

ORAL ARGUMENT SCHEDULED FOR NOVEMBER 6, 2012

No. 11-7109

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

—————
KAREN HUDES,

Plaintiff-Appellant

v.

AETNA LIFE INSURANCE COMPANY, ET AL.,

Defendants-Appellees

On Appeal from the United States District Court
for the District of Columbia (Boasberg, J.)

**BRIEF OF APPELLEE
THE INTERNATIONAL BANK FOR RECONSTRUCTION AND
DEVELOPMENT**

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CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), Appellee International Bank for Reconstruction and Development certifies as follows:

1. **Parties and Amici.** All parties, intervenors, and amici appearing before the District Court and in this Court are listed in the Brief of Appellant.

Appellee notes that the World Bank Group is a blanket term for five-closely associated, but legally distinct, international organizations: (i) the International Bank for Reconstruction and Development (“IBRD”), (ii) the International Development Association, (iii) the International Finance Corporation, (iv) the Multilateral Investment Guarantee Agency, and (v) the International Centre for Settlement of Investment Disputes. Appellant’s claim is against the IBRD.

2. **Corporate Disclosure Statement.** The International Bank for Reconstruction and Development (“IBRD” or “the Bank”) has no parent company. No publicly-held company has a 10% or greater ownership interest in the IBRD. The IBRD is a public international organization owned by its member countries, which currently total 188. Its purposes are, *inter alia*, to further the development of its member nations, to promote private foreign investment, and to encourage long-range balanced growth in international trade.

3. **Rulings Under Review.** References to rulings at issue appear in the Brief of Appellant.
4. **Statement as to Related Cases.** This case has never been before this Court and was captioned in the court below as *Hudes v. Aetna Life Insurance Co., et al.*, Civil Action No. 10-1444 (D.D.C.) (Boasberg, J.). The IBRD is not aware of any other related cases.

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(1987)3, 4,10, 11

Authorities on which we chiefly rely are denoted with asterisks (*).

GLOSSARY

IOIA International Organizations Immunities Act of 1945, 22 U.S.C § 288
et seq.

IBRD International Bank for Reconstruction and Development

JURISDICTIONAL STATEMENT

On August 30, 2011, the District Court entered a Memorandum Opinion and Order dismissing Appellant's wrongful termination suit against Appellee the International Bank for Reconstruction and Development ("IBRD" or "the Bank") for lack of subject matter jurisdiction. The District Court concluded that the Bank is absolutely immune from Appellant's suit under the International Organizations Immunities Act of 1945 ("IOIA"), 22 U.S.C § 288 *et seq.* J.A. at 44-47. The District Court further concluded that, even assuming jurisdiction, Appellant failed to state a cognizable claim for relief. J.A. at 48. According to the District Court, Appellant's attempts to circumvent the IOIA were futile because neither the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), 18 U.S.C. § 1514A, nor the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Pub. L. No. 111-203, § 4, 124 Stat. 1376, 1390 (2010), apply to the IBRD. *See* J.A. at 47-51. Appellant filed a notice of appeal on August 30, 2011, and now contests both aspects of the District Court's ruling.

The Bank respectfully submits, in accordance with the District Court's holding, that this Court lacks subject matter jurisdiction over Appellant's action given the Bank's absolute immunity "from such suits by current and former employees" afforded by the IOIA. *See* J.A. at 44.

STATUTES AND REGULATIONS

Except for the statutes, rules, and regulations contained in the attached Addendum, all applicable statutes, etc., are contained in the Brief for Appellant.

STATEMENT OF THE ISSUES

Whether the District Court correctly held that Appellee IBRD's immunity under the IOIA had not been waived, thereby barring Appellant's employment suit.

Whether the District Court correctly held that the Sarbanes-Oxley Act was inapplicable to the IBRD as a matter of law.

STATEMENT OF FACTS

A. Background

The Bank "is an international financial institution whose purposes include assisting the development of its member nations' territories, promoting and supplementing private foreign investment, and promoting long range balanced growth in international trade." *Mendaro v. World Bank*, 717 F.2d 610, 611 (D.C. Cir. 1983). It was created in 1944 under Articles of Agreement by representatives of 44 countries, including the United States. *See* Articles of Agreement of the International Bank for Reconstruction and Development, Dec. 27, 1945, 60 Stat. 1440, *as amended*, 16 U.S.T. 1942 ("IBRD Articles"). The United States accepted these Articles and became a member of the Bank pursuant to the Bretton Woods Agreements Act of 1945, 22 U.S.C. § 286 *et seq.* The IBRD was subsequently

designated an “international organization” by Executive Order, *see* Exec. Order No. 9751, 11 Fed. Reg. 7713 (July 13, 1946), entitling it to the full immunities and privileges provided by the International Organizations Immunities Act of 1945 (“IOIA”), 22 U.S.C. § 288a(b). *See Mendaro*, 717 F.2d at 613 n.26.

