

OVERVIEW OF THE RULES ON CONDUCT AND ETHICS AT THE IMF

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The principles of good governance and transparency apply not only to the IMF's advice to member countries but within the organization as well. This is illustrated by the rules on conduct and ethics that apply to staff members in IMF, as well as the Executive Board. This paper will examine the following aspects of ethics within the IMF:

- Reasons for having rules on conduct and ethics
- How these rules are enforced at the IMF
- Avoiding conflicts of interest and the financial disclosure process
- Special Code of Conduct for members of Executive Board

I. BACKGROUND: PURPOSE OF RULES ON CONDUCT

All of the major public international organizations like the IMF have adopted rules regulating the conduct and ethics of their employees. These rules are considered to be part of the terms and conditions of employment, and a staff member's failure to follow them could lead to disciplinary action, including termination.

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It may seem obvious that international civil servants should be honest and behave properly, and not take improper advantage of their positions. However, there are various reasons for spelling out these mandates in the staff rules. Most importantly, it is not always clear or obvious what actions are not permitted for an employee. It may not occur to someone that there is a potential conflict between his actions and the interests of the organization. For example, staff may not realize that they need permission in order to run a family business on the side while employed at the IMF, or whether they may recommend a relative's software products to the information technology staff. Likewise, it may not be obvious whether and to what extent an employee is allowed to use an office computer to do trading on the stock market during working hours, or to accept an award from a member country to which the staff member has provided technical assistance.

It is incumbent on the organization as an employer to clarify what the expectations are, so that staff can conform their behavior to these requirements. For this reason, IMF management issued a Code of Conduct for staff in 1999. Although the Code is not a legal document per se, it is intended to provide a practical understanding of what is permissible or not in the eyes of the organization. Because the rules themselves are written in very broad terms, the Code provides interpretations and specific illustrations of these rather general pronouncements.

International civil servants are held to a higher standard and to some rather special rules that would not typically apply in the private sector. This is a consequence of the special nature of international organizations and the fact that they must be non-political and above reproach in

the manner which they and their staffs conduct themselves. For example, Rule N-4 of the IMF's Rules and Regulations provides that:

“Persons on the staff of the Fund shall maintain standards of conduct compatible with their position as international civil servants and shall avoid any action or pronouncement, either in their own country or elsewhere, that would not be in keeping with their position as international civil servants. They shall always bear in mind the reserve and tact incumbent upon them by reason of their international functions, and they shall exercise the utmost discretion in matters of official business.”

Another rule adopted by the Executive Board prohibits staff from expressing their personal views in public e.g., by making a speech or writing a letter to a newspaper, on national political issues (e.g., criticizing the level of military expenditures in national budget) unless it has been cleared by the organization. This is intended to avoid embarrassment to the organization in situations where the staff member's personal views would inevitably be attributed to the organization itself and possibly strain its relations with the political authorities in the country involved.

Perhaps another reason for the adoption of rather comprehensive codes of staff conduct by international organizations stems from the fact that these organizations and their officials enjoy certain privileges and immunities under their governing charters. At the IMF, these privileges and immunities are provided in the Articles of Agreement. In particular, officials

are immune from judicial process with respect to acts performed in their official capacities. Although officials do not have immunity with respect to their personal conduct outside the workplace, the immunity of the organization may have the unintended effect of insulating that conduct from the reach of the legal system. For example, if a staff member fails to pay a legal judgment for alimony or child support; the court may then order the IMF as the employer to pay over a prescribed amount of the wages to the employee's spouse or other creditor (which the court could do from other employers in the US). However, the IMF—unlike other employers-- is immune from the garnishment order, as it is immune from any form of judicial process. The result is that the staff member may appear to have evaded his private legal obligations by “hiding behind” the IMF's immunity. In order to prevent this result—which would undoubtedly lead to complaints that immunity was being abused—the IMF has a standard of conduct stating that the failure to meet private legal obligations may be grounds for disciplinary action. Moreover, it will voluntarily give effect to certain types of garnishment orders (in the family law context), notwithstanding its immunity.

These types of measures are intended to allow the IMF to demonstrate to its membership and the public that there are standards of conduct to which its staff will be held, and that these standards are taken seriously and enforced.

II. ENFORCEMENT OF THE RULES ON CONDUCT

In this regard, the IMF has appointed an Ethics Officer, whose function to investigate allegations of misconduct by IMF staff, as well as to give advice to the staff at large and on an individual basis, on any matter concerning ethics, conflict of interest and the like.

The Terms of Reference for the Ethics Officer call upon him to look into allegations of misconduct by IMF employees, and to report his findings to IMF management, who will decide whether to impose disciplinary action on the individual.

The allegations pursued by the Ethics Officer can come from any source: management can refer a matter to the Ethics Officer; staff can report that they believe some form of misconduct has occurred; or he may simply get a phone call from an outside party complaining about a Fund staff member's behavior. These can all trigger an inquiry, although the Ethics Officer will not follow up on an anonymous lead; these are considered too unreliable.

