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SM/90/55

March 30, 1990

To: Members of the Executive Board  
From: The Secretary  
Subject: Suspension of Voting and Related Rights

There is attached for consideration by the Executive Directors a paper on a possible amendment of the Articles of Agreement to provide for the suspension of voting and related rights. This subject has been tentatively scheduled for discussion on Monday, April 16, 1990.

Mr. Gianviti (ext. 8329) is available to answer technical or factual questions relating to this paper prior to the Board discussion.

Att: (1)

Other Distribution:  
Department Heads

INTERNATIONAL MONETARY FUND

Suspension of Voting and Related Rights

Prepared by the Legal Department

Approved by François Gianviti

March 30, 1990

1. The Fund's Articles of Agreement provide for two limited forms of suspension of rights attached to membership: ineligibility to use the Fund's general resources and suspension of the right to use special drawing rights. Both can be imposed on the basis of a breach of obligation under the Articles, 1/ but, because of the separation between the jurisdictional and financial responsibilities of the Fund, and the separation between the General Department and the Special Drawing Rights Department, the legal grounds and the effects of the two limited forms of suspension are entirely distinct.

(a) A declaration of ineligibility under Article XXVI, Section 2(a) must be based on a failure by the member to fulfill one or several of its financial or other obligations under the Articles, other than an obligation with respect to special drawing rights (Article XXIII, Section 2(f)), and such a declaration could be followed, if the member persists in its failure to fulfill any such obligation, by a decision of compulsory withdrawal under Article XXVI, Section 2(b).

(b) Under Article XXIII, Section 2(a) and (b), a member's right to use SDRs will or may be suspended if the member fails to fulfill one or several of its obligations with respect to special drawing rights. Depending on the nature of the breach, the suspension is either automatic (unless otherwise decided by the Fund) or declared by the Fund. In either case, such suspension cannot lead to compulsory withdrawal.

2. The staff has been asked to provide the text of a possible amendment of the Fund's Articles that would introduce a new form of suspension of membership rights, that is, a suspension of voting and

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1/ A member may also be declared ineligible to use the general resources of the Fund, without a breach of obligation, under Article V, Section 5 and Article VI, Section 1.

related rights. 1/ Attached to this paper, for the consideration of the Executive Board, are three preliminary versions of a possible amendment of the Articles on such a new form of suspension. They are illustrative, rather than exhaustive, and their purpose is to elicit the preferences of the Executive Board on the main elements to be included in such an amendment.

The basic differences in the attached drafts are the following:

Alternative A is limited to (i) the suspension of the member's voting and related rights, that is, the right to vote on proposed amendments of the Articles and to participate in the election or appointment of officials (Governor, Councillor, Executive Director) of the Fund, and (ii) the suspension of the voting rights of the officials already elected or appointed by the member. These officials would remain in office. Thus, an Executive Director elected by a group of members could still cast the votes allotted to the other members of the group, and a Governor appointed by a suspended member could still attend the meetings of the Board of Governors, although he could not participate in any vote either during the meeting or by mail.

Alternative B is more drastic: the officials appointed or elected by the suspended member would cease to hold office. If the official was selected by a group that includes the suspended member, a new official would be appointed or elected by the other members of the group.

Alternative C is a "menu" of options. Various suspensions of voting and related rights could be imposed, either separately or jointly, on a case by case basis.

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1/ On the question of suspension of membership rights, see also "Suspension of Membership in the Fund--Legal Aspects," SM/87/229, August 25, 1987, and "The Issue of Suspension of Membership," SM/89/127, June 28, 1989. More specifically, on the suspension of voting and related rights, see "Note on the Suspension of Voting and Related Rights of Membership," February 1, 1990.

ALTERNATIVE A

Decision to Amend the Articles of Agreement

1. The text of Article XXVI, Section 2 is hereby 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, the member persists in its failure to fulfill any of its obligations under this Agreement, the [Fund] [Board of Governors] may [, by a seventy percent majority of the total voting power,] suspend the right of the member to vote on a proposed amendment of this Agreement, other than a proposed amendment requiring acceptance by all members under Article XXVIII(b), and to appoint a Governor and Alternate Governor, to appoint or participate in the appointment of a Councillor and Alternate Councillor, and to appoint or elect an Executive Director. During the period of the suspension, the number of votes allotted to the member under Article XII, Section 5 shall not be included in the calculation of the total voting power, and the Governor, Councillor, and Executive Director for the member, or their Alternates, shall not cast the number of votes allotted to the member. The [Fund] [Board of Governors] may [, by a seventy percent majority of the total voting power,] [, by a majority of the total voting power,] terminate the suspension at any time.

(bc) If, after the expiration of a further reasonable period, 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.

(ed) Regulations shall be adopted to ensure that before action is taken against any member under (a), or (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. The text of Article XXIII, Section 2(f) is hereby amended to read as follows:

"(f) The right of a participant to use its special drawing rights shall not be suspended because it has become ineligible to use the Fund's general resources under Article V, Section 5, Article VI, Section 1, or Article XXVI, Section 2(a). Article XXVI, Section 2 shall not apply because a participant has failed to fulfill any obligations with respect to special drawing rights. The suspension of voting rights under Article XXVI, Section 2(b) shall not apply to amendments of this Agreement or decisions on matters pertaining exclusively to the Special Drawing Rights Department."

