

October 16, 1997

SECRETARY'S CIRCULAR NO. 97/88

To: Members of the Executive Board

From: The Secretary

Subject: **Note on Procedure for Adoption of the Proposed Fourth Amendment of the Articles of Agreement of the International Monetary Fund**

Please find attached for the information of Executive Directors, a note, prepared by the Legal Department, on the procedure for adoption of the Fourth Amendment of the Articles of Agreement. This note will be attached, for the information of members, to the letter of the Secretary asking members whether they accept the proposed Fourth Amendment. That letter will be sent shortly.

Mr. Hagan (ext. 37715) or Mr. Ho (ext. 37798) is available to answer technical or factual questions relating to this paper.

Att: (1)

Other Distribution:
Department Heads

INTERNATIONAL MONETARY FUND

Note on Procedure for Adoption of the Proposed Fourth Amendment of the Articles of Agreement of the International Monetary Fund

This note describes the procedure for adoption of the proposed Fourth Amendment of the Articles of Agreement of the International Monetary Fund.

1. The procedure for adoption of amendments of the Articles of Agreement of the Fund is set forth in Article XXVIII of the Articles. The procedure is in two stages: first, the proposed amendment must be approved by the Board of Governors of the Fund by a majority of the votes cast; and, secondly, it must be accepted by three-fifths of the members, having eighty-five percent of the total voting power. When the required conditions have been met, the Fund certifies this fact by a formal communication to all members, and the amendment enters into force for all members, regardless of whether they have accepted the proposed amendment, three months after the date of the certification, unless a shorter period was specified by the Fund when submitting the proposed amendment for acceptance by the members.

With respect to the proposed Fourth Amendment, the first stage was completed on September 23, 1997, when the proposed amendment was approved by the Board of Governors of the Fund (Resolution No. 52-4). The second stage is being initiated by the letter of the Secretary of the Fund to which this Note is attached, asking members whether they accept the proposed Fourth Amendment. The Fund has decided that the proposed Fourth Amendment will enter into force on the date of the certification by the Fund that three-fifths of the members having eighty-five percent of the total voting power have accepted it. Since the proposed amendment pertains exclusively to the Special Drawing Rights Department, all members, including those whose voting rights have been suspended, may participate in the adoption of the proposed amendment by notifying their acceptance.

2. When accepting the proposed Fourth Amendment, each member should ensure that three conditions are fulfilled. First, it should take any domestic legal steps that may be a prerequisite for the acceptance of the proposed amendment, such as the adoption of a statute, decree or other regulation. Secondly, the competent person or body should accept the proposed amendment. Thirdly, this acceptance should be communicated to the Fund. These three conditions are elaborated upon in subparagraphs (a), (b), and (c) below.

(a) First, measures may need to be taken under national law to enable the member to accept the proposed amendment, which is a modification of an international agreement. These domestic legal steps will vary according to the law and, in particular, the constitution of each country. In many countries, the acceptance of the proposed amendment will require the prior consent of the legislature or the executive, or both.

(b) Secondly, the acceptance should be effected on behalf of the member by the competent person or body. This competence will be derived either directly from the constitution or some other general legal provision of the member, or from the specific statute, decree or other regulation that may have been adopted to authorize the acceptance of the proposed amendment.

(c) Thirdly, the acceptance should be communicated to the Fund. When the person who communicates the acceptance has the authority to accept the proposed amendment, the communication may take the form of a declaration of acceptance on behalf of the member. A draft form of declaration of acceptance is set forth in Annex I. Alternatively, the acceptance given by the competent person or body on behalf of the member may be notified to the Fund by a designated official. A draft form of notification of acceptance is set forth in Annex II.

3. It is for each member to ascertain the requirements that must be complied with under its national law in order to accept the proposed Fourth Amendment. However, given that an amendment of the Articles is a modification of an international agreement, the Fund must be satisfied that each declaration or notification of acceptance will be regarded as a valid expression of the member's consent under the relevant rules of the law of treaties. Therefore, any declaration or notification of acceptance (unless it is signed by the Head of State, Head of Government (e.g., Prime Minister), or Minister for Foreign Affairs) should be accompanied by copies of the relevant documents demonstrating that the proposed amendment is being or has been duly accepted on behalf of the member by the person or body vested with the necessary authority to take such a decision. When these documents do not clearly demonstrate such authority, confirmation of such authority should be provided in a memorandum of law signed by the Minister of Justice, Attorney General or other competent legal official of the member.

4. The Fourth Amendment will enter into force only when the Fund certifies that three-fifths of the members having eighty-five percent of the total voting power have accepted it. Any consequential changes in domestic statutes or regulations would not, therefore, need to become effective until the date of certification by the Fund of the entry into force of the Fourth Amendment.

Legal Department
International Monetary Fund
October 16, 1997

Annexes (2)

Declaration of Acceptance
(To be Addressed to the Secretary of the Fund)

I have the honor to inform you that [member] hereby accepts the proposed Fourth Amendment of the Articles of Agreement of the International Monetary Fund.

[A copy of the statute/decreree/regulation pursuant to which this acceptance is given is attached.]¹

¹On the use of this form and the inclusion or omission of this paragraph, see Note above, paragraphs 2(c) and 3.

Notification of Acceptance
(To be Addressed to the Secretary of the Fund)

I have the honor to inform you that [member] has accepted the proposed Fourth Amendment of the Articles of Agreement of the International Monetary Fund.

[A copy of the text of the acceptance [and of the statute/decreree/regulation pursuant to which this acceptance is given] is attached.]²

²On the use of this form and the inclusion or omission either of this paragraph or of the text between square brackets within this paragraph, see Note above, paragraphs 2(c) and 3.