

DOCHSBC

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

Ofício n. 8671/2015/CGRA-DRCI-SNJ-MJ

Brasília, 23 de dezembro de 2015.

A Sua Excelência o Senhor
PAULO ROCHA
Senador da República
Praça dos Três Poderes, Anexo II.
Ala Alexandre Costa, sala 15 – Subsolo.
70.165-900 – Brasília/DF

Assunto: Cooperação Jurídica Internacional em Matéria Penal Brasil/Suíça - Caso SwissLeaks.

Nossa Referência: **2015/02268**

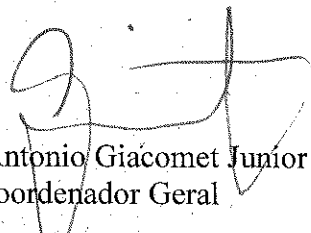
Prezado Senador,

1. Fazemos referência ao Ofício nº 459/2015 – CPIHSBC, de 30 de junho 2015, por intermédio do qual Vossa Excelência encaminhou solicitação de assistência jurídica internacional em matéria penal dirigida à Suíça, decorrente da aprovação do Requerimento nº 121/2015 – CPIHSBC, em trâmite na Comissão Parlamentar de Inquérito do Caso SwissLeaks dessa Casa Legislativa.

2. A esse respeito, conforme se depreende da documentação em anexo, fomos informados pelas autoridades helvéticas que o pedido não pode ser cumprido, por não preencher todos os requisitos necessários para a lei daquele país. Nesse sentido, a Autoridade Central da Suíça ressaltou a falta de explicação aprofundada dos fatos investigados, o entendimento de que as autoridades brasileiras solicitaram produção genérica de provas – vedada pela legislação suíça –, bem como a impossibilidade de cooperação para fins de persecução de evasão de divisas – no caso, o art. 22 da Lei n. 7.492/86.

3. Permanecemos à disposição dessa Comissão Parlamentar de Inquérito para todo e qualquer esclarecimento, bem como para eventuais novas diligências que se fizerem necessárias.

Respeitosamente,


Isalino Antonio Giacomet Junior
Coordenador Geral

Ra/chnb

Recebido na COCETI em 25/01/16
Felipe Costa Geradeles
Mar 200809

ALF, OFJ, Bundesrain 20, 3003 Berne, Suisse

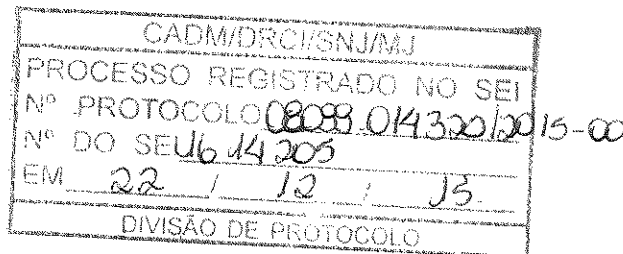
FEDERAL EXPRESS

Departamento de Recuperação de
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Votre référence : 2015/02268

Notre référence : B 242'612 ALF

Berne, le 16 décembre 2015



Commission rogatoire du 7 juillet 2015 délivrée par la Commission d'enquête parlementaire Brésil dans l'affaire HSBC Private Bank Genève

Madame, Monsieur,

Référence est faite à votre courrier du 8 juillet 2015 par lequel vous nous avez transmis la demande d'entraide citée sous rubrique. Suite à un examen attentif, nous vous communiquons ce qui suit :

Conformément au droit suisse, les demandes d'entraide judiciaire en matière pénale doivent notamment contenir un exposé des faits sous enquête, dont il doit en particulier ressortir le lieu et la date de la commission des faits, le mode opératoire (*modus operandi*), les personnes impliquées et leur rôle ; le lien entre les faits sous enquête et les mesures d'entraide sollicitées de la Suisse doit également être mentionné ; lorsqu'une requête vise un compte bancaire, l'exposé des faits doit permettre d'établir l'origine délictueuse des transactions ou des fonds qui s'y rapportent. Vous voudrez bien en outre vous reporter à la *Checklist* ci-jointe.

