

**IMMEDIATE
ATTENTION**

EBAP/92/118

June 26, 1992

To: Members of the Executive Board
From: The Acting Secretary
Subject: Appeal of Vault Rental Charges - Initiation of Judicial Proceeding

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 Thursday, July 2, 1992. In the absence of such a request, the draft decision that appears on page 2 will be deemed approved by the Executive Board and it will be so recorded in the minutes of the next meeting thereafter.

Ms. Powers (ext. 37714) is available to answer technical or factual questions relating to this paper.

Att: (1)

Other Distribution:
Department Heads

INTERNATIONAL MONETARY FUND

Appeal of Vault Rental Charges--
Initiation of Judicial Proceeding

Prepared by the Legal Department
(In consultation with the Administration Department)

Approved by François Gianviti

June 25, 1992

Pursuant to the District of Columbia Public Space Rental Act, the District of Columbia charges an annual fee for the use of enclosed space that is adjacent to a property owner's subterranean space and is located below public property, typically sidewalks and streets, referred to as "vault space". Because the fee is a charge for the use of space rather than a tax, the Fund is not immune with respect to vault space used at headquarters. 1/ The amount of the fee is based on the assessed value of the adjacent land for property tax purposes, even as to land that is exempt from property tax. In order to have the value rental charges reduced, the property owner must successfully challenge that assessment before the D.C. Board of Equalization and Review, an administrative body.

The vault rental charges imposed on the Fund have greatly escalated as a result of increases in the assessed value of the Fund's property in Square 120 over the last two years. 2/ In the view of the Fund's outside real estate counsel, the assessment of the Fund's property is excessive, and there is a good likelihood that it could be successfully challenged on the merits. Accordingly, the Fund initiated a review of the assessment of the land value of its property in Square 120 for proposed tax year 1993 with the D.C. Board of Equalization and Review, as described above. Its application was dismissed, however, on the grounds that, because the Fund is immune from the payment of real property tax, it was not an "aggrieved party" within the meaning of the law allowing property owners to challenge the tax assessment

1/ The vault space at the Fund's headquarters includes the perimeter of the Concourse level and the corresponding areas on the levels beneath the Concourse level, which are used primarily for parking, storage and other miscellaneous purposes.

2/ For tax year 1992 (July 1, 1991 to June 30, 1992), the Fund paid \$340,707.29 in vault rental charges. For tax year 1993 (July 1, 1992 to June 30, 1993), it is estimated that the Fund will be assessed \$895,448.61 for these charges.

of their properties. In the view of both the Legal Department and the Fund's outside real estate counsel, this determination by the D.C. Board is erroneous as a matter of law because this assessment has an adverse financial effect on the Fund as a user of vault space.

In order for this ruling to be reversed, however, an action must be brought in the courts of the District of Columbia. The issues would be whether the D.C. Board's dismissal of the application on the grounds that the Fund, because it is exempt from property tax, cannot be an aggrieved party, was legally correct, and the correctness of the tax assessment itself. If the assessment is successfully challenged, the charges for vault space rental would be reduced accordingly, and the new assessment would become the basis for future adjustments in assessed value.

Under Article IX, Section 2 of the Articles of Agreement, the Fund has the capacity to institute legal proceedings. However, as indicated in EBAP/92/113 (6/8/92), the initiation of a judicial action would constitute a limited waiver of the Fund's immunity from judicial process. Therefore, the approval of the Executive Board is thus sought before such action is undertaken.

It is hereby recommended that the Executive Board approve the following proposed decision:

Proposed Decision

"The Managing Director is authorized to initiate an action on behalf of the Fund in the courts of the District of Columbia challenging the dismissal of the Fund's Real Property Assessment Appeal by the District of Columbia Board of Equalization and Review, and to take all necessary actions relating to the case."