

Text of Suggested Statement on Mutual Assistance between Business Regulatory Agencies

As Revised by Senior Officials on 18 November, 1993

At the Meeting of Commonwealth Law Ministers held at Mauritius from 15-19 November 1993 note was taken of the considerable progress achieved towards the effective implementation of the Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth. Ministers recognised, however, that the increasing 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 Commonwealth Scheme or other established mechanisms for the provision of mutual assistance in traditional criminal matters.

Ministers reiterated the view expressed in the Communique which concluded their April 1990 Meeting at Christchurch, New Zealand, that there was a need for the extension of mutual assistance in the area of business regulation. 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.

It was agreed that those Commonwealth countries contemplating the development of administrative structures and the enactment of legislation in this area should, subject to the general principles of their domestic legal systems, be guided by the following general principles 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 breach of the 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 and comity; and the resource costs involved. Assistance would not normally be refused solely on the ground that the circumstances which gave rise to the request for assistance did not constitute a violation of the laws, regulations or requirements of the requested country. However, assistance could always be denied on grounds of 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 agency in that country to use appropriate powers available to it in a domestic context. This would include in particular:

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

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 agency was entitled to obtain in the context of responding to a request for assistance.

6. There should be no legal impediment to the spontaneous provision by a regulatory agency (subject to appropriate safeguards) of information to a counterpart agency in another Commonwealth country where that information clearly gave rise to a suspicion of a breach of a legal provision, regulation or requirement of that counterpart agency. The decision of whether or not to provide such information in any particular case would be at the sole discretion of the agency 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 and modern basis from which to combat fraud and other abuses, thus ensuring a more orderly international market place.