En l'espèce, la demande d'entraide ne satisfait pas aux exigences légales suisses. Elle ne fournit en effet pas de description des faits telle que mentionnée plus haut et relève d'une recherche indéterminée de preuves laquelle est inadmissible au sens du droit suisse. A noter au demeurant et à toutes fins utiles que les faits / infractions d'évasion de devises / d'évasion fiscale ne sont pas susceptibles d'entraide au regard du droit suisse.

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RECEVU
22/12/15

Vu ce qui précède, nous sommes au regret de vous informer qu'il ne peut en l'état être donné suite à la demande d'entraide brésilienne. Dans la mesure où son enquête révèle les éléments nécessaires, il est toutefois loisible à l'autorité requérante de la compléter dans le sens des indications précisées *supra*.

Nous vous prions de croire, Madame, Monsieur, à l'assurance de notre considération distinguée.



Pascal Gossin
Chef Unité Entraide judiciaire I

Annexe : ment.

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6. Reason for the request

- Point out the connection between the foreign proceeding and the required measures;
- Indicate exactly the evidences sought and the acts requested (blocking of the account X by the bank Y, seizure / surrender of the documents XY, interview of the witness Z, etc.);
- In case of examination of witnesses a questionnaire has to be elaborated;
- In case of search for persons or premises, for seizure or surrender of objects a confirmation has to be added that these measures are permitted in the requesting State (does only apply to States with whom exists no agreement on Mutual Assistance in Criminal Matters).

7. Application of the foreign law at the execution (exception)

- Show the need for the application of the foreign prescription at the execution; and
- Reproduce the legal prescription to be applied.

8. Presence of parties to the foreign proceedings at the execution (exception)

- Give the reasons for the presence of these persons at the execution; and
- Indicate exactly the identity and the status (office) of these persons.

9. Form of the request

- written;
- A legalisation of the official records is not necessary.

10. Language/Translation

- Draft the request in German, French or Italian; otherwise
- Enclose a translation into one of these three official languages.

11. Channels of Transmission

- By diplomatic channels to the Federal Office of Justice of the Federal Department of Justice and Police in Berne, if there is no agreement regarding other channels (through the Ministry of Justice or direct contact with the requested authority);
- In urgent cases through Interpol; the request has to be confirmed in writing and its original must be transmitted later on through ordinary channels to the Federal Office of Justice.



Status as at 7 September 2007

CHECKLIST FOR FOREIGN REQUESTS FOR MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Requests for Mutual Assistance in Criminal Matters addressed to Switzerland must correspond to the following requirements and contain the following indications:

1. Legal bases

- European Convention on Mutual Assistance in Criminal Matters of 20th April 1959 / other agreements containing prescriptions on mutual assistance; or
- bilateral treaty; or
- declaration / agreement on reciprocity.

2. Requesting Authority

- Indicate the competent investigating or prosecuting authority; and
- State the office / authority from which the request emanates. It is recommendable to indicate the person dealing with the case (name as well as telephone and telefax numbers).

3. Object of the request

- Investigation or criminal proceeding before a judicial authority; or
- Preliminary enquiries of an authority which is authorized by law to investigate or to prosecute offences, provided that an appeal to a judge can be made in the foreign proceeding.

4. Person who is the target of the investigation or proceeding

- Furnish as far as possible exact and complete identifying data of the accused/incriminated person (family name, first name, nationality, date and place of birth, profession, address, etc.).

5. Summary of the facts/legal qualification of the offence

- Give a summary of the relevant facts indicating the place, the time and the manner of the perpetration of the offence. In a voluminous and complicated case, a résumé of the most important facts has to be added; and
- Indicate the legal qualification of the facts (murder, theft, fraud, etc.).