Mutual Assistance Between Business Regulatory Agencies

A Memorandum by the Commonwealth Secretariat

Background

Commonwealth Law Ministers discussed the matter of co-operation to combat fraud in the financial markets at their 1990 meeting in Auckland, New Zealand. The meeting Communiqué records that:

"13. Ministers identified the need for the extension of mutual assistance in the area of business regulation. The increasing internationalisation of financial markets required effective mutual assistance between national business regulatory agencies. 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. They invited the Commonwealth Secretariat to report to their next Meeting on the progress that had been made throughout the Commonwealth to develop this additional form of mutual assistance."

Although Law Ministers have discussed the idea of mutual assistance in financial markets, in reality the actions taken by Commonwealth governments are largely confined to Securities Regulators. Little has been done in the areas of the bond markets, bullion markets, banking or general corporate mutual assistance. Only the Australian and the United Kingdom laws extended mutual assistance beyond the securities market: the Australian law has been placed in one Mutual Assistance Act covering various business regulatory areas whereas the United Kingdom has placed its provisions dealing with investigatory assistance in the Companies Act 1989 and provisions permitting enforcement in support of overseas regulatory authorities in the Financial Services Act 1986 which are both administered by the Secretary of State for Trade and Industry.

This memorandum looks at the significant legislative developments in Commonwealth jurisdictions.

Introduction

Recent trends in the world's financial markets towards globalisation, inter-market listings and international electronic trading in securities have allowed for much freer movement of financial instruments in those markets. Regulators have realised that they have a growing interdependence on each other when attempting to regulate their own market places. The international character of today's securities markets makes enforcement difficult as many evidentiary, jurisdictional and detection problems are raised. Regulators are finding that they need to seek assistance from foreign regulators but are hindered in information sharing and investigative assistance by the current regulatory structures.

There are many differences in the laws and regulatory structures of different countries as well as other factors which impede efforts to improve international information sharing. These include:

- blocking and privacy laws
- bank secrecy laws
- lack of regulatory authority to obtain information requested
- lack of a national regulator
- differing technical and resource capabilities- ongoing criminal proceedings
- an inability to ensure the confidentiality of shared information, and
- differing regulatory structures - some administrative, some civil and some criminal - others, all three.

Domestic Developments

In order to give full effect to the sentiments expressed by Law Ministers in the 1990 Communiqué it would be necessary for domestic law and practice, in jurisdictions where the issue is relevant, to permit a particularly advanced form of transnational co-operation. There are several levels to this international co-operation. First, regulators may have provisions in their legislation which enable them to exchange publicly available information with overseas regulators. Second, regulators may have provisions which allow for the exchange of non-public information, subject to the appropriate conditions and safeguards. This non-public information may have been obtained under compulsory powers during investigation of domestic matters. The third and final level of co-operative powers enables the regulator to use their compulsory powers to assist in the administration of the securities laws of another jurisdiction. This latter level is quite important because if the foreign regulator is requesting information which has not already been the subject of an investigation at the local level, the local regulator may have difficulty in offering to provide information which it does not yet have on file. It would have to go out and gather the information on behalf of the foreign regulator but without a statutory mandate to do so, it may not be able to assist in this way.

The Commonwealth Secretariat survey covered Commonwealth countries which are also members of IOSCO: Australia, Bermuda, Canada, Cyprus, Hong Kong, India, Jamaica, Kenya, Malta, Mauritius, New Zealand, Singapore, Trinidad & Tobago and the United Kingdom. Australia, British Columbia (Canada), New Zealand and the United Kingdom all have mutual assistance provisions within their domestic legislation. Hong Kong and Malta do not currently have mutual assistance provisions in place while Cyprus and Trinidad & Tobago are currently contemplating amending their legislation to include such provisions.

Australia

The *Mutual Assistance in Business Regulation Act 1992* enables designated Australian Commonwealth business regulatory authorities to provide assistance to foreign business regulatory authorities or agencies. Australia is the only Commonwealth country to enact separate legislation dealing with mutual assistance in business regulation. It sets up the framework for Australian agencies such as the Australian Securities Commission and the Trade Practices Commission to provide assistance to their overseas counterparts. This is a wider position that the Canadian or New Zealand legislation has taken. These two countries have limited their mutual assistance provisions to their Securities Acts.

