

**IMMEDIATE  
ATTENTION**

EBAP/08/171

December 10, 2008

To: Members of the Executive Board

From: The Secretary

Subject: **Amendments to the Supplemental Retirement Benefits Plan to Comply with U. S. Tax Regulations Effective January 1, 2009**

Attached for consideration by Executive Directors is a memorandum from the Acting Chairman of the Pension Committee proposing amendments to the Supplemental Retirement Benefits Plan to comply with U.S. tax regulations that will take effect on January 1, 2009. The proposed amendments were endorsed by the Pension Committee at its meeting on December 5, 2008 (see RP/CP/08/14, 11/25/08). Minor editorial corrections were subsequently incorporated (RP/CP/08/14, Cor. 1, 12/10/08), and the amended paper is now being circulated to the Executive Board for consideration on a lapse of time basis. It is not intended to publish this paper on the Fund's external website.

The proposed amendments appear on pages 11 to 18. It is not proposed to bring this matter to the agenda of the Executive Board for discussion unless an Executive Director so requests by **the close of business on Thursday, December 18, 2008**. In the absence of such a request, the proposed amendments will be deemed approved by the Executive Board.

Questions may be referred to Ms. Brookbank (ext. 36764) and Ms. Marzouk (ext. 39522 ) in HRD.

This document will shortly be posted on the extranet, a secure website for Executive Directors and member country authorities.

Att: (1)

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Members of the Investment Committee  
Members of the Administration Committee  
Department Heads





# *Office Memorandum*

To: Members of the Executive Board

December 10, 2008

From: Murilo Portugal, Acting Chairman of the Pension Committee

Subject: **Amendments to the Supplemental Retirement Benefits Plan to Comply with U. S. Tax Regulations Effective January 1, 2009**

At its meeting on December 5, 2008, the Pension Committee endorsed amendments to the Supplemental Retirement Benefits Plan (SRBP) to comply with U.S. tax regulations that take effect January 1, 2009 (see RP/CP/08/14, 11/25/08). Minor editorial corrections were subsequently incorporated (RP/CP/08/14, Cor. 1, 12/10/08), and the Pension Committee is now forwarding the proposed amendments for Executive Board approval on a lapse of time basis. Aside from the implementation costs, the proposed changes have no financial implications for the Fund.

The proposed changes to the SRBP impact U.S. participants with gross pensionable compensation or annual pension benefits in excess of the limits established by the IRS for “qualified plans,” such as the Staff Retirement Plan. These participants will be subject to more restrictions on how their SRBP benefits can be paid (in some cases, eliminating an option to commute) and when their SRBP benefits may commence (with limited options to defer their pensions). However, the proposed changes have been designed to minimize as much as possible the impact on SRBP participants.

Attachment

cc: Members of the Pension Committee



INTERNATIONAL MONETARY FUND

**Amendments to the Supplemental Retirement Benefits Plan to Comply with  
U.S. Tax Regulations Effective January 1, 2009**

Prepared by the Human Resources Department

In consultation with the Legal Department and the Finance Department

Approved by Markus Rodlauer

December 10, 2008

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## EXECUTIVE SUMMARY

The IMF sponsors two defined benefit pension plans: the Staff Retirement Plan (SRP) and the Supplemental Retirement Benefits Plan (SRBP). The SRP is a U.S. “qualified” defined benefit pension plan, meaning that it complies with certain provisions of the U.S. Internal Revenue Code (IRC) in order to allow the deferral of income tax on U.S. taxpayers’ pension benefits until those benefits are paid. However, the IRC imposes limitations on the benefits payable from qualified plans, such as the SRP, and the compensation that may be recognized for determining Plan contributions and benefits.<sup>1</sup>

The Executive Board established the SRBP in 1985 to receive pension contributions and pay pension benefits that exceed the pay and benefit limits imposed on U.S. qualified pension plans. As a “nonqualified” plan, the SRBP is not subject to the same limitations as the SRP.

Due to regulations issued under IRC Section 409A, the portion of U.S. participants’ benefits under the SRBP accruing after 2004 (the “post-2004 benefits”) will be subject to new restrictions on when and how payments may be made, beginning January 1, 2009. The new restrictions will require an amendment to the SRBP, and communications with participants, before the end of this year. In the absence of an amendment, all participants who are subject to U.S. income tax on their Fund compensation would be liable for a 20 percent additional tax on their post-2004 benefits from the SRBP. With the proposed amendment, U.S. SRBP participants would be offered an *initial election*, until December 29, 2008, to choose the timing and/or form of their future payments of post-2004 SRBP benefits. After 2008, U.S. participants in the SRBP will be permitted to make a *subsequent election* to change the timing and/or form of their post-2004 SRBP benefit payments only if they complete a “409A election form” at least 12 months prior to their retirement date (or the date their benefit payment(s) would otherwise begin).

This paper seeks the Pension Committee’s approval and recommendation to the Executive Board for adoption of amendments to the SRBP to comply with the regulations issued under IRC Section 409A. These amendments have no financial implications for the Fund.<sup>2</sup> Currently, any benefit provided from the SRBP is payable in the same form (annuity, lump sum, or combination of lump sum and annuity) and at the same time (deferred or immediate commencement) as the SRP benefit. This has allowed for a relatively simple process as participants make one set of pension elections that applies to benefits payable from the SRP and the SRBP.

