

DOCUMENT OF INTERNATIONAL MONETARY FUND AND NOT FOR PUBLIC USE
For Immediate Attention

EBD/62/68

May 16, 1962

To: Members of the Executive Board
From: The Secretary
Subject: Inquiry under Article VIII, Section 2(b)

A New York law firm has inquired in connection with litigation in the Federal District Court of New York as to the consistency of the Fund Agreement of exchange restrictions maintained by Cuba (Annex A). The Fund interim response is set forth in Annex B.

In view of the interest of the Fund in maintaining the effectiveness of Article VIII, Section 2(b) it is recommended that the Fund follow the certification procedure adopted in connection with similar inquiries in the past. In order that the certificate be admissible as evidence in the Federal Courts of the United States the Fund would communicate the information to the Secretary of the Treasury of the United States. In turn the attorneys will obtain certified copies of such information from the U.S. Treasury Department (EBD/62/46).

Annex C sets forth the proposed letter to the Secretary of the Treasury along the same lines as a similar recent letter regarding the consistency with the Fund Agreement of exchange measures maintained by Cuba (EBD/61/68) and Annex D contains the draft of the covering letter.

If no objection is received from any Executive Director before 5:30 p.m., on Monday, May 21, 1962, the following decision will be recorded in the minutes of the next meeting of the Executive Board:

The Secretary is authorized to transmit to the United States Secretary of the Treasury the letters contained in EBD/62/68.

Att:(4)

Other Distribution:
Department Heads
Division Chiefs

MYRON J. KLEBAN
Counselor at Law
745 Fifth Avenue
New York 22, N.Y.

May 7, 1962

International Monetary Fund,
19th and H Streets, N.W.,
Washington 25, D.C.

Dear Sirs:

I would greatly appreciate your advising me whether you have made any determination or declaration that the Republic of Cuba has violated any agreement with or rule of the Fund relating to the convertibility of its currency.

My interest is as attorney for a seller of toys for dollars to various Cuban purchasers in 1959 against acceptance of U.S. dollar time drafts. After acceptance, peso deposits to cover the dollars were then made with banks in Cuba and applications made by the latter to the Cuban authorities to remit dollars. Some remittances were made but after the nationalization decrees in 1960 permission was never granted. A suit is pending against funds of Banco Nacional de Cuba which were attached. Defendant pleads, among other defenses, sovereign immunity and acts of state.

Sincerely,

/s/

Myron J. Kleban

ANNEX B

May 11, 1962

Dear Sir:

This is in response to your letter dated May 7, 1962 in which you inquire concerning the consistency with the Fund's Articles of Agreement of exchange restrictions maintained by Cuba.

In accordance with usual procedure the Fund will certify as to whether or not the member maintains exchange restrictions consistently with the Fund Agreement. In addition, in order for such certificate to be used in litigation in the Federal Court of New York the certificate will be transmitted to the Secretary of the Treasury of the United States. Upon your request the Secretary of the Treasury will be in position to furnish the necessary documentation for use in the courts.

I enclose a copy of the Fund's Articles of Agreement together with certain publications which deal with the pertinent provision of the Articles.

Sincerely yours,

/s/

Roman L. Horne
Secretary

Enclosures

Mr. Myron J. Kleban
Counselor at Law
745 Fifth Avenue
New York 22, New York

Sir:

This letter relates to the consistency with the Articles of Agreement of exchange restrictions maintained or imposed by Cuba.

A member of the Fund, like Cuba, which has accepted the obligations of Article VIII is required to obtain Fund approval of exchange restrictions on current transactions, multiple currency practices and discriminatory currency arrangements pursuant to Article VIII, Sections 2 and 3 of the Fund's Articles of Agreement. The Fund has approved the maintenance by Cuba of a two per cent exchange tax on remittances abroad. Any other existing restrictions on current transactions, multiple currency practices or discriminatory currency arrangements do not have the Fund's approval.

In accordance with the Articles of Agreement, Fund approval for controls of capital transfers is not required. Thus, to the extent any controls are confined to capital transfers, they are maintained or imposed consistently with the Fund's Articles of Agreement.

Very truly yours,

Roman L. Horne
Secretary

The Honorable
The Secretary of the Treasury
Washington 25, D.C.

Sir:

Article VIII, Section 2(b), of the Articles of Agreement of the International Monetary Fund provides as follows:

"(b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, co-operate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement."

In an authoritative interpretation under Article XVIII of this provision, adopted on June 10, 1949, by the Board of Executive Directors of the Fund, it was stated that:

"The Fund will be pleased to lend its assistance in connection with any problem which may arise in relation to the foregoing interpretation or any other aspect of Article VIII, Section 2(b). In addition, the Fund is prepared to advise whether particular exchange control regulations are maintained or imposed consistently with the Fund Agreement."

This decision by the Board of Executive Directors was printed in the Federal Register of the United States of America on August 19, 1949.

The enclosed letter dealing with certain exchange control regulations of Cuba has been addressed to you at the request of Myron J. Kleban of New York, who is appearing as attorney in litigation involving these regulations. If the United States Treasury certifies that this letter is part of its records, the attorney believes that it will be possible to introduce such letter in evidence in the Federal District Court of the City of New York. The attorney will approach you shortly on this matter.

Very truly yours,

Roman L. Horne
Secretary

The Honorable
The Secretary of the Treasury
Washington 25, D.C.

Enclosure