

BRAZIL-SWITZERLAND AGREEMENT: A COOPERATIVE EXCHANGE OF INFORMATION

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After five years of negotiations, the Agreement on Judicial Cooperation in Criminal Matters signed between Brazil and Switzerland (the “Agreement”) will finally take effect on September 27. The intent of such agreement is to facilitate the exchange of information and documents referring mainly to investigations of corruption, money laundering, fraud and organized crime.

By signing this agreement, the signatory countries introduced the concept of mutual judicial assistance to support investigations and the production of evidence in lawsuits and police investigations. The Agreement covers money laundering, embezzlement, terrorism, drug traffic, human trafficking, animal and arms traffic, among other crimes.

In practice, the aim of this Agreement is to allow both Brazil and Switzerland to make more effective use of legal mechanisms, such as testimonies of witnesses, defendants and other relevant parties; provision of documents, data and records; recovery of amounts and goods giving rise to and/or resulting from crimes; location of people and assets; transfer of people from one jurisdiction to the other in order to testify/provide explanations; carrying out of seizure warrants; attachments; reimbursements; charging of fines and application of other penalties.

What was once seen as a slow and cumbersome process will most likely become more efficient. From now on, those people and authorities that must cooperate under the Agreement are pre-defined: they are the signatory countries’ Ministries of Justice.

Brazilian authorities expect to be able to trace Swiss bank accounts whose balance originates from criminal activity, obtain suspects’ documents and bank slips and recover such amounts, as applicable, in a more expeditious way.

However, it must be pointed out that the Agreement does not cover tax evasion, especially because this is not a crime in Switzerland. As a result, documents provided by the Swiss authorities cannot be used in connection with this type of crime.

Once the exchange of information is made faster, the signatory countries will probably start engaging their efforts towards the negotiation of a double taxation agreement. A project with this purpose already exists but is still in an early stage. In this scenario, Brazil is expected to resume cooperation with Switzerland in tax evasion cases, especially considering that the Swiss Government is often subject to international pressure when it comes to its bank secrecy system.