As a result of the Section 409A regulations, U.S. participants will need to make separate elections with respect to the post-2004 benefits under the SRBP, and their choices will be significantly limited.

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<sup>1</sup> For 2008, the annual pension benefit limit is \$185,000 (payable at age 62) and the compensation limit is \$230,000 (gross remuneration). The 2009 limits will be \$195,000 and \$245,000, respectively.

<sup>2</sup> There will be IT implementation costs, however, due to the need to modify FIN’s pension and tax systems.

There would be no impact on the following participants and/or benefits:

- non-U.S. participants;
- benefits payable from the SRP;
- benefits accrued and vested prior to January 1, 2005; and
- mandatory withdrawal benefits payable from the SRBP to those who are not eligible for a deferred pension (under age 55 with fewer than 3 years of service).

In order to comply with the regulations, it is necessary to modify the SRBP to sever the current linkages:

- between U.S. participants' SRBP payments and their elections under the SRP; and
- for U.S. participants who receive an SBF package on or after January 1, 2009, between the commencement of SRBP payments and the timing of payments from the Separation Benefits Fund (SBF).<sup>3</sup>

The recommended modifications to the SRBP for U.S. participants are as follows:

- offer an initial election opportunity in December 2008, to select the form of payment (full annuity, or up to one-third commuted lump sum) and the timing of payment after separation, with respect to post-2004 benefits under the SRBP;
- allow for the initial election to be changed by a subsequent election(s), provided that the final election is made at least 12 months before benefit payments would otherwise commence (maximum flexibility permitted under the IRC regulations). A subsequent election, however, would trigger a five-year delay in the payment of the benefit, in order to comply with the regulations;
- grandfather vested SRBP benefits as of December 31, 2004, allowing these amounts to be paid according to the elections made for the SRP (maximum flexibility permitted under the regulations);
- unless a timely election is made by a participant who is eligible for an immediate annuity upon separation, the SRBP would commence payment of the post-2004 SRBP benefits as an immediate annuity with no commutation.<sup>4</sup> These are the most common elections made by U.S. nationals eligible for an immediate pension. A timely election would need to be made at least 12 months prior to separation; the election would

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<sup>3</sup> Volunteers under the downsizing would not be impacted by this change to the link between SBF and the commencement of SRBP payments. However, they would be impacted by the other modifications de-linking the elections under the SRBP and the SRP.

<sup>4</sup> Payments would begin after separation leave ends, for those with an SBF letter dated before January 1, 2009 (including volunteers under the downsizing), consistent with the current rules.

allow the participant to defer the annuity and receive up to one-third as a commuted lump sum payment. However, there would be a minimum five-year delay in the benefit commencement date, if an election for commutation or a deferred pension is made;

- Unless a timely election is made by a participant who is not yet eligible for an immediate annuity, but eligible for a choice between a lump sum withdrawal benefit and a deferred pension, the SRBP would pay the larger of the lump sum values (i.e., lump sum withdrawal benefit or 100 percent commutation of the deferred pension), one year after separation from service. The recommendation to pay the benefit—on the default option—as a lump sum is because participants may currently elect the withdrawal benefit, which is only payable as a lump sum. By setting the default option as paying the benefit one year after separation from service, the participant could still make an election upon separation for an annuity or a later benefit commencement date (given the Section 409A requirement that an election be made at least 12 months prior to commencement of payment). There would be a minimum five-year delay in the benefit commencement date, if an election is made for an annuity and/or deferral of payment;
- For those who receive an SBF package after December 31, 2008, the post-2004 SRBP payments would commence at the later of the date when the participant first becomes eligible for a pension, or 22½ months after the last day of active duty.<sup>5</sup> The form of payment would be an annuity, if eligible for an immediate annuity, or otherwise a lump sum.

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<sup>5</sup> This provision would not apply to volunteers under the downsizing, or other participants who receive an SBF package prior to January 1, 2009. The 22½-month delay in payments from the SRBP is related to the maximum period of separation leave available under the current SBF policy. For the purpose of this paper, “receive an SBF package” refers to the date when the participant signs the customary letter informing him/her of the terms of the SBF package.

## I. INTRODUCTION

1. While the SRBP provides for retirement benefits, there are other types of nonqualified deferred compensation plans that serve merely to defer taxation. Section 409A of the IRC was enacted in 2004 in response to perceived abuses among the latter group of plans. However, the law introduced sweeping new restrictions that apply to all nonqualified deferred compensation, including the SRBP benefits payable to U.S. participants. Pursuant to regulations under Section 409A, which become effective on January 1, 2009, participants who are subject to U.S. income tax on their Fund compensation would be liable for a 20 percent additional tax on the benefits they accrue under the SRBP (and on all SRBP benefits they accrued in prior tax years, plus interest) unless the current arrangements for the SRBP are changed to comply with the new restrictions.

