

June 4, 2008

SECRETARY'S CIRCULAR NO. 08/48

To: Members of the Executive Board

From: The Secretary

Subject: **Note on Procedure for Adoption of the Proposed Voice and Participation Amendment and the Proposed Investment Authority Amendment of the Articles of Agreement of the International Monetary Fund**

Attached for the information of Executive Directors is a note, prepared by the Legal Department, on the Procedure for Adoption of the Proposed Voice and Participation Amendment and the Proposed Investment Authority Amendment of the Articles of Agreement. This note has been transmitted to members for their information, under cover of a letter from the Secretary.

Questions may be referred to Mr. Eastman (ext. 36884) and Mr. Bergthaler (ext. 34287) in LEG.

Other Distribution:
Department Heads

INTERNATIONAL MONETARY FUND

Note on Procedure for Adoption of the Proposed Voice and Participation Amendment and the Proposed Investment Authority Amendment of the Articles of Agreement of the International Monetary Fund

This Note describes the procedure for the adoption of (a) the proposed Amendment of the Articles of Agreement of the International Monetary Fund to Enhance Voice and Participation in the International Monetary Fund (the “Proposed Voice and Participation Amendment”), and (b) the proposed Amendment of the Articles of Agreement of the International Monetary Fund to Expand the Investment Authority of the International Monetary Fund (the “Proposed Investment Authority Amendment”). These proposed amendments are also referred to jointly as the “Proposed Amendments” or each individually as the “Proposed Amendment.”

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; and, second, the proposed amendment must be accepted by three-fifths of the Fund’s members, having eighty-five percent of the total voting power.^{1, 2} When the second stage is completed, the Fund certifies this fact by a formal communication addressed to all members, and the amendment enters into force for all members, regardless of whether or not they have accepted the proposed amendment, three months after the date of this certification, unless a shorter period was specified in the communication from the Fund asking members whether they accept the proposed amendment.

2. It should be emphasized that the Proposed Voice and Participation Amendment and the Proposed Investment Authority Amendment are independent of each other. Accordingly, acceptance of one amendment by a member does not require acceptance of the other, and the entry into force of one does not require the entry into force of the other. However, the Fund understands that members, in their discretion, may decide to consider these two amendments together. Members may also, if they wish, communicate to the Fund at the same time their acceptance of these two amendments.

¹ A limited number of amendments require acceptance by all members. See Article XXVIII(b).

² It is noted in this regard that, under Article XXVI, Section 2(b) and Schedule L of the Articles, members whose voting rights have been suspended may not participate in the adoption of a proposed amendment of the Articles of Agreement or be counted in the total number of members for that purpose (except in the case of an amendment requiring acceptance by all members under Article XXVIII(b), or pertaining exclusively to the Special Drawing Rights Department). Also, their votes are not included in the calculation of the total voting power (except for purposes of the acceptance of a proposed amendment pertaining exclusively to the Special Drawing Rights Department).

3. For each Proposed Amendment, the first stage of the amendment process has been completed. The Board of Governors adopted Resolution No. 63-2 for the Proposed Voice and Participation Amendment on April 28, 2008, and Resolution No. 63-3 for the Proposed Investment Authority Amendment on May 5, 2008. The second stage was initiated on May 2, 2008 for the Proposed Voice and Participation Amendment, and on May 12, 2008 for the Proposed Investment Authority Amendment, by letters of the Secretary of the Fund to members asking whether they accept the respective Proposed Amendment (Attachments I and II). As specified in the above-mentioned letters of the Secretary, the Board of Governors has decided for each Proposed Amendment that it will enter into force as of the date on which the Fund certifies, by a formal communication addressed to all members, that three-fifths of the members, having eighty-five percent of the total voting power, have accepted it. The Reports of the Executive Board to the Board of Governors recommending the approval of the Proposed Amendments (SM/08/83, Sup. 2, 4/2/08, and SM/08/80, Rev. 1, Sup. 1, 4/8/08) are available on the secure extranet for Executive Directors and member officials (<https://www-oed.imf.org>).³

4. When accepting either or both of the Proposed Amendments, 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 relevant Proposed Amendment(s), such as the adoption of a statute, decree or other regulation. Second, the competent person or body should accept the relevant Proposed Amendment(s). Third, the 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 a member to accept the relevant Proposed Amendment(s), each of which constitutes modifications of an international agreement. These domestic legal steps will vary according to the law and, in particular, the constitution of each member. In many countries, the acceptance of the relevant Proposed Amendment(s) will require the prior consent of the legislature or the executive, or both.

(b) Second, 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 relevant Proposed Amendment(s) by the member.

(c) Third, the acceptance should be communicated to the Fund. When the person who communicates the acceptance has the authority to accept the relevant Proposed Amendment(s), the communication may take the form of a **Declaration of Acceptance** on behalf of the member. Draft forms of the declaration of acceptance are set forth in Attachment III. Alternatively, the acceptance given by the competent person or body on

³ Member officials not having access to the Fund's secure extranet can obtain copies of the Report by contacting their Executive Director, phoning the Secretary's Department at (202) 623-6750, or emailing a request to comfront@imf.org.

behalf of the member may be notified to the Fund by a designated official. Draft forms of the **Notification of Acceptance** are set forth in Attachment IV.