The Bank’s Articles of Agreement confer on it an international and intergovernmental status independent of any of its 188 individual member countries. In order to protect the Bank from interference by any member—or that member’s courts—its Articles provide, *inter alia*, that the Bank’s property is immune from attachment or any other form of seizure, IBRD Articles, art. VII, §§ 3, 4; that the “archives of the Bank shall be inviolable,” *id.* art. VII, § 5; that its property and assets are free from restrictions, regulations, or controls of any kind, *id.* art. VII, § 6; that its official communications must be treated as official communications of a sovereign country, *id.* art. VII, § 7; and that its officers and employees are immune from legal process for acts performed in their official capacity, unless the Bank waives that immunity, *id.* art. VII, § 8.

As explained in its Articles, the Bank’s immunities and privileges, which are established by international agreement, are intended “[t]o enable the Bank to fulfill the functions with which it is entrusted.” *Id.* art. VII, § 1; *accord* Restatement (Third) of Foreign Relations Law of the United States § 467(1) (1987) (“Under international law, an international organization generally enjoys such privileges

and immunities from the jurisdiction of a member state as are necessary for the fulfillment of the purposes of the organization, including immunity from legal process”). The IBRD’s immunities and privileges under its Articles have been incorporated into the United States Code. *See* 22 U.S.C. § 286h.

B. Procedural History

Appellant, a former member of the Bank’s legal staff, has, over time, filed numerous claims both within the Bank’s internal conflict resolution system (“CRS”) and in external venues, generally alleging wrongful termination as retaliation for “whistleblower” activities.¹ As part of a mutually agreed-upon separation, which included a release of claims, Appellant left Bank service in 2007. Appellant filed several later claims within the Bank’s CRS, but on her own initiative, she withdrew all her claims in January 2011.²

Appellant also filed a complaint with the Occupational Safety and Health Administration (“OSHA”) on October 13, 2009, alleging that the Bank violated

¹ Consistent with its intergovernmental nature, the Bank has a well-developed internal justice system to provide a neutral and consistent administrative forum to resolve employee grievances across all countries in which it operates. *See Atkinson v. Inter-Am. Dev. Bank*, 156 F.3d 1335, 1338 (D.C. Cir. 1998) (citing Bank’s “established administrative tribunal to resolve employees’ contract grievances”); Restatement (Third) of Foreign Relations Law of the United States § 467 (1987), Reporter’s Note 7 (noting Bank’s internal tribunal for employee disputes).

² *See* Opp’n. to Mot. to Dismiss, *Hudes v. AETNA Life Ins. Co.*, No. 10-cv-01444 (D.D.C. Jan. 17, 2011), ECF No. 62-1, at 11.

§ 806 of the Sarbanes-Oxley Act (“Act”), 18 U.S.C. § 1514A, by retaliating against her for disclosing the Bank’s “corrupt bank takeover and securities law violations.” J.A. at 26, ¶ 6; *see Hudes v. Int’l Bank for Reconstruction & Dev.*, No. 2010-SOX-00012, 2010 DOLSOX LEXIS 15, at *1 (Dep’t of Labor Feb. 22, 2010). OSHA dismissed the complaint, finding that the Bank is not a “company” under the Act. *Id.* It also dismissed as time-barred the portion of the complaint alleging retaliatory discharge. *Id.* at *2. On December 10, 2009, Appellant exercised her right under the regulations governing Sarbanes-Oxley claims to appeal the decision to an Administrative Law Judge (“ALJ”). 29 C.F.R. § 1980.106. On February 22, 2010, the ALJ dismissed Appellant’s Complaint on grounds that (1) the World Bank is not a “company” under the Act, (2) the Bank is immune from this type of claim, and (3) the complaint was time-barred insofar as it was based on Plaintiff’s termination. *Hudes*, 2010 DOLSOX LEXIS 15, at *2-9. Under the regulations, Appellant had ten business days to appeal this decision to the Administrative Review Board (“Board”). 29 C.F.R. § 1980.110(a); *see also Hudes*, 2010 DOLSOX LEXIS 15, at *11. On March 4, 2010, she “informed the [Board] that [she] was removing the Sarbanes-Oxley claim to the U.S. District Court for the District of Maryland.” J.A. at 28 ¶ 10. On March 5, 2010, Appellant amended her pre-existing Complaint against Appellants Aetna and Mark Schreiber,

adding the Bank as a Defendant and asserting that the Bank retaliated against her in violation of the Sarbanes-Oxley Act.

