

DOCUMENT OF INTERNATIONAL MONETARY FUND AND NOT FOR PUBLIC USE

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September 9, 1993

To: Members of the Executive Board

From: The Secretary

Subject: Proposed Amendment of Section 14(d) of the By-Laws
(Vacancy of Executive Director's Office)

There is attached for the information of Executive Directors the text of a memorandum proposing a change in Section 14(d) of the By-Laws and incorporating a report and a draft resolution to be transmitted to the Board of Governors, as approved by the Executive Board at its meeting on the afternoon of September 8, 1993. As agreed by the Executive Board, this report and the draft resolution are being transmitted to the Governors for a vote without meeting to be completed by September 20, 1993.

Att: (1)

Other Distribution:
Department Heads

INTERNATIONAL MONETARY FUND

Proposed Amendment of Section 14(d) of the By-Laws
(Vacancy of Executive Director's Office)

Prepared by the Legal and Secretary's Departments

Approved by François Gianviti and Leo Van Houtven

September 8, 1993

Under Article XII, Section 3(b) of the Fund's Articles of Agreement "[t]he Executive Board shall consist of Executive Directors with the Managing Director as chairman." Moreover, under Article XII, Section 3(e), "[e]ach Executive Director shall appoint an Alternate with full power to act for him when he is not present."

In order to ensure the continuity of the Executive Board, Article XII, Section 3(f) provides that "Executive Directors shall continue in office until their successors are appointed or elected." However, this provision does not by itself preclude the possibility of a vacancy in the Executive Board, for instance, as a result of an Executive Director's resignation. In that case: "[w]hile the office remains vacant, the Alternate of the former Executive Director shall exercise his powers, except that of appointing an Alternate" (Article XII, Section 3(f)).

The Articles do not contemplate the case where the Executive Director's office would become vacant while there is no Alternate to exercise his powers. In that situation, a temporary remedy would be provided by Section 14(d) of the By-Laws. This provision authorizes the designation of a temporary Alternate by each Executive Director, but a temporary Alternate cannot serve for more than a total of thirty business days in the course of a year of the Executive Director's service. The practice of the Fund in the application of this provision has been rather liberal in that it has authorized the designation of several temporary Alternates, their continuation of service after the Executive Director's office had become vacant, and the designation of temporary Alternates by an Alternate during the vacancy of the Executive Director's office. However, this provision imposes a constraint which may adversely affect the operation of the Fund when the temporary remedy ends. The fact that the votes allotted to the member or members that appointed or elected the Executive Director could no longer be cast in the Executive Board would affect both the voting structure within the Fund, when calculating the majority of the votes cast, and the attainment of special majorities, which are calculated on the basis of the total voting power.

In order to avoid these consequences, it is proposed to amend Section 14(d) of the By-Laws. The amendment would require a resolution of the Board of Governors, adopted by a majority of the votes cast. The Executive Board could request the Board of Governors to vote without meeting, in which case the replies received would have to include a majority of the Governors exercising two-thirds of the total voting power (Section 13(e) of the By-Laws).

The proposed amendment would authorize a temporary Alternate to continue to serve, in the absence of both the Executive Director and the Alternate, until another Executive Director has been appointed or elected, but in any case for not more than six months. As at present, when several temporary Alternates have been appointed by an Executive Director, each one of them would be deemed to have the authority to cast the same votes that could be cast by the former Executive Director. Unless the former Executive Director had established and notified to the Executive Board an order of precedence among his temporary Alternates, their respective attributions in the operation of the Executive Board would have to be determined among themselves.

Section 14(d) of the By-Laws would be amended by adding the following sentence before the last sentence of the provision:

"When the positions of both the Executive Director and his Alternate become vacant, a temporary Alternate may continue to act until the effective date of the appointment or election of the successor Executive Director or the end of a six-month period, whichever is earlier."

CONCLUSION AND RECOMMENDATION

It is proposed that the Executive Board approve for transmittal to the Board of Governors the following draft documents:

- (i) Letter of Transmittal (Attachment I)
- (ii) Report to the Board of Governors (Attachment II)
- (iii) Resolution (Attachment III).

INTERNATIONAL MONETARY FUND
DRAFT LETTER OF TRANSMITTAL

(date)

Sir:

I have been authorized and directed by the Executive Board to send to you the following Report proposing an amendment of Section 14(d) of the By-Laws together with a draft Resolution for adoption by the Board of Governors. The Board of Governors has been requested to vote without meeting, pursuant to Section 13 of the By-Laws of the Fund, on the draft Resolution.

In view of the particular urgency of this amendment, which is needed to ensure the continued effective functioning of the Executive Board beyond September 20, 1993, the voting on this amendment should be completed by that date. We would be most grateful for your prompt action on this matter.

