

# Statement on Mutual Assistance between Business Regulatory Agencies



The Commonwealth

Office of Civil and  
Criminal Justice Reform

---

# Statement on Mutual Assistance between Business Regulatory Agencies



The Commonwealth

---

© Commonwealth Secretariat 2017

All rights reserved. This publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording or otherwise provided it is used only for educational purposes and is not for resale, and provided full acknowledgement is given to the Commonwealth Secretariat as the original publisher.

Views and opinions expressed in this publication are the responsibility of the author and should in no way be attributed to the institutions to which they are affiliated or to the Commonwealth Secretariat.

Wherever possible, the Commonwealth Secretariat uses paper sourced from responsible forests or from sources that minimise a destructive impact on the environment.

Printed and published by the Commonwealth Secretariat.

# Introduction

Increased international activity in the securities, futures and investment markets has resulted in a corresponding need for a high level of international co-operation between business regulatory agencies if national agencies are to administer national regulatory laws effectively.

Administrative and civil sanctions, which are a feature of most business regulation laws, mean that the Commonwealth Scheme relating to Mutual Assistance in Criminal Matters does not adequately meet the needs of regulators. Business regulators draw a clear distinction between their needs and those of authorities administering criminal laws. Differences include, for example, the importance of economic interests which are at stake in administering business regulatory laws, as well as the different form in which information sought are required. In seeking to take administrative action, for instance, business regulators require information which justifies, on reasonable grounds, the making of a decision. They do not, in many cases, require that information is provided in a form which is usable in court.

Accordingly, this Statement on Mutual Assistance between Business Regulatory Agencies is not intended to deal with matters falling under the scope of the Scheme relating to Mutual Assistance in Criminal Matters. Rather, it is designed to address co-operation between business regulatory agencies in respect of administrative and civil matters. The Statement is a statement of principles and guidelines for co-operation and does not constitute a scheme. The Statement sets out, for the guidance of member countries acting in accordance with their constitutional and general legal systems, general principles, guidelines and considerations pertinent to the subject.

# Background

At their meeting held in 1990 in Christchurch, New Zealand, Commonwealth Law Ministers identified the need for extension of mutual assistance in the area of business regulation. They noted that voluntary co-operation needed to be reinforced by legislative provisions to enable powers of compulsion to be exercised in the fulfilment of requests in appropriate cases. Ministers agreed to encourage their regulatory agencies to provide assistance to corresponding agencies in other Commonwealth countries and to develop inter-agency agreements to that end.

At their meeting held in 1993 in Grand Baie, Mauritius, Commonwealth Law Ministers reviewed legislative developments in a number of countries and adopted a first Statement on Mutual Assistance between Business Regulatory Agencies which articulated general principles and considerations within this area.

Commonwealth Law Ministers reviewed that Statement at their meeting held in 1996 in Kuala Lumpur, Malaysia, and recognized that the globalization of financial markets created a need for effective co-operation in business regulation. Law Ministers adopted the present Statement on Mutual Assistance between Business Regulatory Agencies, as an amplification and development of the statement on the same subject made at their Mauritius meeting in 1993.

# Statement on Mutual Assistance between Business Regulatory Agencies

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.







The Commonwealth