The scheme for mutual assistance between business regulators allows the request to be received by the Australian business agency but the agency must take into account such factors as the resource cost to the Australian agency, the availability of the same information to the foreign agency from other sources, the likelihood of the Australian agency successfully obtaining the information sought in the application, and the extent to which the foreign agency has corresponding functions and responds to or is likely to respond to a similar request from an Australian agency. [s.7(3)]

If the Australian business agency decides to comply with the foreign request it must then inform the Attorney-General that the regulator does not oppose the request and advise whether or not it proposes imposing certain conditions in relation to compliance with the request. [s.7(1)] The Attorney-General must then either authorise and approve the regulator's decision or override it. In considering his decision, the Attorney-General should take into account matters such as Australia's national interest, whether compliance with the request is consistent with international law or whether compliance with the request is likely to be used for punishing a person for an offence of a political character.

The Australian regulator cannot and must not comply with a request from a foreign regulator unless the Australian regulator has received an undertaking in writing from the foreign regulator stating that the information or evidence obtained from the person and provided to the foreign regulator by the Australian regulator will not be used for the purpose of criminal proceedings against the person and, to the extent of its ability, the foreign regulator will ensure that the information will not be used by any other person, authority or agency for the purposes of any criminal proceeding or imposition of a penalty. [s.6(1)] Australia takes the view that if information is sought for criminal proceedings it should be sought under the Mutual Assistance in Criminal Matters Scheme which has its own inbuilt safeguards.

Once these conditions have been met, the business regulator may assist the foreign regulator in the enforcement of foreign business laws by obtaining relevant information, documents and evidence and transmitting them to the foreign regulator. The Australian regulator may take evidence under oath and require the production of documents. There is no ability for the Australian regulator to enter premises of the person who is the subject of an investigation where the Australian regulator is acting on behalf of a foreign business regulator. The power to ask for a warrant to be issued, and for the Australian Federal Police with other persons named in the warrant to enter the premises, search it and take possession of documents and books is available under the Australian Securities Act 1989 for domestic investigations.

Canada - British Columbia

In Canada, securities regulation currently falls under the jurisdiction of the provinces as a matter of property and civil rights. There is no Canadian (federal) securities regulator. In British Columbia, the British Columbia *Securities Act 1985* makes express provision under s. 126 for assistance to foreign securities regulators by allowing the British Columbia Securities Commission to issue an investigation order to assist in the administration of the securities laws of another jurisdiction.

The investigation order grants a wide range of powers to the investigator which include power to:

(a) to enter into the premises or on the land of a person at any reasonable time, for the purpose of carrying out an inspection, examination or analysis,

(b) to require the production of any records, property, assets or things and to inspect, examine or analyse them, and

(c) on giving a receipt, to remove any records, property, assets or things inspected, examined or analysed under paragraph (a) for the purpose of further inspection, examination or analysis.

Generally the power to assist a foreign regulator includes power to investigate, inquire into, inspect and examine the affairs of a person; any records, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of, in relation to or connected with that person; any property, assets or things owned, acquired or disposed of in whole or in part by that person or by a person acting on behalf of or as agent for that person; the assets at any time held by, the liabilities, debts, undertakings and obligations at any time existing and the financial or other conditions at any time prevailing in respect of that person, and the relationship that may at any time exist or have existed between that person and any other person by reason of:

(a) investments made,

(b) commissions promised, secured or paid,

(c) interests held or acquired,

(d) the lending or borrowing of money, securities or other property,

(e) the transfer, negotiation or holding of securities,

(f) interlocking directorates,

(g) common control,

(h) undue influence or control, or

(i) any other relationship.

An investigator appointed under section 126 or 131 has the same power as the Supreme Court has for the trial of civil actions to summon and enforce the attendance of witnesses, compel witnesses to give evidence on oath or in any other manner, and to compel witnesses to produce records and things. He also has the same power as the Supreme Court to deal with the failure or refusal of a witness to attend, to take an oath, to answer questions, or to produce the records and things in his custody or possession.

In circumstances when it is "necessary and in the public interest" the British Columbia Securities Commission may also apply to the court for an order authorising an investigator to enter non-residential premises for the purposes of carrying out an inspection or examination and for removing records or property for further inspection, examination or analysis.