2. The specific modifications to the SRBP that are prompted by Section 409A relate to the form and timing of payments from the SRBP. In particular, in order for the SRBP to comply with Section 409A with respect to U.S. participants, and thus avoid triggering the additional tax for such participants, it is necessary that the SRBP benefits be modified to eliminate the participant's discretion on form and timing of payment, subject to a narrow exception.<sup>6</sup> This requires two changes to the SRBP: first, it is necessary to sever the current linkage between U.S. participants' SRBP payments and their elections under the SRP as to the form (annuity or lump sum) and timing (deferral or immediate commencement) of payment. Second, for U.S. participants who receive an SBF package, it is necessary to sever the current linkage between the commencement of their SRBP payments and their severance payment elections.<sup>7</sup> Elections and payments from the SRP would be unaffected by these changes.

3. Both the World Bank and the Inter-American Development Bank have supplemental pension plans similar to the SRBP. Both organizations are amending their plans to conform to Section 409A.

## II. BACKGROUND

4. Currently, any benefit provided under the SRBP is payable in accordance with the terms and conditions that are applicable to the corresponding benefit in the SRP, including all SRP elections as to the form (annuity or lump sum) and timing (deferral or immediate

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<sup>6</sup> The only exception to this restriction allows participants to elect to delay receipt of an SRBP pension for not less than five years, but this election must be made at least twelve months prior to the first scheduled benefit payment.

<sup>7</sup> The SBF policy allows staff to choose to take their severance payment as separation leave or as a lump sum (or as a combination of separation leave and a lump sum). Separating staff continue to participate in the pension plans while SBF payments are being made, and may commence their pension benefits after all of their SBF payments have been completed. The new regulations require that the payments from the SRBP be independent of participants' elections to take SBF as a lump sum or as separation leave.

commencement) of payments. For example, if a participant upon retirement elects under the SRP to defer receipt of the pension, or to commute a portion of the pension to a lump sum, the same election applies to the participant's benefit under the SRBP.

5. The contributions by the Fund and participants that exceed the IRC limits for the SRP are held in two trust accounts to fund the benefits payable under the SRBP. For participants who are subject to U.S. income tax on their Fund compensation, those contributions are held in a revocable trust for U.S. tax reasons, whereas for other participants, the contributions are held in an irrevocable trust.

### **Application of the new rules to the SRBP**

6. Provided the SRBP is amended to comply, Section 409A allows for benefits that have vested in U.S. participants by December 31, 2004 to be grandfathered under the old rules, with the new restrictions applying solely to SRBP benefits accruing or vesting after that date.<sup>8</sup> Thus, as U.S. participants in the SRBP separate from the Fund, their SRBP benefits will have two components—the pre-2005 component and the post-2004 component—and only the post-2004 component will be subject to the new rules on the timing and form of payment.

7. In order to comply with Section 409A, it is recommended that the SRBP be amended to provide that post-2004 SRBP benefits for U.S. participants be paid in accordance with one of five methods, specified in paragraph 8 below. In addition, because these methods will restrict the flexibility for current participants in the SRBP who are U.S. nationals, it is recommended that U.S. participants be offered the opportunity, before the amendment becomes effective January 1, 2009, to make an initial election regarding the form of payment (full annuity, or up to one-third commuted lump sum) and the timing of payment after separation (commencing at earliest eligibility for SRP payments, or deferred) with respect to post-2004 benefits under the SRBP. For U.S. participants who choose to make an initial election, their choices will be reflected in Annex II; those elections may be modified by a subsequent election complying with the procedure specified in paragraph 8(iv) below. If no election is made prior to December 29, 2008, staff retiring during 2009 will have to receive their SRBP benefit as an immediate annuity or, if they elect commutation or a deferral of their benefit, they would be subject to the 20 percent penalty tax under the regulations.

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<sup>8</sup> The benefits that are subject to the new rules include both the normally accrued SRBP benefits and benefits arising from the purchase of SRP service credits that have been or will be incorporated in the SRBP. However, the benefits attributable to the purchase of SRP service credits that were paid in full by December 31, 2004 are considered vested and not subject to the new rules.

8. Under the proposed amendment, there are five methods for payment of post-2004 SRBP benefits, as applicable:<sup>9</sup>

(i) **U.S. participants who separate after December 31, 2008, and are eligible under the SRP for an immediate pension.**<sup>10</sup> For this group, post-2004 SRBP benefits will be paid in all cases as a monthly pension commencing in the month following separation, unless the participant has made the election specified in subparagraph (iv).<sup>11</sup> These SRBP benefits will be so paid without regard to participants' elections either to defer receipt of their SRP pension or to commute a portion of their SRP pension to a lump sum payment;<sup>12</sup>

(ii) **U.S. participants who separated prior to December 31, 2008, but whose pension commences after December 31, 2008.** The post-2004 SRBP benefits for these separated participants will be paid as a monthly pension commencing as of their earliest eligibility for retirement, unless the separated participant has made the election specified in subparagraph (iv);