The District Court for the District of Maryland granted Appellant Aetna's request for a transfer of venue on August 23, 2010, and the case moved to the U.S. District Court for the District of Columbia. On October 15, 2010, Appellant amended her Complaint for the second time, claiming entitlement to protection under the Dodd-Frank Act and stating for the first time that she had purchased IBRD bonds. The new complaint did not, however, raise new claims based on her asserted status as a bondholder; for instance, she has not made any claims that the Bank failed to honor her bonds.

Appellant subsequently filed Rule 11 motions for sanctions against counsel for IBRD while motions to dismiss were pending. The court denied the motions and ordered that Appellant file no further Rule 11 motions without prior leave of the court. The court subsequently granted the Bank's motion to dismiss on August 31, 2011. The court reasoned that Appellant's action was one for "wrongful termination," J.A. at 44, and arose "from her internal employment relationship with the Bank." *Id.* at 47 (emphasis in original). The court further concluded that Appellant "has 'failed to show that this suit furthers the Bank's objectives so as to distinguish her claims from other employment disputes.'" *Id.* (quoting *Aguado v. Inter-Am. Dev. Bank*, 85 F. App'x 776, 777 (D.C. Cir. 2004)). The court

accordingly dismissed the suit for lack of subject matter jurisdiction because “the [] Bank is immune from such suits by current and former employees.” *Id.* at 44.

The court likewise dismissed the Appellant’s claims under the Sarbanes-Oxley Act and the Dodd-Frank Act because, among other reasons, the Bank is not a “company” within the meaning of Sarbanes-Oxley and Dodd-Frank does not apply retroactively. *Id.* at 48-51.

STANDARD OF REVIEW

This Court reviews *de novo* the dismissal of a complaint for lack of subject matter jurisdiction and for failure to state a claim. *Trudeau v. Fed. Trade Comm’n*, 456 F.3d 178, 193 (D.C. Cir. 2006).

SUMMARY OF ARGUMENT

The IBRD, as a recognized public international organization, is absolutely immune from “every form of judicial process,” under the IOIA, the Bank’s Articles of Agreement, and well-settled precedent. 22 U.S.C. § 288a(b). Claims against the Bank are permitted only if the Bank expressly waives its immunity. The Bank has not done so in this case.

Appellant is a former employee of the Bank and her “allegations against the [] Bank amount to a claim for wrongful termination.” J.A. at 44. Her claim thus falls squarely within the Bank’s immunity. Indeed, this Court’s precedent clearly recognizes that employment suits by former Bank personnel “arising out of internal

administrative grievances” are strictly barred. *See Mendaro*, 717 F.2d at 615 (“One of the most important protections granted to international organizations is immunity from suits by employees of the organization in actions arising out of the employment relationship.”). Because the Bank has not waived its immunity, the District Court properly dismissed Appellant’s claim for lack of subject matter jurisdiction.

Not only is the Bank absolutely immune from this action in its entirety, the District Court also properly concluded that Appellant’s claims are not actionable under the Sarbanes-Oxley Act. Appellant’s claims under Sarbanes-Oxley fail for a host of reasons, most fundamentally because the Bank is not a “company” within the meaning of the Act, and thus, not subject to its requirements.

This Court should affirm the District Court’s decision and dismiss Appellant’s claims.

ARGUMENT

I. APPELLANT’S ACTION WAS PROPERLY DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE THE BANK IS IMMUNE FROM THIS TYPE OF SUIT.

A. The Bank Has Absolute Immunity Under the IOIA and Its Articles of Agreement.

As a designated international organization, the Bank has broad immunity from suit under the International Organizations Immunity Act of 1945 (“IOIA”):

International organizations, their property and their assets, wherever located, and by whomsoever held, *shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments*, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.

22 U.S.C. § 288a(b) (emphasis added).³ By its plain terms, this provision grants the Bank immunity from “every form of judicial process,” including a “suit” such as Appellant’s. *Id.*; *see also Viega v. World Meteorological Org.*, 568 F. Supp. 2d 367, 371 (S.D.N.Y. 2008) (“Case law applying the IOIA uniformly holds that international organizations covered by the statute, while engaged in noncommercial activities, are immune from process in suits brought by their employees alleging breach of contract, wrongful termination, fraudulent conduct and other claims similar to those asserted by [the plaintiff] in the instant action.”), *aff’d*, 367 F. App’x 189 (2d Cir. 2010). Moreover, the immunity conferred by the IOIA is the “absolute immunity” that foreign nations enjoyed when the IOIA was enacted in 1945. *See Atkinson v. Inter-Am. Dev. Bank*, 156 F.3d 1335, 1340-42 (D.C. Cir. 1998).

The immunity conferred by the IOIA is subject to only two limitations: “First, the organization itself may expressly waive its immunity. Second, the

³ The Bank has been designated an “international organization” under the IOIA. *See* Exec. Order No. 9751, 11 Fed. Reg. 7713; *Mendaro*, 717 F.2d at 613 n.26.