Information obtained by way of investigation order may be disclosed to foreign securities regulators providing that such disclosure would not be prejudicial to the public interest. The Commission will not disclose compelled testimony to a foreign regulator unless that regulator can provide assurances that the testimony will not be used against the testifier in a criminal proceeding. Compelled testimony cannot be used against the testifier in Canadian criminal proceedings and so will not be provided for such use by foreign jurisdictions. Some foreign regulators have obtained compelled testimony by securing appropriate "use immunity" commitments from the relevant criminal authorities.

Information already in the possession of the British Columbia Securities Commission or available without recourse to the statutory investigation powers can most often be provided to other bona fide enforcement agencies pursuant to the "public duty" provisions of section 8 of the Act.

Section 137.1 of the Act expressly allows, where it would not be prejudicial to the public interest, disclosure of facts, information and records obtained in an investigation to any body empowered by the laws of another jurisdiction to administer or regulate trading in securities. The British Columbia legislation therefore allows for both information exchanges and new investigations on behalf of foreign regulators.

New Zealand

In 1988 New Zealand amended its *Securities Act 1978*, to include specific provisions allowing the New Zealand Securities Commission to co-operate with any Securities Commission or other similar body in any other country. Information obtained by the Securities Commission in the ordinary course of its duties, whether confidential or not, can be communicated to the foreign securities regulator. Further, a separate amendment allows the Securities Commission to take evidence on behalf of overseas regulators. The Securities Commission may also collect documents or information that, in the Securities Commission's opinion, is likely to assist the Commission with the requesting body's request. These specific mutual assistance sections mirror the domestic enforcement provisions of the Commission, to take evidence under oath and to receive books, documents, papers etc.

Before complying with a request for assistance from a foreign regulator, the Commission must turn its mind to whether or not compliance with the request will substantially alter the performance of its other functions under the Act. Further, the Commission must recommend compliance with the request to the Minister and the Minister must approve and accept the recommendation. There is no power to request the issuance of a warrant to enter premises and search them either on behalf of a foreign regulator or indeed in a domestic investigation.

The United Kingdom

The ability to provide assistance to overseas regulatory authorities is laid out in three separate acts in the UK: the Companies Act 1985, the Companies Act 1989, Section 82-91 and the Financial Services Act 1986, Section 128 (as amended) and Sections 179-180.

The 1985 Companies Act:

Section 449(1)(M) of the *Companies Act 1985* allows information already held by the Secretary of State for Trade and Industry or his Department to be passed to overseas regulatory bodies for the purpose of enabling the exercise of their regulatory functions. Information already held may include evidence obtained by a search warrant under this Act.

The 1989 Companies Act:

The 1989 Companies Act gives power to the Secretary of State for Trade and Industry pursuant to s.83(2) to assist an overseas regulatory authority where the assistance "is for the purposes of its regulatory function". These regulatory functions are listed in s.82(2) and include:

(a) all those functions which the UK regulatory bodies or the Secretary of State exercise in relation to banking, insurance, companies or financial services under the Insurance Companies Act, Companies, Financial Services or Banking Acts or in connection with the investigation or enforcement of rules relating to insider dealing; and

(b) any other functions of the regulatory authority which relate to companies or financial services.

The assessment of whether the request is "for the purposes of its regulatory function" is in practice made by HM Treasury and requests should be made to the Treasury in the first instance.

The Secretary of State nevertheless retains a discretion pursuant to s.82(4) as to whether to accept or reject requests for assistance. He may in particular take into account:

(a) issues of reciprocity;

(b) issues of dual criminality and the breadth of the jurisdictional claim being made by the requesting country;

(c) the seriousness of the matter to which the request relates and the possibility of assistance being available through other sources; and

(d) the public interest.

By s.82(6) the Secretary of State may decline assistance unless the overseas authority undertakes to make a contribution towards the costs therof.

Once approval to a request has been given the DTI will proceed to act. Although on the domestic front the Department of Trade and Industry ("DTI") does not usually exercise statutory powers in the financial services and banking areas it can assist in these areas even if it has to liaise with another agency to comply with the request (for example, the Bank of England or the Securities and Investment Board). The scale of assistance available covers a large area of business regulation and is broadly worded so that the functions of overseas regulators need not exactly parallel those of regulators in the UK. The DTI may exercise compulsory powers to require any person to attend and give evidence under oath and to produce any specified documents which appear to be related to the matter. Legal professional privilege can be claimed in response to an order to produce. There is no power of search and seizure under the 1989 Companies Act.

