

Mutual Assistance in Business (Regulation) Regulations 1992 No. 331

EXPLANATORY STATEMENT

STATUTORY RULES 1992 No. 331

Issued by the Authority of the Attorney-General

Mutual Assistance in Business Regulation Act 1992

Mutual Assistance in Business (Regulation) Regulations

Section 23 of the Mutual Assistance in Business Regulation Act 1992 (the Act) empowers the Governor-General to make regulations not inconsistent with the Act, prescribing, inter alia, matters which are required by the Act to be prescribed by regulations or necessary or convenient to be prescribed by regulations for carrying out or giving effect to the Act.

The Act allows prescribed Commonwealth business regulatory agencies, with Ministerial approval, to compel the giving of evidence, the provision of information and the production of documents to assist foreign business regulators.

The purposes of the proposed Regulations are:

- to prescribe which bodies are Commonwealth business regulatory agencies for the purposes of the Act;
- to prescribe in detail but not exclusively the information which the Act requires a foreign regulator to provide when making a request for assistance;
- to provide a form to be used when giving notice to persons required to give information; and
- to prescribe allowances for persons giving information under the Act.

The Mutual Assistance in Business Relation Act 1992 has been proclaimed to commence on 23 October 1997.

Details of the Regulations are attached.

Regulation 1 - Citation

The Regulations are to be cited as the Mutual Assistance in Business (Regulation) Regulations.

Regulation 2 - Commencement

The Regulations commence on the date of commencement of the Act.

Regulation 3 - Interpretation

The Mutual Assistance in Business Regulation Act 1992 is referred to as the 'Act'.

Regulation 4 - Commonwealth Regulators

The Australian Securities Commission and the Trade Practices Commission are prescribed Commonwealth regulators.

Regulation 5 - Information to be Provided by Foreign Regulators

Under subsection 6(1) of the Act a foreign regulator may request a Commonwealth regulator to obtain information, documents or evidence from a person for purposes relating to the administration or enforcement of a foreign business law.

Subsection 6(2) requires that the foreign regulator must provide an undertaking which preserves the person's rights against self-incrimination and must provide such other information as is required by the regulations. The requirements of Regulation 5 are designed to allow the Commonwealth regulator to fulfil its obligations under section 6 and section 7 of the Act. Under section 7 the Commonwealth regulator is able to refuse the request or advise the Attorney-General that it does not oppose the request. If the regulator accepts the request, it may also impose conditions on the request when considering what action to take in relation to a request. The Commonwealth regulator may take into account the matters set out in subsection 7(2).

Paragraph 5(a)

This paragraph requires the foreign regulator to provide a general description of the subject matter and the facts supporting it. This includes the conduct being investigated, relevant time periods and relevant names and addresses. This information assists the Commonwealth regulator in determining whether it will oppose or accept the request as is required under section 7 of the Act.

Paragraph 5(b)

This paragraph requires the foreign regulator to provide a description of the type of assistance it seeks from the Commonwealth regulator. Under subsection 6(1) the Commonwealth regulator may take evidence, obtain documents or other specified information.

Paragraph 5(c)

This paragraph requires the foreign regulator to indicate the purposes for which the information is sought.

Paragraph 5(d)

This paragraph requires that a request include a copy of the foreign business law to which the request relates and if necessary a translation into English. The foreign regulator will also need to indicate how the foreign business law relates to the fact of the matter the subject of the request.

This paragraph assists the Commonwealth regulator and the Attorney-General to determine that the request complies with subsection 6(1).

Paragraph 5(e)

This paragraph requires from the foreign regulator a description of its functions so that the Commonwealth regulator may determine whether that foreign regulator's functions correspond to its own for the purposes of paragraph 7(3)(d) of the Act.

Paragraph 5(f)

This paragraph requires a statement from the foreign regulator as to whether it will be able to comply with a similar request. This is necessary to allow the Commonwealth regulator to make a determination under paragraph 7(3)(e) of the Act.

Paragraph 5(g)

The foreign regulator will be required to indicate whether it has sought or could conveniently seek the information sought in the request from another source. The purpose of this paragraph is to assist the Commonwealth regulator to determine for the purposes of paragraph 7(3)(c) whether the foreign regulator could more conveniently have the request satisfied from another source. The Commonwealth regulator will be in a position to determine whether a request could be more conveniently dealt with by another Australian authority. It may not however be possible for the Commonwealth regulator to determine whether another foreign source would be better placed to provide the assistance in the absence of information from the requesting foreign regulator.

Paragraph 5(h)

Under this paragraph the foreign regulator will be required to provide a statement of the grounds on which the foreign regulator considers that the Commonwealth regulator will be likely to obtain the information. This will assist the Commonwealth regulator to assess the likelihood of its obtaining the information for the purposes of paragraph 7(3)(a) of the Act.

Paragraph 5(j)

The foreign regulator will be required to state the purpose for which the information is to be used. This information will allow the Commonwealth regulator to determine whether the request could be more appropriately dealt with under the Mutual Assistance in Criminal Matters Act 1987. It is also needed to assist the Attorney-General under section 8(2) of the Act.

Paragraph 5(k)

This paragraph requires the foreign regulator to give details of the confidentiality it will afford information acquired under the Act.

Paragraph 5(1)

This paragraph requires the foreign regulator to indicate the time within which it requires the requested material.

Paragraph 5(m)

Under this paragraph the foreign regulator will be able to indicate whether it wishes to receive material as it comes to hand or in one complete transmission.

Paragraph 5(n)

This paragraph requires the foreign regulator to supply the name and telephone number of an officer who is familiar with the subject matter of request. This paragraph will allow the speedy and efficient resolution of any queries the Commonwealth regulator may have in respect of the request.

Regulation 6

Notices by a Commonwealth Regulator

The form 1 in Schedule 1 is the form of notice to be given to persons under section 10 of the Act.

Regulation 7

Prescribed Allowances

Pursuant to section 21 of the Act, this regulation prescribes allowances for expenses incurred by a person compelled under the Act to give information or evidence.

Schedule 1

Form 1

This form is the form to be used when serving written notice on a person under section 10 of the Act requiring that person to give information, produce documents or appear and give evidence.