5. It is for each member to ascertain the requirements that must be complied with under its national law in order to accept either or both of the Proposed Amendments. 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 acceptance 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 relevant Proposed Amendment(s) 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.

6. As noted above, the Proposed Voice and Participation Amendment and the Proposed Investment Authority Amendment will each enter into force when the Fund certifies, by a formal communication addressed to all members, that three-fifths of the members having eighty-five percent of the total voting power have accepted the relevant Proposed Amendment. Any consequential changes in domestic statutes or regulations would not, therefore, need to become effective until the date of such certification by the Fund.

Legal Department
International Monetary Fund
June 4, 2008

Attachments (4)



INTERNATIONAL MONETARY FUND
WASHINGTON, D. C. 20431

CABLE ADDRESS
INTERFUND

May 2, 2008

Dear Member:

I have the honor to inform Fund members that the Board of Governors has approved the Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Enhance Voice and Participation in the International Monetary Fund (the "Proposed Voice and Participation Amendment") by adopting, effective April 28, 2008, the Resolution set forth in Part IV of the report of the Executive Board to the Board of Governors contained in my communication to Fund Governors dated March 28, 2008. The Resolution adopted will be cited as "Resolution No. 63-2."

Pursuant to Article XXVIII of the Articles of Agreement of the Fund and Resolution No. 63-2, I have been directed to ask whether, as a Fund member, your government accepts the Proposed Voice and Participation Amendment. (The Proposed Voice and Participation Amendment is set forth in the attachment to this letter.)

In accordance with Article XXVIII and the terms of Resolution No. 63-2, the Proposed Voice and Participation Amendment will enter into force for all members as of the date on which the Fund certifies by a formal communication addressed to all members that three-fifths of the members, having eighty-five percent of the total voting power, have accepted the Proposed Voice and Participation Amendment.

Very truly yours,

A handwritten signature in black ink, appearing to read "S. Anjaria", with a horizontal line underneath.

Shailendra J. Anjaria
Secretary

Attachment

PROPOSED AMENDMENT OF THE ARTICLES OF AGREEMENT OF THE INTERNATIONAL MONETARY FUND TO ENHANCE VOICE AND PARTICIPATION IN THE INTERNATIONAL MONETARY FUND

The Governments on whose behalf the present Agreement is signed agree as follows:

1. The text of Article XII, Section 3(e) shall be amended to read as follows:

“(e) Each Executive Director shall appoint an Alternate with full power to act for him when he is not present, provided that the Board of Governors may adopt rules enabling an Executive Director elected by more than a specified number of members to appoint two Alternates. Such rules, if adopted, may only be modified in the context of the regular election of Executive Directors and shall require an Executive Director appointing two Alternates to designate: (i) the Alternate who shall act for the Executive Director when he is not present and both Alternates are present and (ii) the Alternate who shall exercise the powers of the Executive Director under (f) below. When the Executive Directors appointing them are present, Alternates may participate in meetings but may not vote.”

2. The text of Article XII, Section 5(a) shall be amended to read as follows:

“(a) The total votes of each member shall be equal to the sum of its basic votes and its quota-based votes.

(i) The basic votes of each member shall be the number of votes that results from the equal distribution among all the members of 5.502 percent of the aggregate sum of the total voting power of all the members, provided that there shall be no fractional basic votes.

(ii) The quota-based votes of each member shall be the number of votes that results from the allocation of one vote for each part of its quota equivalent to one hundred thousand special drawing rights.”

3. The text of paragraph 2 of Schedule L shall be amended to read as follows:

“2 The number of votes allotted to the member shall not be cast in any organ of the Fund. They shall not be included in the calculation of the total voting power, except for purposes of: (a) the acceptance of a proposed amendment pertaining exclusively to the Special Drawing Rights Department and (b) the calculation of basic votes pursuant to Article XII, Section 5(a)(i).”



INTERNATIONAL MONETARY FUND
WASHINGTON, D. C. 20431

CABLE ADDRESS
INTERFUND

May 12, 2008

Dear Member:

I have the honor to inform Fund members that the Board of Governors has approved the Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Expand the Investment Authority of the International Monetary Fund (the "Proposed Investment Authority Amendment") by adopting, effective May 5, 2008, the Resolution set forth in Part IV of the report of the Executive Board to the Board of Governors contained in my communication to Fund Governors dated April 7, 2008. The Resolution adopted will be cited as "Resolution No. 63-3."

Pursuant to Article XXVIII of the Articles of Agreement of the Fund and Resolution No. 63-3, I have been directed to ask whether, as a Fund member, your government accepts the Proposed Investment Authority Amendment. (The Proposed Investment Authority Amendment is set forth in the attachment to this letter.)

In accordance with Article XXVIII and the terms of Resolution No. 63-3, the Proposed Investment Authority Amendment will enter into force for all members as of the date on which the Fund certifies by a formal communication addressed to all members that three-fifths of the members, having eighty-five percent of the total voting power, have accepted the Proposed Investment Authority Amendment.