The Financial Services Act 1986:

The Financial Services Act (the "FSA") enables (i) powers of disclosure, and (ii) disciplinary powers and powers of intervention to be exercised to assist foreign regulatory authorities. It should be noted that under the FSA "Overseas Regulatory Authority" is defined as having the same meaning as under s.82 Companies Act 1989.

S.180(1)(qq) allows the disclosure of "restricted information" within the meaning of s.179(2) for the purpose of enabling or assisting an Overseas Regulatory Agency to exercise its regulatory function. The information may be held by, inter alia, the Secretary of State, any designated agency, the Bank of England - see s.179(3).

S.180(3) goes further and enables the Treasury to authorise disclosure under the FSA to authorities outside the UK who do not fall within the statutory definition of an Overseas Regulatory Agency. For each authority designated under s.180(3) there will also be a statement of the functions of the authority in relation to which information will be provided. So far six such designations have been made.

It is understood that the rules governing the release of information are specific to each holder of information and each request will be dealt with individually.

S.128C provides that the Secretary of State may exercise disciplinary powers or powers of intervention at the request of, or for the purpose of assisting, an overseas regulatory authority. In practice the s.128C powers have been delegated to the SIB as a designated agency within the meaning of s.114 and it should be approached in the first instance. These powers are wide ranging and of enormous potential use. They include:

(a) the right to withdraw or suspend authorisation and thereby stop a person in the UK from conducting investment business;

(b) the right to prohibit an authorised person from entering into transactions and soliciting business from investors;

(c) the right to prevent assets being disposed of;

(d) the right to appoint a trustee and to transfer the company's assets into his control.

Powers of intervention are those powers listed in Chapter VI of Part 1 of the Act. They are similar in scope and nature to the disciplinary powers.

In deciding whether to exercise powers on behalf of an overseas regulatory authority tests similar to those set out in the Companies Act 1989 are applied. Assistance may be declined if the requesting authority fails to undertake to contribute to the costs of the exercise.

Disciplinary and intervention powers can only be exercised over "authorised persons". Only an authorised person can carry out investment business as defined by Schedule 1 of the FSA in the United Kingdom and a person becomes authorised by becoming a member of the Securities and Investments Board or one of the Self Regulatory Organisations. Tough criteria regarding financial capitalisation, conduct of investment business and internal compliance procedures must be adhered to for a person to become and remain a member of a SRO and hence an authorised person.

The Self Regulating Organisations are:

(a) Financial Intermediaries, Managers and Brokers Regulatory Association (FIMBRA);

(b) Investment Management Regulatory Organisation (IMRO)

(c) The Securities Association;

(d) Life Assurance and Unit Trust Regulatory Organisation; and

(e) Association of Futures Brokers and Dealers;

International Organisation of Securities Commissions

A number of Commonwealth Countries are members of IOSCO and have advised the Secretariat that, notwithstanding the lack of specific domestic legislation relating to mutual assistance between business regulatory agencies, they have acceded to the IOSCO Resolution concerning Mutual Assistance. The text of this resolution is:

Considering the increasing international activity in the securities markets;

Recognising the need to enhance investor protection through both oversight of the internationalised markets and securities-relation businesses as well as through enforcement of national securities laws with respect to international transactions;

Desiring to develop new mechanisms for mutual co-operation and assistance among securities authorities;

NOW THEREFORE BE IT RESOLVED THAT the Executive Committee of the International Organisation of Securities Commissions ("IOSCO") hereby calls upon all securities authorities;

(a) to the extent permitted by law, to provide assistance on a reciprocal basis for obtaining information related to market oversight and protection of each nation's markets against fraudulent securities transactions;

(b) to designate a contact person who will insure the timely processing of all requests for assistance.

The Capital Markets Authority of Kenya has advised that it has acceded to this resolution and the Stock Exchange of Trinidad & Tobago advises that, as an IOSCO member, it has in principle, an arrangement through the medium of a MOU to co-operate with other member countries when information is requested of it. India also relies on the MOU as a basis for exchanging information with other member agencies. Similarly the Securities and Exchange Commission of Nigeria advises that it can exchange information with other members of IOSCO.