President may specifically limit the organization's immunities when he selects the organization as one entitled to enjoy the Act's privileges and immunities." *See, e.g., Mendaro*, 717 F.2d at 613. Neither applies here. The President has not limited the Bank's immunities,⁴ and as explained below, the Bank has not waived its immunity.

B. The Bank Has Not Waived Its Immunity In this Case.

Section 3 of Article VII of the Bank's Articles of Agreement effects a limited waiver of the Bank's otherwise "absolute immunity" from suit,⁵ but this limited waiver is utterly inapplicable to Appellant's wrongful termination action.

This Court has long held that Section 3 applies only to the narrow class of lawsuits for which "an insistence on immunity would actually prevent or hinder the organization from conducting its activities." *Mendaro*, 717 F.2d at 617. Thus, not only should "the Bank's immunity. . . be construed as *not waived* unless the particular type of suit would *further* the Bank's objectives," *Atkinson*, 156 F.3d at 1338 (emphasis in original), but the Bank's immunity is not waived unless the Bank "would *have to* subject itself to [the] suit in order to achieve its chartered

⁴ *See* Exec. Order No. 9751, 11 Fed. Reg. 7713 (extending IOIA immunity to the Bank without limitation).

⁵ Section 3 provides, "Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities." IBRD Articles, art. VII, § 3.

objectives.” *Mendaro*, 717 F.2d at 615 (emphasis added). Actions by “debtors, creditors, [and] bondholders” related to enforcing the covenants associated with Bank securities are among those where the Bank has taken specific actions to further its objectives and waived immunity as a result. *Id.*; see also *Ashford Int’l, Inc. v. World Bank Grp.*, No. 1:04-CV-3822, 2006 WL 783357 (N.D. Ga. Mar. 24, 2006); *Morgan v. Int’l Bank for Reconstruction & Dev.*, 752 F. Supp. 492, 494 (D.D.C. 1990); accord Restatement (Third) of Foreign Relations Law of the United States § 467 (1987), Reporter’s Note 3 (“The charters of the [World Bank] and other international financial institutions contain provisions permitting suits against the organization under some circumstances and in selected venues; these provisions were designed to permit suits by bondholders and related creditors.”).

Section 3’s limited waiver of immunity thus applies to the Bank’s “*external* relations with its debtors and creditors” and is directed to its practical ability to function in lending markets and commercial transactions. *Mendaro*, 717 F.2d at 618 (emphasis in original) (noting, for example, that without this limited waiver, “the Bank would be unable to purchase office equipment or supplies or anything other than on a cash basis”). With respect to bondholder suits in particular, this Court explained that a waiver of immunity is necessary because “[p]otential investors would be much less likely to acquire the Bank’s own securities if they could not sue the Bank to enforce its liabilities.” *Id.*

Despite Appellant's effort to wedge her way into this narrow waiver for suits by bondholders, Appellant makes no cognizable claim based upon her bonds. Appellant's case is an employment suit for wrongful termination. Appellant Br. at 14-20 (describing Appellant's purported whistleblowing activity); J.A. at 26, ¶ 6 (claiming "employee protection"); *id.* at 29-30, ¶¶ 11-13 (summarizing employment history); *id.* at 35, ¶ 29(1) (requesting reinstatement to IBRD's Legal Department). Whether or not she may happen to own bonds,⁶ her Second Amended Complaint does not state a claim based on the Bank's issuance or guarantee of bonds, and she has not sued to enforce the liabilities associated with those bonds. As the District Court correctly observed, Appellant's purchase of Bank-issued bonds does not convert this employment complaint into a securities claim over which jurisdiction might be asserted. J.A. at 47. This case is simply an employment action for which the Bank has not waived its immunity.⁷

Subjecting the Bank to this type of employment suit would not "further the Bank's objective" in any way. *Mendaro*, 717 F.2d at 618 ("Rather than furthering

⁶ Appellant did not purchase bonds until May 27, 2010—years after the events that she asserts form the basis for her complaint. Opp'n. to Mot. to Dismiss, *Hudes v. AETNA Life Ins. Co.*, No. 10-cv-01444 (D.D.C. Jan. 17, 2011), ECF No. 62-1, at 10.

