offenders.”

From the above provision, the following features of CPIs are worthy of note:

- a) They are composed of members of the National Congress (Federal Deputies and/or Senators);
- b) Their purpose is to investigate both civil or criminal violations; and



- c) They have powers of investigation, which are inherent to judicial authorities.

These three aspects will be further examined below.

2. Composition of the Parliamentary Committees of Investigation

Following in Brazilian constitutional tradition, the 1988 Federal Constitution maintained the authority of both Houses of the National Congress (Chamber of Deputies and Federal Senate) to create CPIs. As regards the composition of these Committees, there are three possibilities:

- a) Federal Deputies only; b) Senators only; or c) joint composition with both Deputies and Senators.

CPIs are fundamental for the Brazilian democracy, as they are decisive instruments for the Houses of the National Congress to perform effectively their oversight role, especially as regards the acts of the Executive Branch.

Within the Brazilian Law, CPIs are created by means of a request, submitted by one third of the members of the Chamber of Deputies or the Senate; or one third of both Houses, in the event of a Joint Parliamentary Committee of Investigation (CPMIs, in the Brazilian acronym). The request does not need to undergo deliberation in any of the plenaries. Thus, once the request is submitted, the establishment of the Parliamentary Committee of Investigation is mandatory.

It is noteworthy that Parliamentary Committees of Investigation are foreseen in the legal systems of several other countries. Examples are Germany (article 44 of the Basic Law of Germany); Spain (article 76 of the Constitution of Spain); United States of America; United Kingdom; Italy (article 82 of the Constitution of the Italian Republic); and Portugal (article 178 of the Constitution of the Portuguese Republic).

As of Constitutional Law No. 2008-724, of July 23, 2008, the Constitution of the French Republic has also introduced, in its article 51-2, the existence of the Parliamentary Committees of Investigation (“*comissions d’enquête*”), which can be established within the National Assembly or the Senate.

3. Purpose of the Parliamentary Committees of Investigation

As mentioned in article 58, paragraph 3 of the Federal Constitution, CPIs are constitutionally competent to investigate “a given fact”. This means that a set of concrete facts that involve possible civil or criminal violations are investigated, while general, disconnected facts are not.

The purpose of a CPI is to identify these violations, which, due to their gravity and extension, cause a political and social commotion. If the perpetrators are identified, the Committee forwards its conclusions to the competent authorities to adopt the applicable judicial or extrajudicial measures.

CPIs investigate facts related to the conduct of public and private agents that cause damage to the Brazilian society.

In such cases, the investigation carried by the National Congress has been decisive to identify perpetrators and adopt the applicable legal proceedings, as well as to improve the correlated legislation. Two examples follow below of Parliamentary Committees of Investigation established by the National Congress, which had positive outcomes.

In 1993, a Joint Parliamentary Committee of Investigation was created to investigate alleged misuse of public funds of the Union Budget. The misapplication of public funds surpassing R\$ 100 million was investigated. Supposedly, public funds were being directed to legal entities that would later transfer part of the amount to members of the Parliament. After intense activities of the Committee, six federal deputies were removed from office. In addition, budgetary transparency and control increased to prevent future misapplication of public funds.

In 2012, the Senate established the Parliamentary Committee of Investigation on Violence against Women. This Committee's starting point was the fact that Brazil ranked 12th amidst 73 countries with the highest levels of female homicide, 40% of which committed in the domestic environment. After a survey of the flaws of public policies in this area, several draft bills to protect women were presented, such as priority treatment within the public health system and the right to temporary social security assistance in cases of domestic violence. One of the outcomes of this Committee was Law No. 13,104, of March 9, 2015, which typified the crime of femicide.

4. Investigative Powers of the Parliamentary Committees of Investigation

Paragraph 3 of article 58 of the 1988 Federal Constitution expressly determined that Parliamentary Committees of Investigation have “powers of investigation inherent to the judicial authorities, in addition to other powers set forth in the regulations of the respective Houses.” This strengthened the investigative powers of the Committees, since the previous Constitutions did not provide for such broad competence.

As a result, the 1988 Constitution granted the CPIs the same investigate powers of judicial authorities to investigate civil and criminal violations. It is noteworthy that other countries also expressly grant their committees the investigative powers inherent to judicial authorities. Italy and Portugal are examples of such countries.

Non-constitutional rules also specify some of the powers inherent to CPIs. Article 2 of Law No. 1,579, of March 18, 1952 provides:

“Article 2. In the fulfillment of their duties, Parliamentary Committees of Investigation may determine measures considered necessary and summon Ministers of State; take the testimony of any federal, state or municipal authority; hear defendants; probe any witnesses under oath; request information and documents from the direct or indirect public administration or any of its foundations; and travel to places where their presence is necessary.”