An IOSCO document of particular importance in this area is entitled "Principles for Memoranda of Understanding" and is appended to this memorandum.

1. SUBJECT MATTER

MOUs should provide that investigatory assistance will be granted without regard to whether the type of conduct under investigation would be a violation of the laws of the Requested Authority unless the Requested Authority is not permitted to provide assistance where the type of conduct under investigation would not be a violation of the laws of the Requested Authority.

In 1989, the Technical Committee endorsed a resolution calling for member organisations to enter into MOUs on information sharing in which they would undertake to provide each other with information on a reciprocal basis, without regard to whether the matter under investigation would be a violation of the laws of the Requested Authority. Most of the existing MOUs cover the broad range of subject matters supported by the Technical Committee. By providing in an MOU for a broad range of matters for which assistance will be provided, each Authority is assured that it will receive as much assistance as possible with respect to all matters falling within its jurisdiction.

If a Requested Authority is not able to provide assistance with respect to matters which would not constitute violations within its own state without breaching is domestic legislation, the Requested Authority should consider recommending that appropriate amendments be made to this legislation to enable the assistance to be given, if it has the power to make such recommendations.

2. CONFIDENTIALITY

An MOU should provide that an Authority that receives information pursuant to an MOU request will protect the information with the highest possible level of confidentiality which, at a minimum, should pro-

vide that the information will be treated with the same level of confidentiality that is given to similar information that it collects in investigations of possible domestic violations. In addition, an MOU should provide the Requested Authority with the opportunity to identify the level of confidentiality that it expects to be attached to information that it transmits pursuant to an MOU request.

The primary purpose of MOUs is to provide information for use in investigations, which are, in most instances, non-public inquiries. In fact, most securities and futures regulators are subject to domestic laws and regulations governing the confidential treatment of information. The confidentiality requirements, however, vary by country and it is possible that the procedures of one authority for maintaining confidentiality will not be consistent with the disclosure or confidentiality provisions of its foreign counterparts. This, in turn, may lead to restrictions on the requested authority's ability to transmit information.

It may be possible to overcome differences between the confidentiality requirements and procedures of the authorities by including confidentiality provisions in the MOU that satisfy the needs of both authorities. In certain instances, however, legislative action may be required to increase the level of confidentiality to encourage the widest possible exchange of information.

3. IMPLEMENTATION PROCEDURES

In a mutually agreeable form, the signatories to an MOU should describe the procedures that they will follow in making and executing requests for information pursuant to the MOU; those procedures should be consistent with both signatories' legal requirements or impediments.

One of the main purposes of an MOU is to create a framework of procedures for exchanging information between regulators. Therefore, it is important that the parties to an MOU clearly set out the manner in which requests will be made and executed.

4. THE RIGHTS OF PERSONS SUBJECT TO AN MOU REQUEST

The fact that an investigation is conducted on behalf of a foreign authority pursuant to an MOU request should not alter the legal rights and privileges granted to persons in the State of the Requested Authority.

Because it is essential that the legal rights and privileges of witnesses be protected, the signatories to an MOU should make sure that the means of executing a request is consistent with the laws, methods and requirements of the Requested Authority. When the laws and policies of the requested authority provide a range of options, requests should be executed in the manner most consistent with the needs of the Requesting Authority.

Authorities negotiating information-sharing agreements may find it useful to examine the scope and implications of other agreements or treaties between the states of the signatories so that, among other things, they can ensure that the citizens of the signatory countries receive similar guarantees and protections.

5. CONSULTATION

MOUs should contain a provision in which the Authorities agree to consult on relevant issues that arise during the operation of the MOU. Moreover, authorities should consult frequently to discuss developments or proposals likely to affect the other Authority's interests or the available means for cooperation.

Since MOUs are designed to facilitate assistance, and not to create overly formal relations between the signatory authorities, they should contain a provision on consultations. Such a provision could specify circumstances under which it would assist the operation of the MOU to consult, such as where assistance may be or has been denied, and may also provide for consultation when requested by a signatory. By consulting about, for example, a denial of a request for assistance, the Requested Authority may be able to identify certain assistance that it is able to provide, and the Requesting Authority may benefit from learning more about why assistance was denied.