⁷ In characterizing her case as a whistleblower action, Appellant confirms that her claims "aris[e] out of the employment relationship" and thus fall squarely within the Bank's immunity. *See Mendaro*, 717 F.2d at 615.

the purposes and operations of the Bank, this waiver would lay the Bank open to disruptive interference . . . in each of the thirty-six countries in which it has resident missions, and more than 140 nations in which it could be involved in its lending and financing activities.”). Indeed, the District Court and this Court have dismissed numerous actions just like this one. *See Aguado*, 85 F. App’x at 776 (employment dispute); *Dujardin v. Int’l Bank for Reconstruction & Dev.*, 9 F. App’x 19, 20 (D.C. Cir. 2001) (defamation claim); *Mendaro*, 717 F.2d at 611 (employment discrimination claims); *Morgan*, 752 F. Supp. at 493 (claims for libel, slander, false imprisonment, and intentional infliction of emotional distress); *Chiriboga v. Int’l Bank for Reconstruction & Dev.*, 616 F. Supp. 963, 967 & n.3 (D.D.C. 1985) (claim for breach of employment contract); *cf. Tuck v. Pan Am. Health Org.*, 668 F.2d 547, 550 (D.C. Cir. 1981) (claims for breach of contract, tortious interference with contract, and discrimination); *Broadbent v. Org. of Am. States*, 628 F.2d 27, 35-36 (D.C. Cir. 1980) (claim for breach of employment contract). Appellant’s claim is indistinguishable and likewise entirely barred by the Bank’s “absolute immunity.”

II. APPELLANT’S ACTION WAS PROPERLY DISMISSED FOR FAILURE TO STATE A CLAIM UNDER THE SARBANES-OXLEY ACT.

In addition to falling within the Bank’s immunity from employment related suits, Appellant’s largely indecipherable “whistleblower” claim under the

Sarbanes-Oxley Act fails as a matter of law. The Bank is not a “company” within the meaning of Act, and therefore it is not subject to its requirements. J.A. at 49; *Hudes*, 2010 DOLSOX LEXIS 15, at *10.

Appellant claims that the Bank illegally terminated her, refused to reinstate her, and barred her from its premises in violation of Sarbanes-Oxley. J.A. at 27, 30, ¶¶ 8, 13. The whistleblower protections of Sarbanes-Oxley, however, apply only to a “company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).” 18 U.S.C. § 1514A(a); *see also Welch v. Chao*, 536 F.3d 269, 275 (4th Cir. 2008), *cert. denied*, 129 S. Ct. 1985 (2009) (“The Sarbanes-Oxley Act creates ‘whistleblower’ protection for employees of *publicly-traded companies*.”) (emphasis added); *Brady v. Calyon Sec. (USA)*, 406 F. Supp. 2d 307, 317-19 (S.D.N.Y. 2005); *Hudes*, 2010 DOLSOX LEXIS 15, at *3-4. Under 22 U.S.C. § 286k-1, any securities issued by the Bank are “exempted securities” within the meaning of § 3(a)(12) of the Securities Exchange Act of 1934 (“Exchange Act”). Any entity that issues exempted securities is explicitly excluded from the registration requirements of § 12 of the Exchange Act. 15 U.S.C. § 78l. And the reporting requirements of § 15(d) of the Exchange Act apply only to entities with

registered securities. 15 U.S.C. § 78o(d).⁸ Thus, because the Bank does not have registered securities under § 12 and is not required to file reports under § 15(d), the Sarbanes-Oxley whistleblower provision does not apply to it.⁹ *See Malin v. Siemens Med. Solutions Health Servs.*, 638 F.Supp. 2d 492, 502 (D. Md. 2008) (holding that the non-publicly traded company was not “subject to § 1514A’s whistleblower protection provisions” unless it acted as an agent for its publicly-traded parent company); *see also Hudes*, 2010 DOLSOX LEXIS 15, at *1-2.

Appellant’s assertion that the District Court erred in denying discovery as to whether the SEC has revoked the Bank’s exemption pursuant to 22 U.S.C. § 286k-2 is an irrelevant distraction. Appellant Br. at 7-8, 20-21, 24-27. In the first instance, Appellant did not request discovery in the District Court. *See* Opp’n. to Mot. to Dismiss, *Hudes v. AETNA Life Ins. Co.*, No. 10-cv-01444 (D.D.C. Jan. 17, 2011), ECF No. 62-1, at 4-5, 20 (stating only that the SEC failed to respond to her multiple inquiries about the Bank’s exempt status). The issue is therefore not properly preserved for review. Even if it were preserved, there is no reason to

⁸ Under § 286k-1, the SEC may require the Bank to file certain reports, but this requirement does not arise under § 15(d) of the Exchange Act. *See Hudes*, 2010 DOLSOX LEXIS 15, at *2-4.

⁹ Appellant’s claims under Sarbanes-Oxley fail for several additional reasons. First, her claim is time-barred because it was not brought within 90 days of the alleged violation. 18 U.S.C. 1514A(b)(2)(D). She did not file her complaint with OSHA until October 13, 2009, though she left the Bank in 2007. Further, her claim for reinstatement is not cognizable under Sarbanes-Oxley, which offers relief only for discriminatory acts occurring during employment—not after. *Id.*

think the SEC has revoked the Bank's exemption. Revocation would be effected through an official SEC action that would be part of the public record; it is a legal matter delegated to the SEC, not a factual issue susceptible to civil discovery.

