

Appendix 3: Further Procedures for Enforcement Matters

Further details to be contained in requests for assistance

1. If a request for assistance as described in this Exchange of Letters relates to actual or possible enforcement action, the following further details will be contained in the request:
 - (a) a description of the conduct or suspected conduct which gives rise to the request;
 - (b) details of the applicable law, regulation or requirement to the administration of which the request is relevant;
 - (c) the link between the specified rule or law and the regulatory functions of the requesting Authority;
 - (d) the relevance of the requested assistance to the specified rule or law; and
 - (e) whether it is desired that, to the extent permitted by the laws and regulations applying to the requested Authority, any persons from the country of the requesting Authority should be present during interviews which form part of an investigation.

Further ground for denial of request

2. If a request for assistance as described in this Exchange of Letters relates to actual or possible enforcement action, the requested Authority, in determining whether to fulfil the request in whole or in part, may take into account whether the request would lead to the prosecution of, or the taking of disciplinary or other enforcement action against, a person who in the opinion of the requested Authority has already been appropriately dealt with in relation to the alleged breach that is the subject-matter of the request.

Joint Investigations

3. The Authorities acknowledge that, subject to secrecy and confidentiality issues, an investigation, where it concerns suspected breaches of the law of both jurisdictions, may be conducted more effectively by the establishment of a joint investigation involving members from both Authorities.
4. The Authority suggesting the joint investigation will advise the other Authority of the background to the request for a joint investigation, and liaise with the other Authority to determine the likely objectives of the joint investigation, the expected resources required and the approximate duration of the proposed joint investigation. Each Authority will advise the other as soon as possible as to whether it will consent to such an investigation.
5. If the Authorities consent to take part in a joint investigation, a mutually determined initial action plan will be prepared setting out, among other things, the objectives, expected duration, funding, publicity and accountability arrangements, management of the joint investigation, and allocation of responsibilities.
6. Suggestions to APRA for a joint investigation should be made, through APRA's Secretary. Suggestions to the FSC should be made to the Director-General, Department of International Affairs.

Rights of persons preserved

7. Any person providing testimony, information or documents as a result of a request made under this Exchange of Letters will be entitled to all the rights and protections of the laws and regulations of the jurisdiction of the requested Authority. Where assertions are made regarding other rights and privileges arising exclusively pursuant to the laws and regulations of the jurisdiction of the requesting Authority, the Authorities will consult to determine the most appropriate way to proceed.