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SECRETARY'S CIRCULAR NO. 90/87

To: Members of the Executive Board

From: The Secretary

Subject: Note on Procedure for Adoption of the Proposed Third Amendment
of the Articles of Agreement of the International Monetary Fund

The attached paper sets out the procedure for adoption of the proposed Third Amendment of the Articles of Agreement as they are being transmitted to Members and is circulated for the information of the Executive Directors. Copies will also be given to country delegations during the Annual Meeting.

Mr. Francotte (ext. 7798) or Mr. Hagan (ext. 7715) is available to answer technical or factual questions relating to this paper.

Att: (1)

Other Distribution:
Department Heads

INTERNATIONAL MONETARY FUND

Note on Procedure for Adoption of the Proposed Third Amendment of the Articles of Agreement of the International Monetary Fund

This note describes the procedure for adoption of the proposed Third Amendment of the Articles of Agreement of the International Monetary Fund.

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 by a majority of the votes cast; and, secondly, it must be accepted by three-fifths of the members, having eighty-five percent of the total voting power. When this required majority has been reached, the Fund certifies this fact to all members, and the amendment enters into force for all members, regardless of whether they have accepted the proposed amendment, three months after the date of the certification or after such shorter period as may have been specified by the Fund.

With respect to the proposed Third Amendment, the first stage was completed on June 28, 1990, when the proposed amendment was approved by the Board of Governors of the Fund (Resolution No. 45-3). The second stage was initiated by the letter of the Secretary of the Fund dated July 2, 1990, in which members were asked whether they accept the proposed Third Amendment. The Fund has decided that the proposed Third Amendment will enter into force on the date of the certification by the Fund that three-fifths of the members having eighty-five percent of the total voting power have accepted it.

2. When accepting the proposed Third Amendment, each member should ensure that three conditions are fulfilled. First, it should take any domestic legal step that may be a prerequisite for the acceptance of the proposed Third Amendment, such as the adoption of a statute, decree or other regulation. Secondly, it should accept the proposed Third Amendment. Finally, it should communicate this acceptance to the Fund. These three conditions are elaborated upon in subparagraphs (a), (b), and (c) below.

(a) First, measures may be required under domestic law to enable the member to accept the proposed Third Amendment, which is a modification of a treaty. These domestic legal steps, if required, will vary according to the law and, in particular, the constitution of each country. In many countries, the acceptance of the proposed Third Amendment will require the prior consent of the legislature or the executive, or both.

(b) Secondly, the member should accept the proposed Third Amendment. The acceptance should be effected 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 which, as indicated above, may have been required for the acceptance of the proposed Third Amendment.

(c) Thirdly, the member should communicate the acceptance to the Fund. When the person who communicates the acceptance has the authority to accept the proposed amendment, the communication may constitute the act of acceptance.

It is for each member to ascertain the domestic legal requirements that must be complied with for its acceptance of amendments of the Articles of Agreement. The member should, however, communicate to the Fund, together with its notification of acceptance, copies of the documents that contain or authorize acceptance. When these documents do not clearly demonstrate the authority to accept, this authority should be confirmed in a memorandum of law signed by the Minister of Justice, Attorney General or other competent legal official of the member.

A draft form that could be used by members to notify the Fund of their acceptance of the proposed Third Amendment is attached.

3. The Third Amendment will enter into force only when the Fund certifies that three-fifths of the members having 85 percent of the total voting power have accepted it. Any consequential changes in domestic statutes or regulations would, therefore, not need to become effective until the date of certification by the Fund of the entry into force of the Third Amendment.

Legal Department
International Monetary Fund

Attachments (2)

ATTACHMENT I

Draft Notification of Acceptance

To be Addressed to the Secretary of the Fund

I have the honor to inform you that [member] accepts the proposed Third Amendment of the Articles of Agreement of the International Monetary Fund.

A copy of the [statute][decree][regulation] pursuant to which this acceptance is given [and of the text of the acceptance] is attached.