Allowing Appellant to conduct discovery is thus entirely unnecessary and would run head-long into another aspect of the Bank's immunity. *See* IBRD Articles, art. VII, § 5 ("archives of the Bank shall be inviolable"). Further still, revocation of the Bank's exemption during the pendency of this action would have no effect on this case. The Bank was not a "company" under Sarbanes-Oxley when the employment actions at issue took place, and the Act's whistleblower provision does not have retroactive effect. *Fraser v. Fiduciary Trust Co.*, No. 04-CIV-6958, 2005 WL 6328596, at *7 (S.D.N.Y. June 23, 2005) (collecting administrative decisions finding no retroactivity).

III. APPELLANT WAS REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES.

Appellant's final argument is that she was not required to exhaust administrative remedies, either because her case purportedly involves foreign affairs or because it arises under the Dodd-Frank Act. This Court need not reach this administrative exhaustion issue; for all the reasons stated above, Appellant's claims fail irrespective of whether she exhausted her administrative remedies, as the District Court correctly concluded. J.A. at 50. But both of Appellant's contentions are also wrong.

Appellant first claims that, under the APA, her case is not subject to administrative procedures because it involves the conduct of foreign affairs. Appellant Br. at 31-32. Because the Bank is not a federal agency, the APA does not apply, and it provides no relief for her failure to observe exhaustion requirements. Appellant also cites *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963), to argue that her case merits judicial rather than administrative remedies because of supposed “international repercussions.” *McCulloch* is inapposite, as it involved a U.S. federal agency inappropriately asserting jurisdiction over foreign flag vessels with foreign crews and ordering union representation elections under U.S. law. 372 U.S. at 16-17, 21. If anything, this case is the reverse: there is no dispute that the Department of Labor has jurisdiction over Appellant’s Sarbanes-Oxley whistleblower claims, and the Department correctly determined that the Bank, an international organization, was immune from suit and not a “company” under Sarbanes-Oxley.

Second, Appellant makes a naked citation to part of the Dodd-Frank Act’s whistleblower provision, 15 U.S.C. § 78u-6(h)(1)(B)(i), without explaining how it has any bearing on this case. As the District Court correctly explained, J.A. at 51, any reliance on the Dodd-Frank Act is unavailing because that statute does not apply retroactively. Dodd-Frank became effective July 22, 2010, long after the events at issue in this suit. Dodd-Frank, § 4, 124 Stat. at 1390. “When a case

implicates a federal statute enacted after the events in [the] suit, the court’s first task is to determine whether Congress has expressly prescribed the statute’s proper reach.” *Landsgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994). Here, Congress has made clear that the whistleblower provision applies only to individuals who make covered reports of information “after the date of enactment of this subtitle.” Dodd-Frank, § 924(b), 124 Stat. at 1850. Since Congress has “expressly prescribed” that the whistleblower provisions are prospective only, Appellant’s reliance on them fails as a matter of law. *Landsgraf*, 511 U.S. at 280.¹⁰

¹⁰ The Bank respectfully submits that oral argument is unnecessary. D.C. Cir. R. 34(j). Appellant has pursued this case for three years, forcing the Bank to repeat *ad nauseam* that it is immune from her wrongful termination action. Oral argument will not change the clear jurisdictional bar created by the IOIA.

CONCLUSION

For the reasons set forth above, the judgment of the District Court should be affirmed.

/s/ Jeffrey T. Green

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September 5, 2012

Counsel for Appellee,

International Bank for

Reconstruction and Development

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 4,215 words (as determined by the Microsoft Word 2007 word-processing system used to prepare the brief), excluding the parts of the brief exempted under Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

I FURTHER CERTIFY that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure Rule 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using the Microsoft Word 2007 word-processing system in 14-point Times New Roman font.

Respectfully submitted,

/s/ Jeffrey T. Green

Jeffrey T. Green (#426747)

CERTIFICATE OF SERVICE AND FILING

I HEREBY CERTIFY that on the 5th day of September, 2012, a copy of the foregoing brief was filed electronically with the Clerk of the Court using the Court's CM/ECF System. The following counsel of record have therefore been served via the Court's CM/ECF System, which will send notification that such filing is available for viewing and downloading:

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I FURTHER CERTIFY that eight copies of this brief will be delivered to the Clerk of the Court within two business days of electronic filing, in accordance with section ECF-6(D) of the Court's Administrative Order Regarding Electronic Case Filing, entered May 15, 2009.

Respectfully submitted,

/s/ Jeffrey T. Green

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PL 111-203 [HR 4173]
July 21, 2010

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

An Act To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PL 111-203, 2010 HR 4173

END OF DOCUMENT

***1390** (16) STATE.--The term “State” means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

(17) TRANSFER DATE.--The term “transfer date” means the date established under section 311.

