

September 12, 1946

MEMORANDUM

TO: Mr. Gutt  
FROM: Mr. van Campenhout

I am submitting to you a few comments on the draft of the Rules and Regulations (Revised Draft, August 13, 1946).

I. A - Scope of Rules and Regulations

1. A-2

The following modification is suggested:

"The present Rules and Regulations will be completed or modified as it may appear advisable in the course of experience".

Other reasons than new problems can make alteration of the Rules and Regulations necessary. Also modifications may have to be made in other provisions than procedural.

II. B - Terms, Definitions and Symbols

1. General Remarks:

Definition of terms should not be made unless the term defined is used with a meaning special to the Rules and Regulations, and if there is a possibility of ambiguous understanding. No term should be given a definition which is not consistent with the Articles of Agreement.

It may be advisable to add the following provision to the preamble:

"Definitions give hereunder are only for the purpose of the present Rules and Regulations and may not be construed as implying an interpretation of the same terms as used in the Articles of Agreement and in the By-Laws."

2. B-4 and B-5

Definitions of "member" and "member country" do not seem necessary to the understanding of the Rules and Regulations. Generally speaking, "member" should refer to the State on behalf of which Governments have accepted membership.



For the purposes of the Rules and Regulations, it seems clear enough that the obligations of the members are obligations of the Governments representing them and having to enforce these obligations.

No membership can be accepted by or on behalf of a territory, but only in respect of it. Neither does it seem advisable to refer to persons in these territories. Although their Governments may have to impose on them obligations pursuant to the undertakings of the State concerned toward the Fund, or that individual may be bound by some provisions of the Agreement pursuant to their national legislation ratifying the said Agreement, they are not members of the Fund and can have no direct obligations toward it.

3. B-6

The Fund has a legal personality different from the personality the Executive Board, the individuals composing it, the Managing Director or any individual employed by it. The definition is, therefore, legally incorrect and the effect of it can be well illustrated by the reading of Rule L-2:

"The accounts of the Fund shall be kept in a manner that will show clearly the nature of each transaction, the position of the Fund, and the results of its operations."

That this rule is not to apply to the individual accounts of the Executive Directors, Managing Director, or any member of the staff is clear; this provision concerns the accounts of the Fund considered as a legal entity. I suggest that the definition of the word "Fund" could be dropped or limited to this: "Fund" refers to the International Monetary Fund.

4. B-8 and B-9

It seems advisable not to give a definition of "Gold" and "Currency" and to have any desirable precisions written in the rules concerning gold and currency, if any.

The abbreviation "EBD" very likely means Executive Board Documents and should be explained.

5. B-10

AA XII - 3(g) provides that "the Executive Directors shall function in continuous session and shall meet as often as the business of the Fund may require". "Session" and "Meeting" seem to have a different meaning, session being composed, according to this provision, of several meetings. To define "Executive Session", an expression which, by itself, conveys the idea of the continuous session of the Executive Directors, to "a meeting" or to some special meeting of the Executive Directors may lead to confusion.



If "Executive Session" means to refer to a meeting which is more confidential than others, why not use another expression like "restricted meeting", for instance? Is it necessary to limit, by rule, the attendance to such meetings to Directors, and when so decided, the Secretary? This is really a matter concerning mainly arrangements of the Board itself. As far as the intention modifying this draft provision is understood, the best would be to include in the rules the following provision:

"The Executive Board may meet in restricted meetings to which shall attend only the Managing Director, the Executive Directors and, with the approval of the Board granted separately for each restricted meeting, the Secretary of the Board or such member or official of the Fund as may be decided. The Executive Board will decide, for each restricted meeting if and how minutes shall be established and kept".

6. B-11

The following modification is suggested:

"General Order refers to an order issued by the Managing Director pursuant to a decision of the Executive Board".

7. B-12

The Managing Director does not need any authorization from the Executive Board for issuing an Administrative Order. He is the only authority to do so, although a previous decision of the Board may be necessary if the subject of the order comes within the competency of the Board. To avoid any confusion, the following modification and addition are suggested:

"Administrative Order refers to an order issued by the Managing Director pursuant to a general authority granted to him by the Executive Board."

B-13 "Executive Order refers to an order issued by the Managing Director pursuant to the authority granted to him under the Articles of Agreement".

