

IMF STAFF COMMENTS ON THE REPORT BY THE INDEPENDENT EVALUATION OFFICE ON THE EVALUATION OF ASPECTS OF IMF CORPORATE GOVERNANCE— INCLUDING THE ROLE OF THE EXECUTIVE BOARD

Executive Board Meeting
May 21, 2008

A. Legal Department

LEG's comments on the IEO Report entitled "Aspects of IMF Corporate Governance—Including the Role of the Executive Board" are limited to several areas where staff is of the view that the Executive Board would benefit from additional information regarding both the existing framework and recent developments.

I. Executive Board Committees

The IEO Report correctly notes that the Board's role as an executive body flows from a number of provisions in the Articles: its name; its responsibility for "conducting the business of the Fund" and the requirement that it "function in continuous session." The IEO recommends that, given developments over the past 60 years, the Executive Board should perform a supervisory rather than an executive role, which could be facilitated, in part, through a greater reliance on Executive Board committees. It should be emphasized, however, that Executive Board committees generally perform an advisory function: while they make recommendations, final decisions are taken by the Executive Board. Accordingly, although greater reliance on committees could represent a more efficient way for the Executive Board to conduct the business of the Fund (e.g., Board decisions could be taken on a lapse-of-time basis based on a committee's recommendations), such reliance would not, in and of itself, change the scope of the Executive Board's legal responsibilities. The Board would remain an executive organ.

II. Management Accountability

Paragraph 62 of the IEO Report states that "there is no formal process through which the Board reviews the performance of the MD" and "even if such a process were in place, there are no standards or benchmarks to assess performance."

A performance review framework has, in fact, been established. On October 16, 2007, the Executive Board approved a "performance feedback mechanism" designed to enable the Executive Board to assess the performance of the Managing Director. The mechanism envisages that performance feedback would be of a two-way character, permitting the Managing Director to share his assessment of the performance of the Executive Board. Under the mechanism, it is envisaged that a small group of Executive Directors will canvass their colleagues in setting objectives and, at a later stage, assess the performance of the Managing Director against these objectives. Consistent with this framework, the Dean of the Executive Board formed the Working Group on the Framework of the Managing Director's Performance Evaluation, of which he is chair. In consultation with the Managing Director, the Working Group is in the process of developing performance objectives that, if approved by the Board, would be used to assess the Managing Director's performance at the end of 2008. Consistent with the framework approved in October 2007, objectives regarding the performance of the Executive Board are also being developed.

III. Misconduct and Conflict of Interest

Paragraph 63 of the IEO Report identifies perceived weaknesses in the existing framework that addresses potential misconduct or conflict of interest of the Managing Director. The staff would note the following:

- As observed by the IEO, the legal framework that governs potential misconduct or conflict of interest is the Managing Director's contract with the Executive Board. The establishment of an explicit and coherent set of rules on this topic that is subject to Executive Board oversight was a matter of considerable priority for the Executive Board when the current Manag-

ing Director was appointed (and particularly for the Working Group of Executive Directors regarding the Managing Director’s Contract, which was charged with this task). Several aspects of this framework merit emphasis. First, since the Managing Director is not a staff member, it is appropriate that the instrument establishing the requirements in this area be his/her contract, given that the staff rules (many of which the MD has promulgated) do not apply to the MD. Second, while the contract provides that the standards of conduct applicable to staff shall also apply to the Managing Director, it specifically identifies several requirements included that are different—and in some cases more onerous—than those applicable to staff. Finally, and consistent with the Executive Board’s responsibilities *vis-à-vis* the Managing Director, the contract provides that a number of activities require Executive Board approval, and that the Managing Director should consult with the Executive Board if he needs clarification regarding the meaning of these requirements or their application in a particular circumstance.