(iii) **U.S. participants who separate after December 31, 2008, and are *not* eligible under the SRP for an immediate pension, but who are eligible for a deferred pension.** For this group, the value of the post-2004 SRBP benefits will be paid as a lump sum, unless the participant has made the election specified in subparagraph (iv). The amount of the lump sum payment will be the larger of (a) the withdrawal benefit under Section 4.5 of the SRP or (b) the amount determined using actuarial factors consistent with those provided in the SRP for the commutation of pension payments (Schedule D, paragraph 4 of the SRP).<sup>13</sup>

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<sup>9</sup> These new rules will not apply to mandatory withdrawal benefits under the SRBP, which will be paid at the same time as the corresponding mandatory withdrawal benefits under the SRP, as permitted by Section 409A. However, for eligible U.S. participants who elect a withdrawal benefit under the SRP, the amount of their SRBP benefit would be based on their SRP withdrawal benefit, while the form and timing of their SRBP benefit would be determined according to the five methods specified in this paper.

<sup>10</sup> This includes staff on separation leave (under the SBF policy).

<sup>11</sup> This rule would apply to U.S. participants who are eligible for an immediate pension at age 50 under the Rule of Age 50, and to U.S. participants who are eligible for an immediate pension between ages 50 and 61 under the Rule of 75 and the Rule of 85, whether or not such participants elect to defer the commencement of their SRP pension and without regard to any SBF elections of separation leave.

<sup>12</sup> Although an election for a commuted lump sum under the SRP will not be given effect in a participant's post-2004 portion of the SRBP benefit, the U.S. tax regulations do permit changes between different types of actuarially equivalent annuity options, making it possible to give effect, in the payment of SRBP benefits, to a U.S. participant's election of a reduced pension, with an increased pension to survivor, in accordance with Section 4.6 of the SRP.

<sup>13</sup> The Actuary will provide a table of actuarial factors (consistent with those in Schedule D, paragraph 4 of the Plan) to convert deferred pension benefits to lump sum values.

The lump sum will be paid one year after separation, in order to facilitate the elections as described in subparagraph (iv);

(iv) **All U.S. participants whose pensions commence after December 31, 2008.** There will be a limited election available to these participants to modify the form and timing of payment of their post-2004 SRBP benefits. In accordance with current rules, and provided they do not elect a withdrawal benefit under the SRP, U.S. participants will be allowed to elect to defer the commencement of payment. In addition, U.S. participants to whom subparagraph (i) or (ii) applies will be allowed to elect to receive up to one-third of their post-2004 SRBP benefits as a commuted lump sum. Also, U.S. participants to whom subparagraph (iii) applies will be allowed to elect all or a portion of their post-2004 SRBP benefits as a deferred monthly pension instead of the lump sum payment. However, in accordance with the limitations under Section 409A of the IRC, these options must be elected at least 12 months prior to the date that payment under subparagraphs (i), (ii) or (iii) would commence in the absence of any election; an election made by the required date is irrevocable. In addition, the pension must not commence earlier than five years from the date of payment under subparagraphs (i), i.e., five years after separation, (ii), i.e., five years after earliest retirement eligibility date, or (iii), i.e., six years after separation. An explanation of these rules, and the opportunity to make this election using the “409A election form,” will be given to U.S. participants in the SRBP and to new U.S. participants going forward;

(v) **U.S. participants who receive an SBF package after December 31, 2008.** The post-2004 SRBP benefits for these participants will be paid as a lump sum or an annuity as determined under (i), (iii), and (iv) above. However, the payment will be deferred until the later of (a) the participant has reached the earliest eligibility for commencement of a pension under the SRP, or (b) 22½ months have elapsed after the participant’s last day of active duty.<sup>14</sup> This deferral of the payment of the post-2004 component of SRBP benefits is necessary to sever the link with the participant’s election between an SBF lump sum payment and separation leave. Instead, payment of the post-2004 SRBP should be linked to another date that is outside the discretion of the participant or the Fund to determine. Alternative (a) would normally be age 55 for participants who receive an SBF package, or possibly as early as age 50 if the participant is eligible under the Rule of 75. Alternative (b) refers to the latest possible date after which a participant would no longer be on the Fund payroll, taking into account maximum separation leave.<sup>15</sup> This will avoid a situation of participants receiving their post-2004 SRBP benefits before they have formally separated from the Fund.

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<sup>14</sup> This rule would not apply to U.S. participants who have signed an SBF letter with the Fund before January 1, 2009.

<sup>15</sup> In the event the maximum period of separation leave were changed in the future, then the SRBP could be amended to align Alternative (b) with the new SBF policy, without violating Section 409A, provided the change does not apply to U.S. participants who had received an SBF package at the time of such amendment.

### **New funding rules under Section 409A**

9. In addition to the above rules concerning the form and timing of payments, Section 409A also bars the use of “offshore trusts” as a funding vehicle for nonqualified deferred compensation plans such as the SRBP. The meaning of the term “offshore trust” is not entirely clear, but outside tax counsel has advised that, based on the purposes of that prohibition in Section 409A, the revocable trust which the Fund has established for U.S. participants in the SRBP should be deemed compliant. This opinion also was conveyed to the U.S. Treasury Department as formal comments on proposed regulations under Section 409A. However, the new tax regulations do not address this subject, leaving open the possibility that in the future the Fund may need to change its approach to funding the SRBP for U.S. participants.

