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EBS/96/196

CONFIDENTIAL

December 18, 1996

To: Members of the Executive Board
From: The Secretary
Subject: **Establishment of a Temporary Administered Account
for ESAF-HIPC Operations**

It is not proposed to bring the attached memorandum to the agenda of the Executive Board for discussion unless an Executive Director so requests by the close of business on Monday, December 23, 1996. In the absence of such a request, the draft decision that appears on page 4 will be deemed approved by the Executive Board and it will be so recorded in the minutes of the next meeting thereafter.

Mr. Decarli (ext. 37627), Ms. Christensen (ext. 38397), or Ms. Siegel (ext. 37711) is available to answer technical or factual questions relating to this paper.

Att: (1)

Other Distribution:
Department Heads

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INTERNATIONAL MONETARY FUND

**Establishment of a Temporary Administered Account
for ESAF-HIPC Operations**

Prepared by the Legal, the Policy Development and Review
and the Treasurer's Departments

Approved by Jack Boorman, David Williams, and William E. Holder

December 18, 1996

INTRODUCTION

This paper describes a proposal to establish an administered account relating to continuing operations under the Enhanced Structural Adjustment Facility ("ESAF"), including the Fund's participation in the Initiative to support the Heavily Indebted Poor Countries (the "Initiative"), pending the establishment of a permanent new administered account (the "ESAF-HIPC Trust") for this purpose.

I. PURPOSE OF THE ACCOUNT

It is anticipated that in the early months of 1997, the Fund will establish the ESAF-HIPC Trust, which will receive, *inter alia*, bilateral contributions from members for the continuation of ESAF operations and for the HIPC Initiative. In the meantime, a member has indicated its intention to make a contribution before the end of 1996, or as soon as possible thereafter. It is possible that other contributors may also wish to be able to make payments in the near future. Pending establishment of the ESAF-HIPC Trust, therefore, it is proposed to establish a temporary account (the "Account") for the receipt and administration of resources contributed with a view to their eventual transfer to the ESAF-HIPC Trust.

It is proposed that the Account be established to receive and hold contributions from any members that may wish to make a contribution before the ESAF-HIPC Trust is established ("Contributors"). When a Contributor provides resources to the Account, it may stipulate the intended use for the resources once they are transferred to the ESAF-HIPC Trust, such as whether the contribution is intended as a grant, or as a deposit to generate investment income for the ESAF-HIPC Trust, as well as whether the contribution is to be earmarked for specific operations permitted under the instrument establishing the ESAF-HIPC Trust. In light of its

anticipated short duration, the Account is not designed to administer proposed loans to the ESAF-HIPC Trust which would involve the repayment of principal and the payment of interest on specified terms, which would in any event normally require some time to negotiate.

II. LEGAL BASIS AND STATUS

Article V, Section 2(b) provides the Fund with authority to perform financial and technical services, including the administration of contributions by members. The purposes of the proposed Account would be consistent with the purposes of the Fund and thus the Fund is authorized to establish it.

As is the case with other administered accounts, the assets held in the Account would be under the legal ownership of the Fund. Therefore, the Account, its assets and income, and its operations and transactions authorized by the provisions of the Instrument would enjoy the status, immunities and privileges of the Fund under Article IX of the Fund's Articles of Agreement in all member countries, and under Article III of the U.N. Convention on Privileges and Immunities in countries that have accepted the Convention with respect to the Fund.¹

III. PROPOSED DRAFT INSTRUMENT

The purpose of the Account would be achieved by the adoption of the attached draft Instrument (Annex) pursuant to which the Fund would establish and administer the Account as a separate account under Article V, Section 2(b). The draft Instrument includes provisions that are similar to those governing a number of accounts established and administered in recent years at the request of members, including the following key provisions:

A. Composition of the resources of the Account

The resources of the Account would consist of (i) the contributions transferred to the Account by the Contributors, and (ii) earnings, net of any transaction costs, accruing from investments of the assets of the Account.

B. Currency of the Account, denomination of operations, and investments

Contributions to the Account may be made in any currency. Contributions may also be made in or exchanged for SDRs in accordance with such arrangement as may be made for the holding and use of SDRs. The Account would be denominated in SDRs. The Managing Director would be authorized to invest, at his discretion, the assets of the Account, pending

¹See Selected Decisions, Twenty First Issue, p. 606. See also Proposed Second Amendment to the Articles of Agreement of the International Monetary Fund, (Report by the Executive Directors to the Board of Governors, 1976), Part II, Chapter D, paragraph 2.

their transfer to the ESAF-HIPC Trust. Investment income, net of any investment costs, would become part of the resources of the Account.

C. Separation of accounts

Operations conducted through the Account will not be "on the account of the Fund," in accordance with Article V, Section 2(b). The resources contributed to the Account will not be recorded in the General Department or the SDR Department of the Fund, but will be kept separate from all the other accounts of, or administered by, the Fund, and the assets held in the Account shall not be used to discharge or meet any liabilities, obligations or losses incurred by the Fund in the administration of any other account of, or administered by, the Fund, and vice versa.