- Paragraph 63 points out that there is currently no “whistleblower” protection for persons who report misconduct. Shortly after taking up his position, the Managing Director requested that a procedure for “whistleblower protection” be established. Staff expects that the procedure, which has been designed in consultation with the Ethics Officer, will be finalized shortly. It is expected to provide a mechanism for anonymous complaints to be made concerning both staff members and the Managing Director. Its application to complaints against Executive Directors will be discussed with the Ethics Committee of the Executive Board.

B. Secretary’s Department

SEC’s comments pertain to the issue of summings up.¹

In general, the IEO evaluation report and background paper present fairly the experience with summings up. However, several technical aspects of process need clarification in capturing the unique and crucial role of summings up in distilling key Board messages. In particular, paragraph 48 of the IEO Report does not describe the existing framework for Executive Board ownership of the summing up. The following might be noted:

- **Executive Directors have opportunities to comment on, and ask for revisions to, all summings up before they are finalized.** Policy summings up go through extensive review by Executive Directors following the Board meeting, and wherever consistent with the Board discussion, comments made by Executive Directors during the review process are incorporated. The procedures are aimed at ensuring the widest possible buy-in to a policy summing up.
- **Policy summings up are the basis for implementation of the related policy, as well as future reviews and evolution of Fund policies.** They are often cited extensively in staff reports for the Executive Board to indicate the degree of support reached for particular aspects of a matter in previous Board discussions. In SEC’s experience, such descriptions are rarely contested by Executive Directors.

Attachment. Technical Comments on the Summing Up

Country and Policy Summings Up

- Summings up on Article IV consultations serve a different purpose than summings up on policy discussions. For instance, summings up on country items are intended to convey the Executive Board’s messages on a member’s policy stance to the country authorities. They formally conclude the Article IV consultation.
- Unless otherwise specified in the Articles of Agreement, Board decisions may be taken with a majority of the votes cast. The summing up on policy matters is a vehicle for facilitating broader agreement than simply being a majority of the votes cast, as well as conveying Executive Directors’ views on the priorities in implementing and monitoring the approved policies going forward. While minority views may be recorded, policy is governed by the majority or consensus view.

Code Words and Minority Views

- Usage of “code words” has developed over time and been tested, and broadly accepted, in the context of Executive Board discussions. Code words have provided an important means to balance the tension between decision making that meets the minimum formal requirement—i.e., a simple majority of the votes cast based on the voting power of each Executive Director—and fostering the strong tradition of attempting to secure the broadest possible consensus—i.e.,

¹Technical Comments in Attachment.

- one that has the buy-in of the largest number of Directors.
- While most code words have specific numerical meanings, there is a degree of overlap in the definition and use of certain code words (“some” and “a number of”), which provides the Chairman and the Secretary a useful degree of flexibility in characterizing the strength of Executive Directors’ views. Executive Directors have generally found the limited overlaps acceptable.
 - Paragraph 22 of the background paper on summing up states that code words reflect both the number and voting share of Executive Directors supporting a given view. Although the interpretation of code words has evolved over time, there is currently—in the interest of transparency and good governance—no ambiguity in their usage. The Secretary uses code words solely to convey numbers, not voting share. The latter, especially in a decision context, is generally denoted by phrases such as “a majority of the Executive Board agreed.” The words “most” and “many,” while still denoting numerical code words, provide a helpful basis for securing and portraying broad Board agreement.
 - In recording minority views, there is a fine balance to be drawn between recording every minority view—which is impractical in a summing up, and not necessary given the extensive Board minutes—and conveying the broad thrust of a discussion. This issue is approached cautiously and with judgment, taking into account the importance of the issue, the degree of the divergence, and the extent to which these differences were actually discussed at the Board, as well as streamlining considerations. Further, as the IEO paper notes, a selective approach avoids a multiplicity of views on a single subject. Executive Directors always have an opportunity to call for inclusion of their minority views at the review stage but in practice are often not insistent on their inclusion in the summing up, as they are anyway recorded in the minutes of the meeting.²

²Although we have not systematically studied this issue, it is the understanding of the Secretary’s Department that the Fund’s formal minutes provide one of the most detailed accounts of Board discussions of any international organization.