(18) OTHER INCORPORATED DEFINITIONS.--

(A) FEDERAL DEPOSIT INSURANCE ACT.--The terms “bank”, “bank holding company”, “control”, “deposit”, “depository institution”, “Federal depository institution”, “Federal savings association”, “foreign bank”, “including”, “insured branch”, “insured depository institution”, “national member bank”, “national non-member bank”, “savings association”, “State bank”, “State depository institution”, “State member bank”, “State nonmember bank”, “State savings association”, and “subsidiary” have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(B) HOLDING COMPANIES.--The term--

(i) “bank holding company” has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841);

(ii) “financial holding company” has the same meaning as in section 2(p) of the Bank Holding

Company Act of 1956 (12 U.S.C. 1841(p)); and

(iii) “savings and loan holding company” has the same meaning as in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

<< 12 USCA § 5302 >>

SEC. 3. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

<< 12 USCA § 5301 NOTE >>

SEC. 4. EFFECTIVE DATE.

Except as otherwise specifically provided in this Act or the amendments made by this Act, this Act and such amendments shall take effect 1 day after the date of enactment of this Act.

SEC. 5. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, jointly submitted for printing in the Congressional Record by the Chairmen of the House and Senate Budget Committees, provided that such statement has been submitted prior to the vote on passage in the House acting first on this conference report or amendment between the Houses.

<< 12 USCA § 5303 >>

SEC. 6. ANTITRUST SAVINGS CLAUSE.

Nothing in this Act, or any amendment made by this Act, shall be construed to modify, impair, or supersede the operation of any of the antitrust laws, unless otherwise specified. For purposes of this section, the term “antitrust laws” has the same meaning

UNITED STATES PUBLIC LAWS
111th Congress - Second Session
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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PL 111-203, 2010 HR 4173

END OF DOCUMENT

*1850 by inserting “and section 21F of this title” after “the Sarbanes-Oxley Act of 2002”.

(2) SECTION 21A.--Section 21A of the Securities Exchange Act of 1934 (15 U.S.C. 78u-1) is amended--

<< 15 USCA § 78u-1 >>

(A) in subsection (d)(1) by--

(i) striking “(subject to subsection (e))”; and

(ii) inserting “and section 21F of this title” after “the Sarbanes-Oxley Act of 2002”;

<< 15 USCA § 78u-1 >>

(B) by striking subsection (e); and

<< 15 USCA § 78u-1 >>

(C) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

<< 15 USCA § 78u-7 >>

SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS FOR WHISTLEBLOWER PROTEC-

TION.

(a) IMPLEMENTING RULES.--The Commission shall issue final regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this subtitle, not later than 270 days after the date of enactment of this Act.

(b) ORIGINAL INFORMATION.--Information provided to the Commission in writing by a whistleblower shall not lose the status of original information (as defined in section 21F(a)(3) of the Securities Exchange Act of 1934, as added by this subtitle) solely because the whistleblower provided the information prior to the effective date of the regulations, if the information is provided by the whistleblower after the date of enactment of this subtitle.

(c) AWARDS.--A whistleblower may receive an award pursuant to section 21F of the Securities Exchange Act of 1934, as added by this subtitle, regardless of whether any violation of a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based, occurred prior to the date of enactment of this subtitle.

(d) ADMINISTRATION AND ENFORCEMENT.--The Securities and Exchange Commission shall establish a separate office within the Commission to administer and enforce the provisions of section 21F of the Securities Exchange Act of 1934 (as add by section 922(a)). Such office shall report annually to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on its activities, whistleblower complaints, and the response of the Commission to such complaints.

SEC. 925. COLLATERAL BARS.

(a) SECURITIES EXCHANGE ACT OF 1934.--

<< 15 USCA § 78o >>

(1) SECTION 15.--Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended by striking “12 months, or bar such person from being associated with a broker or dealer,” and inserting “12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization,”.

<< 15 USCA § 78o-4 >>

(2) SECTION 15B.--Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(4)) is amended by striking “twelve months or bar any such person from being associated with a municipal securities dealer,” and inserting “12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities

C**Effective:[See Text Amendments]**United States Code Annotated [Currentness](#)

Title 22. Foreign Relations and Intercourse

↳ [Chapter 7](#). International Bureaus, Congresses, Etc.↳ [Subchapter XVIII](#). Privileges and Immunities of International Organizations ([Refs & Annos](#))→ → **§ 288. “International organization” defined; authority of President**

For the purposes of this subchapter, the term “international organization” means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in this subchapter. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this subchapter (including the amendments made by this subchapter) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities provided in this subchapter or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this subchapter.