The Ethics Officer is to investigate any matter that is covered by the IMF's rules on conduct. This could include a wide variety of matters: leaks of confidential information to the press; misuse of IMF benefits; sexual harassment, as defined in the IMF's comprehensive policy on harassment; improper use of e-mail or Internet on IMF computers. The Ethics Officer will also look into matters involving private behavior outside the office if this type of behavior violates the IMF's rules. The most common example of this involves alleged mistreatment of domestic employees who are brought to the United States under a special visa that is sponsored by the IMF. If staff members fail to comply with local labor laws regarding their personal servants, (e.g. paying less than minimum wage, not providing adequate time off), this is considered a violation of the rules of this special program. For this reason, such action can be –and has been—a basis for disciplinary action. The Ethics Officer has also received complaints from spouses or ex-spouses about a staff member's failure to pay alimony or

child support. Again, although it involves a family matter, this is considered appropriately within the organization's interest, in order to avoid the perception that staff are "hiding behind" IMF immunities so as not to meet their private legal obligations.

The Terms of Reference for the Ethics Officer set out various procedural rules regarding how investigations are to be conducted. This is intended to safeguard the rights of staff who are being investigated. It is important to the credibility of the process that they have a full opportunity to give their side of the story and respond to the allegations against them, including the underlying evidence.

After the Ethics Officer completes his investigation and reports his findings, the next step in the internal disciplinary process is at the level of management, with respect to complaints against senior staff, and the Director of Human Resources Department, for the rest of the staff. These officials are to consider the fact and, if warranted, charge the staff member with misconduct; after taking into account what the staff member has to say about the matter, they decide whether to impose disciplinary sanctions and what those penalties will be. This can run the range from a warning or written reprimand (least severe), to loss of employment (most severe). In between, there could be forfeiture of benefits, demotion, reduction in pay, so long as the penalty is proportional to the seriousness of the misconduct.

III. CONFLICT OF INTEREST

To an increasing extent, in both the public and private financial sectors, as well as other professions (including lawyers), there are internal rules on conflict of interest by their

employees. This is to prevent the misuse of confidential information and other ways of taking improper advantage of one's position, e.g., the paralegal in the law firm who learns of an impending merger and tips off his family to buy stock; the advisor to a government whose spouse deals in bonds issued by that government; the reporter who learns of a new drug about to be released in the market in the course of an interview and buys shares in the pharmaceutical company before the information becomes public.

Reflecting this trend, international organizations like the IMF have also adopted special measures to ensure that the private financial activities of their employees do not involve the use of non-public information learned in the course of their employment or otherwise pose a conflict of interest with their employment. These measures are taken for the reputation and credibility of the organization.

Certainly, international organizations are subject to close scrutiny when allegations of wrongdoing or conflicts of interest become public. In such cases, it is very important for the organization to be able to demonstrate that it has taken measures to avoid and, if needed, to resolve such conflicts.

At the IMF, there are three basic rules dealing with the issue of staff conflict of interest, which are spelled out in more detailed administrative orders:

Rule N-6, prohibits staff from disclosing or using for personal financial gain confidential IMF information, both during and after IMF employment.

Rule N-7 prohibits staff from engaging in any outside business activity or other public or private employment without the approval of IMF management.

Rule N-10 prohibits staff from accepting gifts or honors from outside parties, including member governments, for their services with the IMF.

The Code of Conduct gives some practical examples of how these rules will be applied. With respect to avoiding conflicts of interest, and how this affects private business and financial activities, the Code provides the following guidance:

1. Staff must avoid any situation involving a conflict or the appearance of a conflict between their personal interests and the performance of their official duties. For example, staff who carry out procurement activities are expected to tell their supervisors about any potential conflict of interest, so that the supervisor can decide whether the staff member must withdraw from the activity in question. This could happen, for example, if the IMF was considering whether to hire a company where the staff member's wife was employed; the staff member would obviously have to recuse himself from that decision and not attempt to influence the result.
2. Another potential conflict could arise in situations where a staff member is negotiating for a new job outside the IMF. If so, he must maintain an arms-length relationship with the prospective employer in all matters relating to the work of the IMF. For this reason,

he would be expected to recuse himself from involvement in sensitive IMF work that could benefit, or be perceived to benefit, his prospective employer.

3. With respect to outside business activities, staff members are allowed to engage in such activities only with permission and only if the activity is undertaken outside of normal working hours and does not involve the use of IMF resources, like fax, phone, etc. With respect to whether permission will be granted, this depends on the nature of the activity. If it is in any way related to the work of the IMF (e.g., giving investment advice), unlikely to be approved; on the other hand, if unrelated to the IMF, such as doing carpentry or preparing tax returns, there is normally no objection on IMF's part.

