

**LAPSE OF
TIME**

EBAP/20/27

March 13, 2020

To: Members of the Executive Board

From: The Secretary

Subject: **Authorization to Convene Virtual Meetings of the Executive Board**

Board Action: Executive Directors' **consideration** on a lapse of time basis

Deadline to Request a Board Meeting, after which Proposed Decision Deemed Approved:

**Monday, March 16, 2020
5:30 p.m.**

Proposed Decision:

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Questions:

Mr. Bauche, SEC (ext. 36764)
Mr. Blair, LEG (ext. 38164)



AUTHORIZATION TO CONVENE VIRTUAL MEETINGS OF THE EXECUTIVE BOARD

March 13, 2020

Approved By
Jianhai Lin, SEC
Rhoda Weeks-
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Prepared by the Legal and Secretary's Departments

This paper proposes a decision expanding the authorization for the Managing Director, as Chair of the Executive Board, to convene virtual meetings of the Board.

LEGAL FRAMEWORK FOR EXECUTIVE BOARD MEETINGS

- 1. The Fund's legal framework for Executive Board meetings is structured around the principle of a resident Board that functions in continuous session at the Fund's headquarters.**¹ Meetings are attended by an Executive Director or his/her Alternate, or (on limited occasions) a temporary Alternate Executive Director.²
- 2. The Fund's Rules require that Executive Directors participate in Board meetings "in person," except in specified circumstances.** Rule C-12 provides that "No Director may vote at any meeting by proxy or by any other method than in person unless the Executive Board decides otherwise in the context of a Board meeting convened by way of telecommunications." The words "in person" in Rule C-12 are

¹ Article XII, Section 3(g). Although the Articles of Agreement provide that the Executive Board is to function in continuous session at the principal office of the Fund, it was recognized at the time the Fund was founded that there may be circumstances where a Board meeting might be held "elsewhere". In this regard, Rule C-4 provides that "The Executive Board shall meet at the principal office of the Fund unless the Executive Board decides that a particular meeting shall be held elsewhere." Rule C-4 also provides the legal basis for the Executive Board's decision to move the quorum (for a specified period) when the annual meeting is held at an overseas location to the territory of the host member country.

² By-Law 14(d). In the Rules and Regulations, per Rule B-1, all references to "Executive Director" also include Alternate Executive Director and temporary Alternate Executive Director, unless otherwise specified.

understood to mean that physical presence at any Board meeting is required for participation in the meeting. This is because, in accordance with Rule C-10 and long-standing practice, “[t]he Chairman shall ordinarily ascertain the sense of the meeting in lieu of a formal vote.”³ Since the Chairman ascertains the “sense of the meeting” based on participation at a Board meeting, participation and voting are understood to have the same meaning for purposes of the Rules.⁴

3. The Rules and the Board’s current decisions limit meetings by means of telecommunications (“virtual meetings”). While the Board has full authority under the Rules to decide to convene virtual meetings⁵, this requires a specific decision of the Board⁶, which must be taken in person or by lapse-of-time.⁷ In addition, the Board has given limited authority to the Managing Director (or her designate) to convene virtual meetings; however the current decision only permits the Managing Director to exercise this authority in the event of an emergency situation resulting in implementation of the Business Continuity Plan (“BCP”).⁸ Finally, because informal Board sessions are not legally meetings of the Executive Board (no decisions can be taken)⁹, they are not subject to the requirements of the C Rules and thus may take any format in the discretion of the Chair.

PROPOSAL TO INCREASE FLEXIBILITY FOR USE OF VIRTUAL MEETINGS

4. To provide additional flexibility for the Board to hold virtual meetings, it is proposed that the Board grant the Managing Director broadened authority to convene such meetings. Because the current legal framework does not easily permit convening virtual formal Board meetings when the BCP has not been activated (since a specific Board decision—in person or by lapse-of-time—is first needed), the proposed decision would give the Managing Director authority

³ Rule C-10.

⁴ See EBAP/13/35, ¶ 4.

⁵ The C Rules provide the Executive Board with general authority to decide to (i) convene virtual meetings and (ii) allow Executive Directors to participate by means of telecommunications equipment in the context of virtual meetings. It is understood that the word “elsewhere” in Rule C-4 includes a non-physical location (i.e., a virtual meeting), and Rule C-12 authorizes the Board to decide to permit voting by means of telecommunication in a virtual meeting. See EBAP/13/35, ¶ 5.

⁶ Under the Rules, a Board meeting must be an in-person meeting at the principal office of the Fund unless the Executive Board decides otherwise. Rule C-4 (“unless the Executive Board decides that a particular meeting shall be held elsewhere”); Rule C-12 (voting in person “unless the Executive Board decides otherwise”).

⁷ Because Board decisions must be taken in person (or by lapse-of-time) unless the Board has decided otherwise, the decision to convene a virtual meeting must be taken in advance of the virtual meeting itself.

⁸ Decision No. A/13569.

⁹ See Compendium of Executive Board Work Procedures, ¶ 23.

to convene virtual Board meetings in other exceptional circumstances (discussed in more detail below). This would permit virtual Board meetings during periods where the possible disruption of the Fund’s ordinary work arrangements is not significant enough to activate the BCP, but it is nevertheless important to have the flexibility of virtual meetings.

5. It is also proposed to permit “hybrid” meetings, where some Directors may participate in person and others remotely. Under the current legal framework, no Executive Director can participate¹⁰ remotely in a formal Board meeting unless that meeting has been specifically convened as a virtual meeting¹¹ in the circumstances outlined in paragraph 3 above. The proposed decision therefore specifically authorizes the Managing Director to convene a virtual Board meeting, in which any Executive Director could participate remotely or attend in person. It is not expected that this provision would be used frequently, but in the current circumstances, this would allow flexibility for virtual participation to address potential concerns about social distancing, for example.

6. The proposal would retain limits on the use of virtual and hybrid Board meetings such that in person meetings would remain the norm. Specifically, and in order to be faithful to the principle of a resident Executive Board functioning in continuous session, and the default provisions in the legal framework that Executive Directors participate in Board meetings in person, it is proposed that the use of virtual or hybrid Board meetings would be limited to “exceptional circumstances,” which would be subject to the judgment of the Managing Director as Chair of the Board, in consultation with the Board. Such circumstances could include, for example, when the Managing Director may require staff to telework or where it is otherwise deemed useful to have virtual rather than in person meetings (e.g., in the current pandemic context).

¹⁰ In the Chair’s discretion, Executive Directors could be permitted to passively listen by electronic means to a formal Board meeting convened in the usual manner, but they could not speak or otherwise actively participate in any way, as explained in paragraph 2. In accordance with By-Law 14(d), such circumstances would be very rare, as Executive Directors or their Alternates are expected to be “continuously available at the principal office of the Fund” and Alternates have “full power to act” for the Executive Director when the Director is not present (Article XII, Section 3(e)).

¹¹ Rule C-12 (“in the context of a Board meeting convened by way of telecommunication”).

Proposed Decision

1. Pursuant to Rule C-12, the Managing Director, or the Managing Director's designate, is authorized to convene meetings of the Executive Board by means of telecommunication whenever, in his or her judgment, in consultation with the Board, it is warranted by exceptional circumstances. In any meeting convened by means of telecommunication held pursuant to this decision, Executive Directors may participate and vote by means of telecommunication.

2. The Managing Director, or the Managing Director's designate, whenever in his or her judgment, in consultation with the Board, it is warranted by exceptional circumstances, is authorized to convene a Board meeting at the principal office of the Fund by means of telecommunication in order to permit Executive Directors to participate and vote in the meeting both in person and by means of telecommunication.