[illegible]

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Proposed Third Amendment
of the Articles of Agreement
of the International Monetary Fund

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

1. The text of Article XXVI, Section 2 shall be amended to read as follows:

"(a) If a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the general resources of the Fund. Nothing in this Section shall be deemed to limit the provisions of Article V, Section 5 or Article VI, Section 1.

(b) If, after the expiration of a reasonable period following a declaration of ineligibility under (a) above, the member persists in its failure to fulfill any of its obligations under this Agreement, the Fund may, by a seventy percent majority of the total voting power, suspend the voting rights of the member. During the period of the suspension, the provisions of Schedule L shall apply. The Fund may, by a seventy percent majority of the total voting power, terminate the suspension at any time.

(c) If, after the expiration of a reasonable period following a decision of suspension under (b) above, the member persists in its failure to fulfill any of its obligations under this Agreement, that member may be required to withdraw from membership in the Fund by a decision of the Board of Governors carried by a majority of the Governors having eighty-five percent of the total voting power.

(d) Regulations shall be adopted to ensure that before action is taken against any member under (a), (b), or (c) above, the member shall be informed in reasonable time of the complaint against it and given an adequate opportunity for stating its case, both orally and in writing."

2. A new Schedule L shall be added to the Articles, to read as follows:

"Schedule L

Suspension of Voting Rights

In the case of a suspension of voting rights of a member under Article XXVI, Section 2(b), the following provisions shall apply:

1. The member shall not:
 - (a) participate in the adoption of a proposed amendment of this 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;
 - (b) appoint a Governor or Alternate Governor, appoint or participate in the appointment of a Councillor or Alternate Councillor, or appoint, elect, or participate in the election of an Executive Director.
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 the acceptance of a proposed amendment pertaining exclusively to the Special Drawing Rights Department.
3.
 - (a) The Governor and Alternate Governor appointed by the member shall cease to hold office.
 - (b) The Councillor and Alternate Councillor appointed by the member, or in whose appointment the member has participated, shall cease to hold office, provided that, if such Councillor was entitled to cast the number of votes allotted to other members whose voting rights have not been suspended, another Councillor and Alternate Councillor shall be appointed by such other members under Schedule D, and, pending such appointment, the Councillor and Alternate Councillor shall continue to hold office, but for a maximum of thirty days from the date of the suspension.
 - (c) The Executive Director appointed or elected by the member, or in whose election the member has participated, shall cease to hold office, unless such Executive Director was entitled to cast the number of votes allotted to other members whose voting rights have not been suspended. In the latter case:

- (i) if more than ninety days remain before the next regular election of Executive Directors, another Executive Director shall be elected for the remainder of the term by such other members by a majority of the votes cast; pending such election, the Executive Director shall continue to hold office, but for a maximum of thirty days from the date of suspension;
 - (ii) if not more than ninety days remain before the next regular election of Executive Directors, the Executive Director shall continue to hold office for the remainder of the term.
- 4. The member shall be entitled to send a representative to attend any meeting of the Board of Governors, the Council, or the Executive Board, but not any meeting of their committees, when a request made by, or a matter particularly affecting, the member is under consideration."

3. The following shall be added to Article XII, Section 3(i):

"(v) When the suspension of the voting rights of a member is terminated under Article XXVI, Section 2(b), and the member is not entitled to appoint an Executive Director, the member may agree with all the members that have elected an Executive Director that the number of votes allotted to that member shall be cast by such Executive Director, provided that, if no regular election of Executive Directors has been conducted during the period of the suspension, the Executive Director in whose election the member had participated prior to the suspension, or his successor elected in accordance with paragraph 3(c)(i) of Schedule L or with (f) above, shall be entitled to cast the number of votes allotted to the member. The member shall be deemed to have participated in the election of the Executive Director entitled to cast the number of votes allotted to the member."

4. The following shall be added to paragraph 5 of Schedule D:

"(f) When an Executive Director is entitled to cast the number of votes allotted to a member pursuant to Article XII, Section 3(i)(v), the Councillor appointed by the group whose members elected such Executive Director shall be entitled to vote and cast the number of votes allotted to such member. The member shall be deemed to have participated in the appointment of the Councillor entitled to vote and cast the number of votes allotted to the member."