Separately, I would note that, on May 2, 2008, I informed Fund members that the Fund's Board of Governors had approved the Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Enhance Voice and Participation in the International Monetary Fund (the "Proposed Voice and Participation Amendment"); I also asked members whether they accept the Proposed Voice and Participation Amendment. It should be emphasized that the Proposed Voice and Participation Amendment and the Proposed Investment Authority Amendment are legally independent of each other. Accordingly, the entry into force of one does not require the entry into force of the other. However, the Fund understands that members, in their discretion, may decide to consider these two amendments together.

Very truly yours,

A handwritten signature in black ink that reads "Shailendra J. Anjaria".

Shailendra J. Anjaria
Secretary

Attachment

**PROPOSED AMENDMENT OF THE ARTICLES OF AGREEMENT OF THE INTERNATIONAL
MONETARY FUND TO EXPAND THE INVESTMENT AUTHORITY
OF THE INTERNATIONAL MONETARY FUND**

The Governments on whose behalf the present Agreement is signed agree as follows:

1. The text of Article XII, Section 6(f)(iii) shall be amended to read as follows:

“(iii) The Fund may use a member’s currency held in the Investment Account for investment as it may determine, in accordance with rules and regulations adopted by the Fund by a seventy percent majority of the total voting power. The rules and regulations adopted pursuant to this provision shall be consistent with (vii), (viii), and (ix) below.”

2. The text of Article XII, Section 6(f)(vi) shall be amended to read as follows:

“(vi) The Investment Account shall be terminated in the event of liquidation of the Fund and may be terminated, or the amount of the investment may be reduced, prior to liquidation of the Fund by a seventy percent majority of the total voting power.”

3. The text of Article V, Section 12(h) shall be amended to read as follows:

“(h) Pending uses specified under (f) above, the Fund may use a member’s currency held in the Special Disbursement Account for investment as it may determine, in accordance with rules and regulations adopted by the Fund by a seventy percent majority of the total voting power. The income of investment and interest received under (f)(ii) above shall be placed in the Special Disbursement Account.”

4. A new Article V, Section 12(k) shall be added to the Articles to read as follows:

“(k) Whenever under (c) above the Fund sells gold acquired by it after the date of the second amendment of this Agreement, an amount of the proceeds equivalent to the acquisition price of the gold shall be placed in the General Resources Account, and any excess shall be placed in the Investment Account for use pursuant to the provisions of Article XII, Section 6(f). If any gold acquired by the Fund after the date of the second amendment of this Agreement is sold after April 7, 2008 but prior to the date of entry into force of this provision, then, upon the entry into force of this provision, and notwithstanding the limit set forth in Article XII, Section 6(f)(ii), the Fund shall transfer to the Investment Account from the General Resources Account an amount equal to the proceeds of such sale less (i) the acquisition price of the gold sold, and (ii) any amount of such proceeds in excess of

the acquisition price that may have already been transferred to the Investment Account prior to the date of entry into force of this provision.”

Declaration of Acceptance⁴
(To be addressed to the Secretary of the Fund)

Declaration of Acceptance of Proposed Voice and Participation Amendment

1. I have the honor to inform you that [member] hereby accepts the proposed Amendment of the Articles of Agreement of the International Monetary Fund to Enhance Voice and Participation in the International Monetary Fund.

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

Declaration of Acceptance of Proposed Investment Authority Amendment

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

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

Declaration of Acceptance of Both Proposed Amendments

1. I have the honor to inform you that [member] hereby accepts (i) the proposed Amendment of the Articles of Agreement of the International Monetary Fund to Enhance Voice and Participation in the International Monetary Fund, and (ii) the proposed Amendment of the Articles of the International Monetary Fund to Expand the Investment Authority of the International Monetary Fund.

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

⁴ On the use of these forms and inclusion or omission of paragraph 2, see Note above, paragraphs 4(c) and 5.

Notification of Acceptance⁵
(To be addressed to the Secretary of the Fund)

Notification of Acceptance of Proposed Voice and Participation Amendment

1. I have the honor to inform you that [member] has accepted the proposed Amendment of the Articles of Agreement of the International Monetary Fund to Enhance Voice and Participation in the International Monetary Fund.

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

Notification of Acceptance of Proposed Investment Authority Amendment

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

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

Notification of Acceptance of Both Proposed Amendments

1. I have the honor to inform you that [member] has accepted (i) the proposed Amendment of the Articles of Agreement of the International Monetary Fund to Enhance Voice and Participation in the International Monetary Fund, and (ii) the proposed Amendment of the Articles of the International Monetary Fund to Expand the Investment Authority of the International Monetary Fund.

[2. A copy of the text[s] of the acceptance[s] [and of the statute/decreet/regulation pursuant to which this [these] acceptance[s] was [were] given] is attached.]

⁵ On the use of these forms and the inclusion or omission of either paragraph 2 or the text between square brackets within paragraph 2, see Note above, paragraphs 4(c) and 5.