10. If the IRS should later determine that the SRBP constitutes an “offshore trust” prohibited under Section 409A, it is recommended that management be authorized to establish a separate Fund account that is not a trust to receive and hold the assets currently held in the revocable SRBP trust for U.S. participants. Such an account would also receive and hold all future contributions by participants and the Fund that otherwise would have been paid into the revocable SRBP trust. In the event that such a non-trust account would also be deemed by the IRS to not satisfy Section 409A, then assets and future contributions would be held in the General Resources Account, as was done temporarily after Section 409A was enacted and there was uncertainty about the “offshore trust” requirement. These assets would be held subject to the same terms and conditions as the present revocable trust for U.S. participants, except that they would not be held as a trust.

### **Financial implications**

11. The SRBP amendments would restrict the timing and form of payments to U.S. participants, but would not alter the benefit amounts, other than to pay the larger of a withdrawal benefit or a lump sum equivalent of a deferred pension to those participants described in subparagraph (iii) of paragraph 8. According to the Actuary for the pension plans (see attached letter from Buck Consultants), the present value of benefits for participants who are assumed to take a deferred pension includes the value of assumed future cost-of-living increases. Since the proposed lump sum payments to these U.S. participants would not include the value of future cost-of-living increases, the Plan costs would overstate the actual benefits to be paid out as either a withdrawal benefit or deferred pension lump sum. Therefore, no increase in plan costs is anticipated from the proposed amendments.<sup>16</sup>

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<sup>16</sup> There would be IT implementation costs, however, due to the need to modify FIN’s pension and tax systems.

### **III. CONCLUSION AND RECOMMENDATION**

12. The SRP Administration Committee has reviewed this paper and recommends the approval of the proposals set out in paragraphs 7, 8, and 10 above, and the adoption of the amendments to the SRBP set out in Annexes I and II. The proposed changes would become effective on January 1, 2009.

## ATTACHMENT I: LETTER FROM BUCK CONSULTANTS



November 19, 2008

Ms. Deborah Marzouk  
Senior Human Resources Officer  
Human Resources Department  
International Monetary Fund  
700 19th Street, NW  
MSC HQ2.12.010  
Washington, D.C. 20431

**RE: Financial Implications of Compliance with Section 409A of the Internal Revenue Code**

Dear Debbi:

As discussed, we have reviewed the amendments to the Supplemental Retirement Benefits Plan (SRBP) to determine if there are any additional costs that result from the change in payment amounts for certain participants. In particular, the features that we have examined relate to U.S. participants who separate after December 31, 2008, are not eligible for an immediate pension under the Staff Retirement Plan (SRP), but are eligible for a deferred pension. Those participants will be entitled to a lump sum payment based on a post-2004 SRBP value equal to the larger of the withdrawal benefit under the SRP or the lump sum value of the deferred benefit based on the SRP's commutation factors.

Currently, a participant has the option of taking the deferred pension, which includes the value of assumed future cost-of-living increases, or the withdrawal benefit. Under the amendment, if the commuted value of the deferred pension is greater than the withdrawal benefit, there is actually a decrease in SRBP cost as the commuted value does not include an assumed cost-of-living assumption and is therefore less valuable than the cost determined in the valuation of the SRBP. If the withdrawal benefit is the greater benefit, there is no additional cost as the participant already had the right to elect to take the withdrawal benefit under current rules. As a result, we have determined that there is no additional cost to the SRBP to provide this feature to comply with Section 409A.

Additionally, we also believe that there will be no cost impact to the SRBP due to the change in timing or form of payment for those U.S. participants who separate after December 31, 2008 and are entitled to an immediate pension from the SRP.

If you have any questions on this information, please let me know.

Sincerely yours,

A handwritten signature in black ink that reads "David C. Nearpass". The signature is written in a cursive, flowing style.

David C. Nearpass, FSA  
Principal and Consulting Actuary

DCN/c

**ANNEX I: PROPOSED SRBP AMENDMENTS SHOWING ADDITIONS**

This Annex shows the proposed amendments to the text of the SRBP, with the additions shown as underlined. There are no proposed deletions.