ALTERNATIVE B

Decision to Amend the Articles of Agreement

1. The text of Article XXVI, Section 2 is hereby 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, the member persists in its failure to fulfill any of its obligations under this Agreement, the [Fund] [Board of Governors] 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] [Board of Governors] may [, by a seventy percent majority of the total voting power,] [, by a majority of the total voting power,] terminate the suspension at any time.

(bc) If, after the expiration of a further reasonable period, 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.

(ed) Regulations shall be adopted to ensure that before action is taken against any member under (a), or (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 is added to the Articles, to read as follows:

"Schedule L

Suspension of Voting Rights

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

1. The member shall not:
  - (a) vote on a proposed amendment of this Agreement, other than a proposed 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 or elect an Executive Director.
2. The number of votes allotted to the member shall not be included in the calculation of the total voting power, and the member shall not be counted for purposes of determining the majority of members required by Article XXVIII(a) for the acceptance of an amendment of this Agreement, except for the acceptance of an amendment pertaining exclusively to the Special Drawing Rights Department.
3. The appointments of the Governor and Alternate Governor and of any Councillor, Alternate Councillor, and Executive Director appointed by the member shall be terminated.
4. The offices of any Councillor in whose appointment the member has participated, and of any Executive Director elected by the member, shall be declared vacant. In such case,
  - (a) the Alternate Councillor and Alternate Executive Director shall continue to serve until an appointment or election is made under (b), but shall not cast the number of votes allotted to the member; and
  - (b) another Councillor shall be appointed in accordance with the provisions of Schedule D, and another Executive Director shall be elected in accordance with the provisions of Article XII, Section 3(f), by the other members of the group that appointed the Councillor or elected the Executive Director.
5. 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 to any meetings of their committees, when a request made by, or a matter particularly affecting, the member is under consideration."

ALTERNATIVE C

Decision to Amend the Articles of Agreement

1. The text of Article XXVI, Section 2 is hereby 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, the member persists in its failure to fulfill any of its obligations under this Agreement, the [Fund] [Board of Governors] may [. by a seventy percent majority of the total voting power.] take one or more of the measures set forth in Schedule L. The [Fund] [Board of Governors] may [. by a seventy percent majority of the total voting power.] [. by a majority of the total voting power.] terminate any such measure at any time.

(bc) If, after the expiration of a further reasonable period, 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.

(ed) Regulations shall be adopted to ensure that before action is taken against any member under (a), or (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 is added to the Articles, to read as follows:

"Schedule L

Measures Available Under Article XXVI, Section 2(b)

A. The Fund may decide, pursuant to Article XXVI, Section 2(b), that:

1. The member shall not vote on a proposed amendment of this Agreement, other than a proposed amendment requiring acceptance by all members under Article XXVIII(b), and the Governor, Councillor and

Executive Director for the member, or their Alternates, shall not cast the number of votes allotted to the member.

2. The Governor and Alternate Governor for the member shall not cast the number of votes allotted to the member or attend meetings of the Board of Governors and any of its committees.

3. (a) The Councillor and Alternate Councillor appointed by the member shall not cast the number of votes allotted to the member or attend meetings of the Council and any of its committees; or

(b) the Councillor and Alternate Councillor in whose appointment the member has participated shall not cast the number of votes allotted to the member.

4. (a) The Executive Director appointed by the member, and his Alternate, shall not cast the number of votes allotted to the member or attend meetings of the Executive Board and any of its committees; or

(b) the Executive Director elected by the member, and his Alternate, shall not cast the number of votes allotted to the member.

5. (a) The appointments of the Governor and Alternate Governor and of a Councillor, Alternate Councillor, and Executive Director appointed by the member shall be terminated.

(b) The offices of a Councillor in whose appointment the member has participated, and of an Executive Director elected by the member, shall be declared vacant. In such case,

(i) the Alternate Councillor and Alternate Executive Director shall continue to serve until an appointment or election is made under (b), but shall not cast the number of votes allotted to the member; and

(ii) another Councillor shall be appointed in accordance with the provisions of Schedule D, and another Executive Director shall be elected in accordance with the provisions of Article XII, Section 3(f), by the other members of the group that appointed the Councillor or elected the Executive Director.

B. 1. When votes cannot be cast under this Schedule, the number of votes allotted to the member shall not be included in the calculation of the relevant total voting power.

2. When a member is not allowed to vote on an amendment of this Agreement under this Schedule, it shall not be counted for purposes of determining the majority of members required by Article XXVIII(a).

3. When a Governor is not allowed to vote under this Schedule, he shall not be counted for purposes of determining the majority of Governors required by Article XXVI, Section 2(c) and the quorum for a meeting of the Board of Governors required by Article XII, Section 2(d).

4. When attendance at a meeting of the Board of Governors, the Council or the Executive Board is not permitted under this Schedule, the member shall be entitled to send a representative to any such meeting, but not to a meeting of a committee, at which a request made by, or a matter particularly affecting, the member is under consideration."

5. When voting rights or attendance at meetings are suspended under this Schedule, the suspension shall not apply to matters pertaining exclusively to the Special Drawing Rights Department.

