

**LAPSE OF
TIME**

EBAP/20/44

June 10, 2020

To: Members of the Executive Board

From: The Secretary

Subject: **Amendment to Article XI of the Statute of the IMF Administrative Tribunal
for the Conduct of Sessions Outside of Fund Headquarters**

Board Action:

Executive Directors' **consideration** on a lapse of time basis

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

**Monday, June 15, 2020
12:00 (noon)**

Proposed Decision:

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Questions:

Ms. Thomas, LEG (ext. 38328)
Mr. Patterson, LEG (ext. 39799)



June 9, 2020

AMENDMENT TO ARTICLE XI OF THE STATUTE OF THE IMF ADMINISTRATIVE TRIBUNAL FOR THE CONDUCT OF SESSIONS OUTSIDE OF FUND HEADQUARTERS

Approved By
Rhoda Weeks-Brown

Prepared by the Legal Department

This paper proposes the adoption of a report recommending that the Board of Governors amend the Statute of the IMF Administrative Tribunal in order to expressly authorize the Tribunal to conduct its sessions away from Fund headquarters, including by electronic means.

1. **The IMF Administrative Tribunal (“the Tribunal”) was established by the Board of Governors in 1992, pursuant to Resolution 48-1, to adjudicate and render final and binding decisions on employment-related disputes at the Fund.** Since then, the Tribunal has issued 63 judgments addressing various legal challenges, including to decisions of the Executive Board affecting the terms of employment of staff. The Statute of the Tribunal was last amended in 2009.¹
2. **Article XI of the Statute of the Tribunal provides that the Tribunal “shall hold its sessions at the Fund’s headquarters at dates to be fixed in accordance with its Rules of Procedure.”** Since its establishment, the Tribunal has, in accordance with this provision, held its sessions in-person at the Fund’s headquarters in Washington, DC. However, the current COVID-19 pandemic has rendered it impracticable for the members of the Tribunal to travel to Washington, DC to convene in-person sessions with all relevant parties. The Tribunal had to cancel its April 2020 session and further proceedings in cases currently pending before the Tribunal have been on hold since then.
3. **The members of the Tribunal have requested that consideration be given to an amendment to the Statute of the Tribunal to expressly authorize the Tribunal to convene its sessions through electronic means.** An amendment is being requested on an expedited basis, to enable the Tribunal to convene in the forthcoming months to consider pending cases, and to ensure that the Fund’s dispute resolution system has a means of functioning under the current conditions such that cases are not subject to undue delay.

¹ Board of Governors Resolution No. 64-1 (2009): Amendment to the Statute of the Administrative Tribunal of the International Monetary Fund.

4. **It is proposed that Article XI be amended to read as follows:**

ARTICLE XI

The Tribunal shall **ordinarily** hold its sessions at the Fund's headquarters. **The Tribunal may decide to hold a session at another location or by electronic means, taking into account the need for fairness and efficiency in the conduct of proceedings. The Tribunal shall fix the dates of its sessions** ~~at dates to be fixed~~ in accordance with its Rules of Procedure.

5. **This proposed amendment to Article XI would provide flexibility to the Tribunal to determine the appropriate modalities for the conduct of its sessions.** While in-person sessions at headquarters will remain the norm, the proposed amendment would allow flexibility for the Tribunal to convene sessions away from headquarters or by electronic means in cases outside the norm; for example where, as is currently the case, it is impracticable for the members of the Tribunal to travel to Washington, DC to convene an in-person session, or where the facts and circumstances of a specific case otherwise warrant a departure from the normal practice.

6. **In all cases, sessions would be held at another location or by electronic means only if consistent with the imperatives of efficiency and ensuring full and fair hearings.** The proposed amendment would apply to all aspects of the Tribunal's work during a session, including oral hearings, deliberations and decision-making. The provision also enables the Tribunal to conduct hybrid sessions involving both in-person and electronic attendance. Other leading administrative tribunals of international organizations have similar flexibility, because their statutes either do not address the manner of holding sessions, or they provide for the tribunals to determine the locations of the sessions as appropriate. The proposed amendment has been discussed with the President of the Tribunal, HRD and the Staff Association Committee, and enjoys their support.

