

# **Mutual Assistance between Business Regulatory Bodies**

## MUTUAL ASSISTANCE BETWEEN BUSINESS REGULATORY AGENCIES

Report prepared by the Commonwealth Secretariat

1. At their 1993 meeting Commonwealth Law Ministers required Senior Officials at their next meeting to consider the issue of Mutual Assistance between Business Regulatory Agencies in order further to develop their Statement on this subject in the light of experience and practice. Paragraph 28 of the Communiqué issued by Ministers after that meeting states:

### Mutual Assistance between Business Regulatory Agencies

28. Ministers recalled the decision of their Christchurch Meeting of 1990, taken in view of the growing internationalisation of financial markets, to extend mutual assistance in the area of business regulations. They reviewed legislative developments in a number of member countries, the emergence of a network of memoranda of understanding between business regulatory authorities, and the work of the International Organisation of Securities Commissions on mutual assistance. Many Ministers articulated general principles and considerations to guide Commonwealth governments in assessing how best, in their own circumstances, they might develop relevant administrative procedures and legislative provisions. It was recognised that a number of delegations would require to conduct further consultations with relevant regulatory agencies on their return to their capitals. In view of the urgency of the situation and the importance of the concerns expressed, it was agreed that the delegations concerned should notify the Secretary-General of any reservations and proposed amendments to the Statement they wished to enter, by 30 June 1994. All reservations and proposed amendments received should be placed before the next Senior Officials Meeting and the matter kept on the Agenda of both meetings in order further to develop the Statement in the light of experience and practice. The Statement is attached.

2. Two countries, in accordance with the request of Law Ministers, notified the Secretary-General of

reservations and proposed amendments to the statement issued by Law Ministers. At their 1995 Meeting Senior Officials considered the concerns expressed by these member countries and resolved to propose to Ministers that their 1993 Statement be amended to take account of these concerns.

3. Senior Officials submit the attached report which contains a proposed revision of the 1993 Statement for consideration by Ministers.

February 1996

**MEETING OF SENIOR OFFICIALS OF  
COMMONWEALTH LAW MINISTRIES  
MALTA 29 MAY - 1 JUNE 1995**

**MUTUAL ASSISTANCE BETWEEN BUSINESS  
REGULATORY AGENCIES**

**Report of the Meeting**

The meeting noted that there is a Commonwealth Scheme for Mutual Assistance in Criminal Matters and that the Statement by Law Ministers was not intended to deal with matters falling within the scope of that Scheme but was designed to address co-operation between business regulatory agencies in respect of administrative and civil matters.

The meeting agreed that the Statement was a statement of principles and guidelines for co-operation and did not constitute a Scheme.

Senior Officials, having reconsidered the Statement issued by Law Ministers in Mauritius and having taken account of proposals to amend that statement, propose the following draft statement to Ministers for consideration:

"In pursuance of the decision taken at their 1993 Meeting in Mauritius, Ministers reviewed the Statement on Mutual Assistance Between Business Regulatory Agencies, at their meeting in Kuala Lumpur from to April 1996. They noted that the continued increase in international activity in the securities, futures and investment markets brought with it a corresponding need for an enhanced level of international co-operation in this specialised area. Given the traditional availability to Business Regulatory Agencies of administrative and civil sanctions in addition to those of the criminal law, this need could not be adequately satisfied by exclusive reliance on the Scheme relating to Mutual Assistance in Criminal Matters or other established mechanisms for the provision of mutual assistance in traditional criminal matters.

Ministers reiterated the view expressed in the Communiqué which concluded their April 1990 Meeting at Christchurch, New Zealand and the general concern expressed at their Meeting in Mauritius that there was a need for the extension of mutual assistance in the area of business regulation. They reaffirmed their view that this was best achieved by provisions, which would

be complementary to and compatible with those giving effect to the Harare Scheme, to enable a regulatory agency to respond to requests for assistance from a counterpart agency in another Commonwealth country and to use for that purpose appropriate powers available to it in a purely domestic context.

Ministers reconsidered the Statement on Mutual Assistance between Business Regulatory Agencies which they had adopted at their Meeting in Mauritius in November 1993. While agreeing that preparation of a Commonwealth Scheme at this stage remained premature, Ministers agreed that those Commonwealth countries contemplating the development of administrative structures and the enactment of legislation in this area should, subject to the requirements of their Constitutions and the general principles of their domestic legal systems, be guided by the following general principles, guidelines and considerations:

1. That systems devised to respond to requests for assistance by counterpart regulatory authorities for the purpose of the exercise of their regulatory functions should be simple, quick and flexible and be capable of use with the minimum of formality.
2. Assistance would be provided subject to compliance by the requesting authority with appropriate conditions concerning the use, confidentiality and return of documents and information.
3. That the decision of whether or not to grant assistance in any case would be discretionary. In the exercise of this discretion the requested party could consider, among other matters, the seriousness of the alleged violation of the regulatory law, regulation or requirement; whether the assistance is obtainable by more appropriate means and, in particular, via existing channels for the provision of mutual assistance in criminal matters; issues of international law, comity and reciprocity; and the extent to which the resource costs involved would fall to be met by the requested party. Assistance may be given even though the circumstances which gave rise to the request for assistance do not constitute a violation of the laws, regulations or requirements of the requested country. However, assistance could always be denied on

grounds of essential public interest.

4. That in providing for the granting of assistance for the purpose of facilitating the performance of the functions of a requesting authority as provided under the laws, regulations and requirements of the requesting country, the law of the requested country should permit (subject to appropriate civil liberties and other safeguards) a regulatory authority in that country to use appropriate powers available to it in a domestic context.

These could include inter alia:

- (a) gaining access to, or supplying, information;
- (b) obtaining information or documents from any person or entity subject to its jurisdiction; and
- (c) exercising appropriate powers of investigation or inspection.

To facilitate the exercise of the appropriate powers, the requesting authority should provide all necessary information required by the requested authority.

5. That the law of the requested country should

make it possible in appropriate cases to invoke sanctions or take other enforcement proceedings in cases in which a person or entity withheld information, documents or other assistance which the regulatory authority was entitled to obtain in the context of responding to a request for assistance.

6. Countries should consider the removal of legal impediments to the spontaneous provision (subject to appropriate safeguards) of information by a regulatory authority to a counterpart authority in another Commonwealth country where that information gives rise to a reasonable suspicion of a breach of a legal provision, regulation or requirement of that party. The decision whether or not to provide such information in any particular case would be at the sole discretion of the authority in possession of it.

Ministers were confident that the introduction by relevant jurisdictions of mechanisms of co-operation in relation to the securities, futures and investment markets which conformed to the above general principles and considerations would provide a sound basis from which to combat fraud and other abuses, thus ensuring a more orderly international market place."