Such consultations also may promote cooperation and avoid misunderstandings and conflicts in situations involving:

- unforeseen circumstances
- overlapping jurisdiction, and
- changes in one authority's laws or procedures.

6. PUBLIC POLICY EXCEPTION

An MOU should provide that the Requested Authority maintains the right to refuse to provide assistance in instances where the provision of assistance would violate the public policy of its state. The concept of public policy would include issues affecting sovereignty, national security, or other essential interests.

Although it is optimal for the scope of an MOU to be as broad as possible, there may be limited instances where, notwithstanding the fact that a request falls within the scope of the MOU, providing assistance would be contrary to the public policy of the state of the Requested Authority. For this reason MOUs should provide a mechanism for dealing with this potential conflict so that the Requested Authority will be able to rely on a public policy exception to the MOU in denying assistance.

7. TYPES OF ASSISTANCE

MOUs should provide that the Authorities will take all reasonable steps to ensure that they can utilise their full domestic powers to execute requests for assistance. The available assistance should include, where the Requested Authority has such powers, obtaining documents and the statements or testimony of witnesses, granting access to the Requested Authority's non-public files, and conducting inspections of regulated entities.

Both before and since the Technical Committee's 1989 resolution on information-sharing several member organisations have obtained the authority to use their full domestic powers to compel the production of documents and statements or testimony on behalf of foreign authorities. In the absence of such authority, a Requested Authority may be limited to providing only information that it can obtain voluntarily or from public files in response to a request for assistance. Since law violators may refuse to produce incriminating information on a voluntary basis, and legal impediments may prevent an innocent intermediary from voluntarily providing information, the Requesting Authority may be unable to obtain critical information at the investigative stage of a matter if production of such information cannot be compelled by the Requested Authority.

herefore, the ability to compel production of documents and statements or testimony on behalf of a foreign authority greatly enhances the value of MOUs. Authorities that do not have such an ability should take all reasonable steps, including considering recommending amendments to their legislation, where they have such power to recommend, to remove impediments that keep them from utilising their full domestic powers for providing assistance to foreign authorities.

8. PERMITTED USES

MOUs should specify whether and under what circumstances the Requesting Authority may provide information it receives pursuant to an MOU to other domestic authorities for use in related matters, including investigations or proceedings instituted by other authorities and regulators, and SROs.

The civil, criminal and administrative components of a country's securities and futures laws are often enforced by multiple agencies. Since, in the first instance, the Requested Authority is responsible for the use of information located in its files, or which it gathers on behalf of the Requesting Authority, the Requested Authority should have the ability to determine permissible uses of the information. On the other hand, to further the goal of effective law enforcement, MOUs should allow the Requesting Authority to provide information it receives pursuant to an MOU to other regulatory and enforcement groups or agencies that are charged with enforcing securities and futures laws, unless precluded by the laws of the Requested Authority from so doing.

9. PARTICIPATION BY THE REQUESTING

MOUs should provide that, to the extent permitted by the laws and policies of the Requested Authority, the Requesting Authority may be permitted to participate directly in the execution of a request for assistance.

Participation by the Requesting Authority, to the extent permitted by the laws and policies of the State of the Requested Authority, may be desirable to ensure that resources are used effectively in executing requests for assistance.

For example, in executing an MOU request that involves document review and/or the questioning of witnesses, a high degree of familiarity with the investigative record may be necessary in order to elicit the necessary information from witnesses and documents. In many cases, MOU requests are preceded by complex, long-term investigations by the Requesting Authority and the files of the investigation may include far more information than can reasonably be included in a particular MOU request. In such cases, the Requested Authority should consider permitting the persons most familiar with the investigative record to assist in the execution of the request.

10. COST-SHARING

MOUs should provide that, under certain circumstances, the Requested Authority can, if it deems it necessary, initiate a process for having the Requesting Authority share the costs of providing assistance that are incurred by the Requested Authority.

Requests for assistance may involve extensive use of investigative resources by the Requested Authority. Sharing costs may be appropriate where the cost of a particular request is substantial or where a substantial imbalance has arisen in the cumulative costs incurred by the signatories. Therefore, to minimise the burden that such investigations might place on the Requested Authority, an MOU should provide a mechanism by which the Requesting Authority may be asked to reimburse the Requested Authority for extraordinary costs. An MOU also should provide that the Authorities will consult about the handling of costs in such cases.