7. **Under Article XIX of the Statute of the Tribunal, a decision of the Board of Governors is required to amend that Statute.** In order to introduce these changes, it is proposed that the Executive Board adopt the Report set forth in Attachment I, for onward transmittal to the Board of Governors. The report includes a draft Resolution proposed for adoption by the Board of Governors, as well as commentary that explains the meaning of the proposed amendment. The proposed Resolution can be adopted by a majority of the votes cast, subject to the quorum requirement of a majority of Governors having not less than two-thirds of the total voting power. If the draft Resolution is adopted by the Board of Governors, the revised commentary would replace the current commentary on Article XI in the Report of the Executive Board to the Board of Governors on the Establishment of an Administrative Tribunal for the International Monetary Fund, which serves as the "legislative history" of the various provisions of the Statute of the Tribunal.

Proposed Decision

The following decision, which may be adopted by a majority of the votes cast, is proposed for adoption by the Executive Board:

1. The Executive Board: (a) adopts the draft Report of the Executive Board to the Board of Governors on an Amendment to Article XI of the Statute of the Administrative Tribunal of the International Monetary Fund in Attachment I of EBAP/20/44, and (b) recommends the adoption by the Board of Governors of the Resolution set forth in that report (the "Resolution").
2. The Executive Board requests the Board of Governors, pursuant to Section 13 of the By-Laws of the Fund, to vote without meeting on the Resolution. To be valid, votes must be received at the seat of the Fund before 6:00 p.m., Washington time, on July 14, 2020. Votes received after that time will not be counted.
3. The Executive Board authorizes and directs the Secretary to send to each member of the Fund the proposal of the Executive Board as set forth in the Report of the Executive Board to the Board of Governors on an Amendment to Article XI of the Statute of the Administrative Tribunal of the International Monetary Fund, with a request for a vote by each Governor on the Resolution.
4. All votes cast pursuant to this decision shall be held in the custody of the Secretary until counted, and all proceedings with respect thereto shall be confidential until the Executive Board determines the result of the vote.
5. The effective date of the Resolution shall be the last day allowed for voting. If approved, the proposed amendment shall become effective on that date.
6. The Secretary is authorized to take such action as he shall deem necessary or appropriate to carry out the purposes of this decision.

Attachment: Report of the Executive Board to the Board of Governors on an Amendment to Article XI of the Statute of the Administrative Tribunal of the International Monetary Fund

INTRODUCTION

1. The IMF Administrative Tribunal (“the Tribunal”) was established by the Board of Governors in 1992, pursuant to Resolution 48-1, to adjudicate and render final and binding decisions on employment-related disputes at the Fund. Since then, the Tribunal has issued 63 judgments addressing various legal challenges, including to decisions of the Executive Board affecting the terms of employment of staff. The Statute of the Tribunal was last amended in 2009.¹
2. Under Article XI of the Statute of the Tribunal, the Tribunal “shall hold its sessions at the Fund’s headquarters at dates to be fixed in accordance with its Rules of Procedure”. Since its establishment, the Tribunal has, in accordance with this provision, held its sessions in-person at the Fund’s headquarters in Washington, DC. However, the current COVID-19 pandemic has rendered it impracticable for the members of the Tribunal to travel to Washington, DC to convene in-person sessions with all relevant parties. The Tribunal had to cancel its April 2020 session and further proceedings in cases currently pending before the Tribunal have been on hold since then.
3. The members of the Tribunal have requested that consideration be given to an amendment to the Statute of the Tribunal to expressly authorize the Tribunal to convene its sessions through electronic means. An amendment is being requested on an expedited basis, to enable the Tribunal to convene in the forthcoming months to consider pending cases, and to ensure that the Fund’s dispute resolution system has a means of functioning under the current conditions such that cases are not subject to undue delay.
4. Under Article XIX, the Statute of the Tribunal may only be amended by decision of the Board of Governors. The Executive Board is therefore proposing the approval by the Board of Governors of an amendment to Article XI of the Statute of the Tribunal. If approved, such amendment would take effect as of the date of adoption of the Board of Governors resolution, and would be applicable to all current and future applications before the Tribunal.
5. The rest of this Report is organized as follows: A commentary is provided which explains the intention of the provision of the statute for which the amendment is being proposed. If the amendment is approved by the Board of Governors, this revised commentary on Article XI of the Tribunal’s Statute would replace the current commentary on this provision which is set forth in the Report of the Executive Board to the Board of Governors on the Establishment of the Administrative

¹ Board of Governors Resolution No. 64-1 (2009): Amendment to the Statute of the Administrative Tribunal of the International Monetary Fund.