**Supplemental Retirement Benefit Plan**  
as amended effective January 1, 2009

1. **Purpose.** This Supplemental Retirement Benefit Plan (hereinafter called “the Supplemental Plan”) has been established by the International Monetary Fund (hereinafter called “the Employer”) for the purpose of providing supplemental benefits to participants in the Staff Retirement Plan (hereinafter called “the Staff Retirement Plan”) who are affected by such plan’s limitations on maximum benefits in Section 4.12, limitations on remuneration taken into account in the last sentences of Section 1.1(p)-(r), and/or limitations on the purchase of service credit in Section 3.2(d). Notwithstanding anything herein to the contrary, the Staff Retirement Plan and the Supplemental Plan together shall not provide benefits to participants in excess of the amounts to which participants would otherwise have been entitled under the provisions of the Staff Retirement Plan absent the foregoing limitations.
2. **Application of Staff Retirement Plan Provisions.** Except as clearly irrelevant or as otherwise expressly provided to the contrary herein, all provisions of the Staff Retirement Plan, as amended from time to time, apply to the fullest extent possible to the Supplemental Plan.
3. **Participation.** Any participant in the Staff Retirement Plan whose remuneration taken into account under such plan is limited by the last sentences of Section 1.1(p)–(r), whose benefit under such plan is limited by Section 4.12, or whose election to purchase service credit under such plan is limited by Section 3.2(d) shall become a participant under the Supplemental Plan.
4. **Employee contributions.** A participant whose remuneration is limited by the last sentences of Section 1.1(p)–(r) shall pay to the Supplemental Plan required employee contributions attributable to remuneration taken into account under the Supplemental Plan. A participant who elects to purchase service credit otherwise limited by Section 3.2(d) of the Staff Retirement Plan shall pay to the Supplemental Plan required employee contributions attributable to the service credit taken into account under the supplemental Plan and shall satisfy all conditions applicable to service credit purchased under Section 3.2 of the Staff Retirement Plan. The Administration Committee may establish rules of uniform application for determining the amount of required payments that are attributable to remuneration taken into account, or service credited, under the Supplemental Plan. Employee contributions paid by Irrevocable Trust Participants shall be paid to the Irrevocable Trust; employee contributions paid by Revocable Trust Participants shall be paid to the Revocable Trust.

5. **Employer Contributions.** The Employer, in its sole discretion, may at any time, or from time to time, contribute cash or other property to the Trusts to augment the principal to be held, administered and disposed of by the Trustee as provided herein. No participant or beneficiary shall have any right to compel Employer contributions. Employer contributions paid on behalf of Irrevocable Trust Participants shall be paid to the Irrevocable Trust; employer contributions paid on behalf of Revocable Trust Participants shall be paid to the Revocable Trust.

6. **Benefits.**

(a) The Supplemental Plan shall pay to participants and beneficiaries such benefits, if any, as are equal to the additional amounts which would otherwise be payable under the Staff Retirement Plan but for the limitations contained in Sections 1.1(p)-(r), 3.2(d) and 4.12 of the Staff Retirement Plan, as determined by the Administration Committee or its designee. Any benefit provided under the Supplemental Plan is otherwise payable in accordance with all terms and conditions of the Staff Retirement Plan applicable to the corresponding benefit in that plan. An election under the Staff Retirement Plan, including, without limitation, an election regarding the form and timing of distributions, shall be deemed an election under the Supplemental Plan, subject to paragraph (b).

(b) For participants who are citizens of the United States of America, the form and timing of distributions for benefits that are accrued and vested after December 31, 2004 will be subject to the following rules, to the extent necessary to comply with Section 409A of the Internal Revenue Code of the United States of America, and except as otherwise specified in Schedule 1:

(i) If upon separation a participant is eligible under the Staff Retirement Plan for an immediate pension, then Supplemental Plan benefits that accrued and vested after December 31, 2004 shall be paid as a monthly pension commencing in the month following separation, without regard to any elections the participant has made affecting the form and timing of payments under the Staff Retirement Plan, except if the participant has made the election specified in subparagraph (iv).

(ii) For a participant who separated prior to December 31, 2008 but whose pension commences after December 31, 2008, the Supplemental Plan benefits that accrued and vested after December 31, 2004 shall be paid as a monthly pension commencing as of the participant's earliest eligibility for commencement of a pension under the Staff Retirement Plan, without regard to any elections the participant has made affecting the form and timing of payments under the Staff Retirement Plan, except if the participant has made the election specified in subparagraph (iv).

(iii) If upon separation a participant is not eligible under the Staff Retirement Plan for an immediate pension, then the value of the Supplemental Plan benefits that accrued and vested after December 31, 2004 shall be paid as a lump sum, without regard to any

elections the participant has made affecting the form and timing of payments under the Staff Retirement Plan, except if the participant has made the election specified in subparagraph (iv). The amount of the lump sum payment will be the larger of (a) the withdrawal benefit under Section 4.5 of the SRP or (b) the amount determined using the same basis for the actuarial factors provided in the Staff Retirement Plan for the commutation of pension payments (Schedule D, paragraph 4 of the Plan), and will be paid in the month following the first anniversary of separation.

(iv) A participant who does not elect a withdrawal benefit from the SRP may elect by a written notice filed with the Administration Committee that payment of the Supplemental Plan benefits that accrued and vested after December 31, 2004 shall be:

(a) deferred until a date of participant's choice not less than five years from the date of payment under subparagraph (i), (ii) or (iii),

(b) paid up to one-third as a commuted lump sum and deferred until a date of participant's choice not less than five years from the date of payment under subparagraph (i) or (ii), or

(c) paid in whole or in part as a monthly pension in lieu of the lump sum specified in subparagraph (iii) and deferred until a date of participant's choice not less than five years from the date of payment under subparagraph (iii).

The election provided for in this subparagraph (iv) will be valid only if received at least twelve months prior to the date that payment otherwise would be made under subparagraphs (i), (ii) or (iii), as applicable, whereupon the election becomes irrevocable, and the election is effective twelve months after it has become irrevocable.