4. The question of personal investments and what would constitute a conflict of interest is considerably more difficult, given the organization's role at the center of the international financial system. At the IMF, staff are generally free to conduct their personal financial affairs as they wish, with two exceptions. First, because of the IMF's role in exchange rate surveillance, all staff members are prohibited from engaging in short-term trading (i.e., combination of buying and selling within six months) in gold, foreign currencies and closely related financial instruments, for speculative purposes. (This would not prevent "one way transactions", where staff member sells foreign exchange in order to pay for expenses incurred abroad.) Second, staff are prohibited from disclosing, or using for personal financial gain, confidential information to which they have access at the IMF.

In terms of monitoring compliance with these conflict of interest rules, various public and private organizations require some form of disclosure of financial holdings to confirm the absence of any conflict of interest. The IMF has two requirements in this regard:

- First, all staff members, regardless of rank or specific work assignment, must annually file a statement with the IMF confirming that they have read and understood the rules with respect to financial holdings and transactions; that neither they nor their immediate family members have any undisclosed financial or business interests that might give rise to an actual or apparent conflict with their duties as a IMF staff member. This rule covers not only the staff member but his/her immediate family; this is quite typical, given the obvious loophole that would exist if the rules did not extend to the financial holdings of those with whom staff have a common financial interest.
- Second, all IMF staff at the managerial level must submit an annual statement listing their individual financial holdings in excess of a prescribed amount (\$10,000), without having to disclose actual value of the asset (just the range).² Transactions in those holdings must also be disclosed. These financial assets include stocks, mutual funds, annuities, bonds, government securities and funds held in retirement plans. Assets that are not financial in nature, such as the personal residence or other real

² Other staff may be subject to this requirement if their positions are such that they have access to nonpublic, market-sensitive information.

estate, need not be disclosed (although liabilities must be disclosed). The disclosure requirements cover financial holdings of spouses and dependents as well.

In terms of the mechanics of the financial disclosure process, the information is submitted on a prescribed form to a Compliance Officer, who reviews them for potential conflicts of interest, taking into account the employee's particular job and the information to which he/she may have access because of that position. The IMF has retained a major accounting firm to provide this service. If the Compliance Officer believes there may be a perceived or actual conflict of interest, the matter is to be discussed with the individual staff member with a view to resolving the matter informally and not having to bring it to the attention of management (unless there is evidence of a flagrant violation for which disciplinary sanctions would be appropriate, which has not occurred to date).

There would be a perceived conflict if a reasonable observer would conclude that the staff member was acting on the basis of confidential IMF information in making an investment; e.g., the staff member participates in a mission to reach agreement on a new economic program in a particular country, and upon return purchases shares in a bank stock fund in that country. If there is a perceived conflict, various options are available to resolve the matter. First, there would typically be a discussion with the individual staff member with a view to resolving the matter informally; including: (i) divestiture of the asset; (ii) "freezing" of the asset, on the understanding that the staff member may seek permission from the Compliance Officer to liquidate the investment, for reasons unrelated to confidential information; or (iii) reassignment or recusal on a particular matter. For example, if the staff member's spouse has

gone to work for an emerging markets mutual fund, the staff member should not work on countries covered by that fund.

The role of the Compliance Office should be regarded as a protection for staff, as they may rely on the Compliance Officer's interpretation of the rules and his clearance of their investments if they are ever accused of having a conflict of interest. In terms of results, nearly 400 staff have been subject to this new disclosure requirement, and it has been implemented without much difficulty, and no major problems have been encountered. It must be acknowledged, however, that the system is self-policing; there is no way to ensure that someone is being truthful and complete in disclosing this information.

IV. CODE OF CONDUCT FOR MEMBERS OF THE EXECUTIVE BOARD

After management issued a Code of Conduct for IMF staff, the Executive Board adopted its own Code of Conduct in 2000. It is perhaps the most comprehensive code of conduct for the governing board of a public international organization.³

The Board's Code is not identical to the staff code, and there are indeed a number of key differences. The reason for these differences is that the situation of Board members is not comparable to that of the staff: they are not expected to be neutral on political issues or to refrain from expressing their views publicly (as long as they do not disclose confidential

³ The World Bank and European Bank for Reconstruction and Development also have such codes for their executive boards.

information). The special situation of Executive Directors is reflected in the preamble to the Board code:

“Executive Directors of the Fund are entrusted by the member countries that have selected them with responsibilities for ensuring that the Fund carries out the mandate prescribed in its Articles of Agreement. The office of Executive Director of the Fund requires personal and professional conduct that meets the highest standards.”

The Code of Conduct for the Board is largely self-policing; there is no mechanism for imposing disciplinary measures on Executive Directors or for removing them from the Board, as they are either elected or appointed by member countries. However, if there is a complaint about an Executive Director’s conduct, it will be considered by a special Ethics Committee of the Board. If the complaint is considered valid, the Committee may recommend that the Board censure the Director in question, and inform his/her member countries about the matter.

The Board has also adopted a system of annual financial disclosure and review by an outside compliance officer, similar to that in place for the staff.