D. Auditing and reporting

The financial statements of the Account will be subject to an external audit. The usual procedures of the Fund would apply to the audit, reporting, and publication of the Account (including publication of the names of the Contributors, unless a Contributor notifies the Fund that it does not wish its name to be published).

E. Costs

The Fund is not expected to incur any obligation or liability by reason of the establishment, administration or termination of the Account. No charge shall be levied for the service rendered by the Fund in the establishment or termination of the Account.

F. Termination

The Account is not intended to remain in existence after the ESAF/HIPC Trust is established. Subject to the concurrence of the Contributor, resources of the Account will be transferred into the ESAF-HIPC Trust and use thereof will be governed by the Instrument establishing that account, which will reflect the description of ESAF-HIPC operations set forth in recent papers on this topic. Use of transferred resources will also be governed by any stipulations on the use made by the Contributor when the contribution was made to the Account. The Instrument for this Account provides that the Account will be terminated when all resources are either transferred to the ESAF-HIPC Trust or refunded to the Contributor.

Proposed Decision

Accordingly, the following draft decision, which may be taken by a majority of the votes cast, is proposed for adoption by the Executive Board:

1. Pursuant to Article V, Section 2(b), the Fund adopts the provisions of the Instrument set forth in Annex I to EBS/96/196, to establish an account for the administration by the Fund of resources contributed for use in continuing ESAF operations, including the Fund's participation in the HIPC Initiative.
2. The provisions of the Instrument may be amended only by a decision of the Fund and with the concurrence of the contributors.

Instrument to Establish a Temporary Administered Account for ESAF-HIPC Operations

To help achieve its purposes, the International Monetary Fund (the "Fund") has adopted this Instrument to establish an account in accordance with Article V, Section 2(b) (the "Account"), which shall be governed by, and administered by the Fund as Trustee in accordance with, the following provisions:

Establishment of the Account

1. The Fund hereby establishes the Account for the administration of resources deposited in that Account by a contributor ("Contributor") for subsequent use in continuing ESAF operations, including the Fund's participation in the Initiative to support the Heavily Indebted Poor Countries (the "Initiative").
2. The resources shall be held in the Account pending the establishment of a new administered account by the Fund in respect of continuing ESAF operations, including the Fund's participation in the Initiative (the "ESAF-HIPC Trust")

Contributions

3. Contributions may be made in any currency. Contributions may also be made in or exchanged for SDRs in accordance with such arrangements as may be made by the Fund for the holding and use of SDRs. Any cost of the exchange shall be met from the proceeds of the contribution.
4. The terms of the contribution, including whether the contribution is to be earmarked for specified uses, shall be as agreed between the Contributor and the Managing Director.

Use of Resources

5. The resources of the Account shall consist of amounts transferred to it as proceeds of contributions made and the income from investment of the resources of the Account net of any transaction costs.
6. Resources held in the Account shall be invested at the discretion of the Managing Director. The Managing Director is authorized (i) to make all arrangements, including establishment of accounts in the name of the Fund, with such depositories of the Fund as may be necessary to carry out the operations of the accounts, and (ii) to take all measures necessary to implement the provisions of this Instrument.

7. Following the establishment of the ESAF-HIPC Trust, the resources of the Account shall be transferred to the Trust unless a Contributor does not concur with such transfer, in which case, that Contributor's pro-rata share of the resources (including income from investment) shall be refunded to the Contributor in the SDR equivalent of the amount to be refunded.

8. Use of resources transferred to the ESAF-HIPC Trust shall be governed by the terms and provisions of the instrument establishing such account and the terms of the contribution as agreed between the Contributor and the Managing Director under paragraph 4 of this Instrument.

Administration of the Account

9. The Account shall be administered by the Fund.

10. Assets of the Account shall be kept separate from the property and assets of all other accounts of, or administered by, the Fund. The property and assets held in such other accounts shall not be used to discharge liabilities nor to meet losses or other obligations arising out of the administration of the Account; nor shall the resources of the Account be used to discharge liabilities or to meet losses or other obligations arising out of the administration of such other accounts.

11. Subject to the provisions of this Instrument, the Fund, in administering the Account, shall apply *mutatis mutandis* the same rules and procedures as apply to the operation of the General Resources Account of the Fund.

12. No charge shall be levied for the services rendered by the Fund in the administration, operation, and termination of this Account.

Accounts, Audit and Reports

13. The Account shall be denominated in SDRs.

14. The Fund shall maintain separate financial records and prepare separate financial statements for the Account. The financial statements for the Account shall be expressed in SDRs.

15. The External Audit Committee selected under Section 20 of the Fund's By-Laws shall audit the financial statements of the Account. The audit shall relate to the financial year of the Fund.

16. The Fund shall report on the position of the Account in the Annual Report of the Executive Board to the Board of Governors and shall include in that Annual Report the report of the External Audit Committee on the Account.

Termination

17. The Account shall be terminated when all resources are either transferred to the ESAF-HIPC Trust or refunded to Contributors under paragraph 7 of this Instrument.

Amendments

18. The provisions of this Instrument may be amended only by a decision of the Fund and with the concurrence of all the Contributors.