(v) A participant who has become entitled to SBF benefits after December 31, 2008 will have the value of the Supplemental Plan benefits that accrued and vested after December 31, 2004 paid as a monthly pension or a lump sum as determined under (i), (iii) and (iv) above, and payment will be deferred until the later of (A) the participant's earliest eligibility for commencement of a pension under the Staff Retirement Plan disregarding any elections the participant has made affecting the timing of payments under the Staff Retirement Plan, or (B) twenty two and one-half months have elapsed after the participant's last day of active duty (including any applicable job search and notice periods).

## 7. Funding

(a) The Employer has established two trusts to pay benefits under the Supplemental Plan: the Irrevocable Trust and the Revocable Trust (collectively, the “Trusts”). The Irrevocable Trust is maintained to pay benefits due to participants who have citizenship other than that of the United States of America, to receive contributions from such participants, and to receive contributions from the Employer attributable to such participants (“Irrevocable Trust Participants”). The Revocable Trust is maintained to pay benefits due to participants who are citizens of the United States of America, to receive contributions from such participants, and to receive contributions from the Employer attributable to such participants (“Revocable Trust Participants”). No participant who is a citizen of the United States of America shall have any interest in or right to any part of Irrevocable Trust, and any participant who becomes a citizen of the United States of America shall cease to have any interest in or right to any part of the Irrevocable Trust. Correspondingly, no participant who is not a citizen of the United States of America shall have any interest in or right to any part of Revocable Trust, and any participant who ceases to be a citizen of the United States of America shall cease to have any interest in or right to any part of the Revocable Trust.

(b) The Irrevocable Trust shall be irrevocable. The Employer shall have no right to divert any of the assets of the Irrevocable Trust before all benefits have been paid to Irrevocable Trust Participants and their beneficiaries pursuant to the terms of the Supplemental Plan.

(c) The Revocable Trust shall be revocable. The Employer shall have the right to terminate the Revocable Trust at any time, including prior to the satisfaction of all liabilities under the Plan with respect to its participants. In such event, all assets of the Revocable Trust shall become the property of the Employer.

(d) If the principal of the Trusts, and any earnings thereon, are not sufficient to pay benefits to participants and their beneficiaries, the Employer shall make the balance of each such payment as its falls due. The obligation of the Employer to make such payments constitutes an unsecured promise of the Employer to make such payments. Any property of the Employer that may be set aside for the payment of benefits under the Plan (other than property set aside in the Trusts) shall remain property of the Employer, and no participant in the Supplemental Plan shall have a beneficial interest in any such property.

(e) The Employer shall serve as the trustee of the Trusts. All contributions to, and all other assets, property, funds and income of, the Trusts shall be held and administered by the Employer, separately from the Employer’s other property and assets, to provide benefits attributable to participants. Except as clearly irrelevant or as otherwise expressly provided to the contrary herein, all provisions of the Staff Retirement Plan applicable to the

Retirement Fund shall apply to the Trusts, provided that the Employer shall hold, invest, and reinvest the Trusts separate and apart from the Retirement Fund.

(f) In the case of a participant who:

(i) will not be a citizen of the United States of America on the last business day of the Employer prior to his retirement; and

(ii) notifies the Secretary of the Administration Committee of his intention to retire in the United States of America not later than 30 days prior to the date of his retirement or within such shorter period as the Administration Committee shall permit:

the Employer shall pay to the Irrevocable Trust on or shortly before the aforementioned last business day an amount equal to all or a portion of the present value of the benefit payable under paragraph 6 of the Supplemental Plan, as determined by the Administration Committee, in order to prefund all or a portion of the benefit. It is intended that the portion of the benefit prefunded will be determined by the Administration Committee or its designee so that the taxable income of the participant calculated for U.S. federal income tax purposes on the combined benefits payable from the Supplemental Plan and the Staff Retirement Plan will be approximately equal to, but not more than, the income that would have been taxable if the entire benefit had been payable from the Staff Retirement Plan.

The method of approximation shall be determined by the Administration Committee or its designee so that if a difference in the taxable incomes should result, it will be no greater than \$100 per annum. For this purposes, "difference in the taxable income" means the estimated excess, if any, of (a) the amount of taxable income calculated for U.S. federal income tax purposes that would have been incurred if the amount of the benefit under the Staff Retirement Plan had been determined without regard to its Section 1.1(p)-(r), Section 3.2(d), or Section 4.12 over (b) the amount of taxable income calculated for U.S. federal income tax purposes to be incurred on the benefits payable under the Staff Retirement Plan and the Supplemental Plan. Calculations of taxable income shall be made only for the years benefits commence and will be made using the annualized pension benefits payable immediately upon retirement under the Supplemental Plan and the Staff Retirement Plan.