III. C Meetings of the Executive Directors

1. General Remarks

It may be desirable to replace the expression "Directors" by "Executive Board" in order to harmonize this chapter of the Rules and Regulations with the definition of terms.



2. C-4

Article XII, Section 3(g) provides that: "The Executive Directors shall function in continuous session at the principal office of the Fund.....". Although imperative, and leaving room for no exception, this provision should not be understood as having to be applied in a way which would be contrary to the interest of the business of the Fund. It is, however, quite clear that the Executive Board could not meet anywhere else than at the principal office for no reason. The following modification of C-4 is suggested:

"The Executive Board shall meet at the principal office of the Fund unless in exceptional circumstances it is desirable for the conduct of the Fund's business that a particular meeting be held elsewhere."

3. C-5

It may be advisable to complete the last sentence of C-5 with the following phrase:

"..but shall not have a deciding vote in the case of an equal decision."

4. C-16

It seems advisable to add a paragraph deciding how the minutes shall be kept and what copy of them shall constitute indisputable evidence of the decisions taken at any meetings. The following paragraph illustrates this suggestion:

"Minutes shall bear the date of the meeting and shall be numbered so as to form a continuous series. When the minutes have been approved, one copy shall be signed by the Chairman and by the Secretary of the Executive Board. These signed copies shall be called originals and shall constitute indisputable evidence of the decisions and proceedings to which they refer. They shall be kept by the Secretary as a single set year by year."

x IV. D - Provisions for Security

1. D-5

Suggested addition to this provision:

"However, in urgent cases, the Managing Director may exceptionally allow members of the Staff to discuss secret exchange matters with other members of the staff or any other person without permission of the Executive Board. In such cases, the Managing Director shall inform the Board as soon as possible of the authorization granted by him."



2. D-6

Suggested addition to this provision:

"However, in urgent cases, the Managing Director may exceptionally request members of the Staff to work on problems relating to "secret exchange matters" without the specific approval of the Executive Board. In such cases, the Managing Director shall inform the Board as soon as possible of the authorization granted by him."

It is the Managing Director who is responsible for the ordinary business of the Fund. The additions to D-5 and D-6 are suggested in order to avoid, in any circumstances, hampering the normal conduct of the business.

V. G - Determination and Maintenance of Par Values and Exchange Rates

Reference should be made also to AA XX - 4(d) concerning changes agreed with the Fund in case of the member whose territory has been occupied by the enemy.

VI. H - Proposed Changes of Parities

Reference should be made to AA XX - 4(d) concerning members whose territory has been occupied by the enemy.

VII. I - Fund transactions

1. I-2, line 7

"designated agency" should read "designated fiscal agency".



VIII. J - Exchange Controls, Currency Practices and Agreements

1. Suggested addition: (J-2)

"The present paragraph shall not prejudice the right of the Fund to request any desirable information from the member against whom the complaint is directed".

IX. Q - Staff Regulations

1. Q-12 - According to the Articles of Agreement, the Managing Director is responsible for the organization, appointment and dismissal of the staff of the Fund, "subject to the general control of the Executive Directors" (AA 12.4B).

In principle, therefore, the Executive Board has no responsibility for deciding any particular case. To submit, by regulation, to the approval of the Executive Board, any particular appointment would be a restriction of the responsibility given to the Managing Director under the Articles of Agreement. This does not preclude the Managing Director to consult the Executive Board on any particular case when both the Managing Director and the Board find it convenient. It is suggested that the question be left to informal arrangements between the Board and the Managing Director.

The question may be somewhat different as far as the appointment of the Secretary of the Board is concerned because there is a direct relationship between the Secretary and the Executive Board, although the Secretary is under the direct authority of the Managing Director.

2. Q-15 - Referring to the remarks made above with regard to the Managing Director's authority, the following modification is suggested:

"The Managing Director shall issue general orders with the approval of the Executive Board concerning the general personnel policies which shall apply through the operating staff of the Fund. The Managing Director shall issue such other orders as he may think necessary to make effective the personnel policies stated in the Rules and Regulations and in the General Orders.

3. Q-16 - Referring to the remarks above, the following modifications are suggested:

"Official travel will be undertaken by staff members only with the approval of the Managing Director. Official travel outside the continental limits of the United States will be undertaken only with the further approval of the Executive Board unless in urgent cases such procedure is unpracticable.