As regards access to documents under bank secrecy, article 4 of Supplementary Law No. 105, of January 10, 2001 provides:

“Article 4. Within their respective jurisdiction, the Central Bank of Brazil and the Brazilian Securities and Exchange Commission, and the financial institutions shall provide the Federal Legislative Branch with the confidential information and documents that are undoubtedly necessary for the fulfillment of their respective constitutional and legal duties.

Paragraph 1. The parliamentary committees of investigation, in the fulfillment of their constitutional and legal duties of broad investigation shall obtain the necessary confidential information and documents directly from the financial institutions or through the Central Bank of Brazil or the Brazilian Securities and Exchange Commission.

Paragraph 2. The information requests referred to in this article shall be subject to prior approval by the plenary of the Chamber of Deputies, of the Senate, or of their respective parliamentary committees of investigation.”

In addition to that, the Constitution itself determines that the internal rules of both Houses of the National Congress may establish other investigative powers for the Parliamentary Committees of Investigation.

In this regard, article 148 of the Standing Rules of the Federal Senate provides:

“Article 148. To perform its duties, the parliamentary committee of investigation shall have the investigative powers inherent to judicial authorities, as well as authority to proceed with any inquiry deemed necessary. It may summon Federal Ministers, take the testimony of any authority, probe witnesses under oath, hear defendants, request from public agencies information or documents of any nature, and request that the Federal Audit Court conduct inspections and audits deemed necessary.”

In view of the above constitutional and legal provisions and internal rules, the precedents of the Federal Supreme Court (STF, in the Brazilian acronym) — the Brazilian Highest Court within the Judicial Branch — settled the opinion that Parliamentary Committees of Investigation of the Federal Senate may,

among other things (see STF, Writ of Mandamus 25.668, En Banc Court, Rapporteur Justice Celso de Mello, j. March 23, 2006):

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However, it is noteworthy that the Federal Supreme Court has also settled some limits to the CPIs' powers of investigation. Based on the idea that the restraint of some fundamental rights would be subject to an "exclusive jurisdiction", CPIs may not (see STF, *En Banc Court*, Writ of Mandamus No. 23,652, Rapporteur Justice Min. Celso de Mello, j. Nov. 22, 2000):

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An interesting issue arises as regards sharing information among CPIs and police authorities relating to investigations in progress. In the Brazilian Law, there are no limits to the subject of a CPI as regards the facts also scrutinized in criminal investigations or criminal procedures. This means that the Committee may probe into facts under investigation or in a criminal procedure in progress.



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“Habeas corpus. Parliamentary Committee of Investigation. Specific investigative activities simultaneously carried out by a judicial body and a parliamentary committee of investigation. Feasibility. The use, by CPIs, of documents from classified inquiries. Possibility. Investigation, by CPIs, of alleged participation of a judge in illegal facts unrelated to the performance of strictly jurisdictional activities. Supervening Retirement. Moot claim. Expansion of the works of the CPI to facts connected to the initially established subject matter. Feasibility. Right to silence, security against self-incrimination and communication with counsel. Full applicability. The existence of investigative criminal proceedings, under consideration before a competent judicial body, shall not prevent investigation by a Parliamentary Committee of Investigation, even if their subject matters are correlated, as each has distinct scopes, constitutionally and legally defined, in addition to diverse purposes. Precedents. Parliamentary committees of investigation have the powers of investigation inherent to judicial authorities, among which the jurisdiction to access classified data (article 58, paragraph 3 of the Federal Constitution, and article 2 of Law No. 1,579/52). Precedents. A supervening retirement moots the possibility of a CPI investigation of non-judicial acts carried out by those were judges at the time of the facts. A Parliamentary Committee of Investigation may extend the scope of its scrutiny to illegal or irregular facts that, during the course of investigations, prove to be connected to the cause that determined the creation of the CPI. Precedents. It is a settled case law before this Court to assure the person called to appear before a CPI the privilege against self-incrimination, the right to silence and to communicate with their counsel. Precedents. Order partially granted.” [STF, Tribunal Pleno (*En Banc* Court), HC 100.341, Rel. (Rapporteur) Justice Joaquim Barbosa, j. November 4, 2010 (emphasis added)].

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We remain at Your Excellency's disposal, to assist you in any further clarification.

Legislative Advisory Office, October 2, 2017.

Victor Marcel Pinheiro
Legislative Advisor

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