To be valid, votes must be cast by Governors or Alternate Governors and must be received at the seat of the Fund on or before 6:00 p.m., Washington time, on September 20, 1993. Votes received after that date and time will not be counted. Please note that if there has been a recent change in either Governor or Alternate Governor, a valid vote can be cast only after the Fund has received official notification of the change.

Your votes on the draft Resolution may be cast in any manner. However, to facilitate the voting process, we also are transmitting a suggested format for a ballot, which should be returned to us either by telex, facsimile or courier. A note also follows outlining various methods for

transmitting votes to the Fund. Whatever method is chosen, the communication should be signed by you or the Alternate Governor or there should be a clear indication that the vote be transmitted by the sender.

Very truly yours,

Leo Van Houtven
Secretary and Counsellor

REPORT OF THE EXECUTIVE BOARD
TO THE
BOARD OF GOVERNORS
PROPOSING AN AMENDMENT OF SECTION 14(d) OF THE BY-LAWS

Under Article XII, Section 3(b) of the Fund's Articles of Agreement "[t]he Executive Board shall consist of Executive Directors with the Managing Director as chairman." Moreover, under Article XII, Section 3(e), "[e]ach Executive Director shall appoint an Alternate with full power to act for him when he is not present."

In order to ensure the continuity of the Executive Board, Article XII, Section 3(f) provides that "Executive Directors shall continue in office until their successors are appointed or elected." However, this provision does not by itself preclude the possibility of a vacancy in the Executive Board, for instance, as a result of an Executive Director's resignation. In that case: "[w]hile the office remains vacant, the Alternate of the former Executive Director shall exercise his powers, except that of appointing an Alternate" (Article XII, Section 3(f)).

The Articles do not contemplate the case where the Executive Director's office would become vacant while there is no Alternate to exercise his powers. In that situation, a temporary remedy would be provided by Section 14(d) of the By-Laws. This provision authorizes the designation of a temporary Alternate by each Executive Director, but a temporary Alternate cannot serve for more than a total of thirty business days in the course of a year of the Executive Director's service. The practice of the Fund in the application of this provision has been rather liberal in that it has authorized the designation of several temporary Alternates, their continuation of service after the Executive Director's office had become vacant, and the designation of temporary Alternates by an Alternate during the vacancy of the Executive Director's office. However, this provision imposes a constraint which may adversely affect the operation of the Fund when the temporary remedy ends. The fact that the votes allotted to the member or members that appointed or elected the Executive Director could no longer be cast in the Executive Board would affect both the voting structure within the Fund, when calculating the majority of the votes cast, and the attainment of special majorities, which are calculated on the basis of the total voting power.

In order to avoid these consequences, it is proposed to amend Section 14(d) of the By-Laws. The proposed amendment would authorize a temporary Alternate to continue to serve, in the absence of both the Executive Director and the Alternate, until another Executive Director has been appointed or elected, but in any case for not more than six months. As

at present, when several temporary Alternates have been appointed by an Executive Director, each one of them would be deemed to have the authority to cast the same votes that could be cast by the former Executive Director. Unless the former Executive Director had established and notified to the Executive Board an order of precedence among his temporary Alternates, their respective attributions in the operation of the Executive Board would have to be determined among themselves.

Section 14(d) of the By-Laws would be amended by adding the following sentence before the last sentence of the provision:

"When the positions of both the Executive Director and his Alternate become vacant, a temporary Alternate may continue to act until the effective date of the appointment or election of the successor Executive Director or the end of a six-month period, whichever is earlier."

The complete text as amended would read as follows (the proposed addition is underlined):

(d) It shall be the duty of an Executive Director and his Alternate to devote all the time and attention to the business of the Fund that its interests require, and, between them, to be continuously available at the principal office of the Fund; however, in the event that both an Executive Director and his Alternate are unable to be available at the principal office of the Fund for reasons of health, absence while on business of the Fund, or similar reasons, the Executive Director may designate a temporary Alternate to act for him for periods of time which shall not in the aggregate exceed fifteen business days in the course of any year of his service. In special circumstances the Executive Director may designate a temporary Alternate to serve for an additional aggregate period not exceeding fifteen business days. When the positions of both the Executive Director and his Alternate become vacant, a temporary Alternate may continue to act until the effective date of the appointment or election of the successor Executive Director or the end of a six-month period, whichever is earlier. A temporary Alternate shall receive no salary or expense allowance for his services in this capacity.

DRAFT RESOLUTION

Amendment of Section 14(d) of the By-Laws of the Fund

RESOLVED:

That Section 14(d) of the By-Laws is amended by adding the following before the last sentence:

"When the positions of both the Executive Director and his Alternate become vacant, a temporary Alternate may continue to act until the effective date of the appointment or election of the successor Executive Director or the end of a six-month period, whichever is earlier."