(g) In the case of a participant who is not a citizen of the United States of America on the last business day of the Employer prior to his retirement, who elects to retire outside the United States of America, and who applies for prefunding in accordance with procedures established by the Employer, the Employer may, in its sole discretion, prefund all or a portion of the benefit through the Irrevocable Trust. It is intended that the determination of whether to prefund will be based on whether the national tax liability attributable to payments from the Supplemental Plan and the Staff Retirement Plan will exceed the

national tax liability which would have been incurred had the benefits been paid solely from the Staff Retirement Plan. It is further intended that the amount of any prefunding will be determined by the Employer so that the national tax liability of the participant on the combined benefits payable from the Supplemental Plan and the Staff Retirement Plan will be approximately equal to such income that would have been taxable if the entire benefit had been payable from the Staff Retirement Plan.

(h) In addition to the right to terminate the Revocable Trust under subparagraph (c), the Employer shall have the right to move the assets of the Revocable Trust into a segregated non-trust account or into a commingled account of the Employer, to the extent necessary to comply with Section 409A of the Internal Revenue Code. If the Employer exercises its rights under this subparagraph, then it shall hold these assets subject to the same terms and conditions as apply to the Revocable Trust, and all references herein to the Revocable Trust shall be deemed to refer to the account in which those assets are held.

#### 8. **Administration**

(a) The Supplemental Plan shall be administered and managed in all respects as the Staff Retirement Plan, unless otherwise stated herein. References to the Pension Committee, the Administration Committee and the Investment Committee refer to those committees as they are constituted under the Staff Retirement Plan but their functions undertaken in accordance with the Supplemental Plan shall be separate and distinct from those performed under the Staff Retirement Plan.

(b) The Pension Committee shall decide all matters of a general policy nature arising under the Supplemental Plan, and all other matters, including any interpretation of the provisions of this Plan, required to be decided by it under its provisions or submitted to it by any Committee appointed by it. The Pension Committee shall have authority to make and establish such rules, policies, and procedures for the overall administration and functioning of the Supplemental Plan, and the collection, investment, management, safekeeping and disbursement of the Trusts as shall not be contrary to the provisions hereof. All such rules, policies, and procedures shall be binding upon the Employer, participants, retired participants and all other persons having any interest in this Plan or the Trusts.

(c) The Administration Committee, subject to the supervision and control of the Pension Committee, shall be responsible for the administration of the Supplemental Plan and its applications. The Administration Committee shall have the exclusive right to interpret the Supplemental Plan, to determine whether any person has a right to any benefit hereunder and, if so, the amount thereof, and to determine any question arising hereunder in connection with the administration of the Supplemental Plan or its application to any person claiming any rights or benefits hereunder, and its decision or action in respect thereof shall be conclusive and binding upon all persons interested. The Administration Committee, subject to the general authority of the Pension Committee, shall have authority

to make, establish and prescribe such rules, policies, procedures and forms for the administration of the Supplemental Plan, its interpretation, the exercise by individuals of rights and privileges hereunder, the disbursement of the Trusts and the application of the Supplemental Plan to individuals and the Employer as shall not be contrary to the provisions hereof.

(d) The Investment Committee, subject to the general control and supervision of the Pension Committee, shall determine and direct the management and investment of the Trusts. The Investment Committee may manage and invest the Trusts in a manner that differs from its management and investment of the Retirement Fund of the Staff Retirement Plan.

9. **Amendment.** Subject to the provisions hereinafter set forth, the Employer reserves the right at any time and from time to time to modify or amend in whole or in part any or all of the provisions of the Supplemental Plan and the Trusts; provided that no modification or amendment may be made which would deprive any participant or retired participant or other person receiving or entitled to receive a pension, annuity or other benefit, without his consent, of any benefits vested in him under the Supplemental Plan at that time by reason of service theretofore rendered or for which contributions have been made, and provided further than no such modification or amendment shall make it possible for any part of the funds of the Irrevocable Trust to be used for, or diverted to, purposes other than for the exclusive benefit of Irrevocable Trust Participants and their beneficiaries, prior to the satisfaction of all liabilities with respect to such participants and beneficiaries.

10. **Termination.** The Supplemental Plan may be terminated at any time by the Employer, in which event the Irrevocable Trust shall be used for the benefit of Irrevocable Trust Participants and their beneficiaries, and for no other purpose, except that such excess funds as may exist because of erroneous actuarial computation after the satisfaction of all fixed and contingent obligations of the Supplemental Plan shall be returned to the Employer.

**ANNEX II: INITIAL PAYMENT ELECTIONS FOR POST-2004 SRBP BENEFITS**

This Annex sets out the initial payment elections, with respect to post-2004 SRBP benefits, for those U.S. participants in the SRBP who have chosen to make an election in December, 2008. The elections specified below may only be modified by a valid subsequent election as described in subparagraph 6(b)(iv) of the SRBP. For U.S. participants who have not made an initial election listed below, the form and timing of payment of post-2004 SRBP benefits will be as specified in paragraph 6(b) of the SRBP.

**Schedule 1  
to the  
Supplemental Retirement Benefit Plan**

**December 2008**

**Initial Payment Elections by U.S. Participants for Post-2004 Benefits**

<b>Participant</b>	<b>Form of Payment</b>		<b>Timing of Payment</b>	
	100% Annuity	Commuted lump sum (specify up to 1/3)	Commencing upon earliest eligibility for SRP payments	Deferred until (specify date)