Tribunal for the International Monetary Fund, which would then be reissued in a consolidated form. The Report then describes the procedure for the adoption of the proposed amendment to the Statute of the Tribunal. Finally, a resolution is proposed for adoption by the Board of Governors, which attaches the proposed amendment to Article XI of the Statute.

COMMENTARY

6. The commentary explains the intention of Article XI, if amended as proposed.

ARTICLE XI

The Tribunal shall ordinarily hold its sessions at the Fund’s headquarters. The Tribunal may decide to hold a session at another location or by electronic means, taking into account the need for fairness and efficiency in the conduct of proceedings. The Tribunal shall fix the dates of its sessions in accordance with its Rules of Procedure.

While in-person sessions at the Fund’s headquarters are the norm, there may be circumstances where such a session is impracticable or not suited to the case. Accordingly, the Tribunal may decide in such cases to hold a session at another location or by electronic means, having regard to efficiency, timeliness, and ensuring that both parties have the opportunity to participate in full and fair proceedings. The Tribunal will determine the frequency and scheduling of these sessions in accordance with its rules. This provision applies to all aspects of the Tribunal’s work during a session, including oral hearings, deliberations and decision-making. The provision also enables the Tribunal to conduct hybrid sessions involving both in-person and electronic attendance. Depending on the nature of the work to be conducted, the Tribunal may, consistent with its Rules of Procedure, set additional rules to enable the efficient organization of hearings to be conducted by electronic means.

PROCEDURE

7. The proposed resolution set out below, including the proposed revision to Article XI of the Statute of the Tribunal, is recommended to the Board of Governors for adoption. In the judgment of the Executive Board, the action requested of the Board of Governors should not be postponed until the next regular meeting of the Board and does not warrant the calling of a special meeting of the Board of Governors. For this reason, the Executive Board requests the Board of Governors, pursuant to Section 13 of the By-Laws of the Fund, to vote without meeting. To be valid, votes must be received at the seat of the Fund before 6:00 p.m., Washington time, on July 14, 2020. Votes received after that time will not be counted. The resolution will be adopted if replies are received from a majority of the Governors exercising not less than two-thirds of the total voting power, and if a majority of the votes is cast in favor of the Resolution. The Resolution must be voted on as a whole.

Draft Board of Governors Resolution

WHEREAS the Executive Board has considered the desirability of amending the Statute of the Administrative Tribunal of the International Monetary Fund (the "Tribunal");

WHEREAS the Executive Board has proposed an amendment to provide flexibility for the Tribunal to convene sessions at a location away from the Fund's headquarters or by electronic means;

WHEREAS the Report of the Executive Board setting forth its proposal has been submitted to the Board of Governors by the Secretary of the Fund; and

WHEREAS the Executive Board has requested the Board of Governors to vote on the following resolution without a meeting, pursuant to Section 13 of the By-Laws of the Fund;

NOW, THEREFORE, the Board of Governors, noting the proposed amendment and the said Report of the Executive Board, hereby RESOLVES that the proposed amendment to Article XI of the Statute of the Administrative Tribunal of the International Monetary Fund attached to this Resolution is approved with immediate effect, and shall be applicable to all current and future Applications before the Tribunal.

PROPOSED AMENDMENT TO ARTICLE XI OF THE STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

The Tribunal shall ordinarily hold its sessions at the Fund's headquarters. The Tribunal may decide to hold a session at another location or by electronic means, taking into account the need for fairness and efficiency in the conduct of proceedings. The Tribunal shall fix the dates of its sessions in accordance with its Rules of Procedure.