CREDIT(S)

(Dec. 29, 1945, c. 652, Title I, § 1, 59 Stat. 669.)

Current through P.L. 112-142 (excluding P.L. 112-140 and 112-141) approved 7-9-12

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C**Effective:[See Text Amendments]**

United States Code Annotated [Currentness](#)

Title 22. Foreign Relations and Intercourse

▣ [Chapter 7](#). International Bureaus, Congresses, Etc.

▣ [Subchapter XVIII](#). Privileges and Immunities of International Organizations ([Refs & Annos](#))

→ → **§ 288a. Privileges, exemptions, and immunities of international organizations**

International organizations shall enjoy the status, immunities, exemptions, and privileges set forth in this section, as follows:

(a) International organizations shall, to the extent consistent with the instrument creating them, possess the capacity--

(i) to contract;

(ii) to acquire and dispose of real and personal property;

(iii) to institute legal proceedings.

(b) International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.

(c) Property and assets of international organizations, wherever located and by whomsoever held, shall be immune from search, unless such immunity be expressly waived, and from confiscation. The archives of international organizations shall be inviolable.

(d) Insofar as concerns customs duties and internal-revenue taxes imposed upon or by reason of importation, and the procedures in connection therewith; the registration of foreign agents; and the treatment of official communications, the privileges, exemptions, and immunities to which international organizations shall be entitled shall be those accorded under similar circumstances to foreign governments.

CREDIT(S)

(Dec. 29, 1945, c. 652, Title I, § 2, 59 Stat. 669.)

Current through P.L. 112-142 (excluding P.L. 112-140 and 112-141) approved 7-9-12

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Effective: April 5, 2012

United States Code Annotated [Currentness](#)

Title 15. Commerce and Trade

[Chapter 2B. Securities Exchanges \(Refs & Annos\)](#)

→→ § 78l. Registration requirements for securities

(a) General requirement of registration

It shall be unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this chapter and the rules and regulations thereunder. The provisions of this subsection shall not apply in respect of a security futures product traded on a national securities exchange.

(b) Procedure for registration; information

A security may be registered on a national securities exchange by the issuer filing an application with the exchange (and filing with the Commission such duplicate originals thereof as the Commission may require), which application shall contain--

(1) Such information, in such detail, as to the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer, and any guarantor of the security as to principal or interest or both, as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors, in respect of the following:

(A) the organization, financial structure, and nature of the business;

(B) the terms, position, rights, and privileges of the different classes of securities outstanding;

(C) the terms on which their securities are to be, and during the preceding three years have been, offered to the public or otherwise;

(D) the directors, officers, and underwriters, and each security holder of record holding more than 10 per centum of any class of any equity security of the issuer (other than an exempted security), their remuneration and their interests in the securities of, and their material contracts with, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer;

(E) remuneration to others than directors and officers exceeding \$20,000 per annum;

(F) bonus and profit-sharing arrangements;

(G) management and service contracts;

(H) options existing or to be created in respect of their securities;

(I) material contracts, not made in the ordinary course of business, which are to be executed in whole or in part at or after the filing of the application or which were made not more than two years before such filing, and every material patent or contract for a material patent right shall be deemed a material contract;

(J) balance sheets for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm;

(K) profit and loss statements for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm; and

(L) any further financial statements which the Commission may deem necessary or appropriate for the protection of investors.

(2) Such copies of articles of incorporation, bylaws, trust indentures, or corresponding documents by whatever name known, underwriting arrangements, and other similar documents of, and voting trust agreements with respect to, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(3) Such copies of material contracts, referred to in paragraph (1)(I) above, as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(c) Additional or alternative information

If in the judgment of the Commission any information required under subsection (b) of this section is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such other information of comparable character as it may deem applicable to such class of issuers.

(d) Effective date of registration; withdrawal of registration

If the exchange authorities certify to the Commission that the security has been approved by the exchange for listing and registration, the registration shall become effective thirty days after the receipt of such certification by the Commission or within such shorter period of time as the Commission may determine. A security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the issuer or the exchange to the Commission; whereupon the issuer shall be relieved from further compliance with the provisions of this section and [section 78m](#) of this title and any rules or regulations under such sections as to the securities so withdrawn or stricken. An unissued security may be registered only in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(e) Exemption from provisions of section for period ending not later than July 1, 1935

Notwithstanding the foregoing provisions of this section, the Commission may by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, permit securities listed on any exchange at the time the registration of such exchange as a national securities exchange becomes effective, to be registered for a period ending not later than July 1, 1935, without complying with the provisions of this section.

(f) Unlisted trading privileges for security originally listed on another national exchange

(1)(A) Notwithstanding the preceding subsections of this section, any national securities exchange, in accordance with the requirements of this subsection and the rules hereunder, may extend unlisted trading privileges to--

(i) any security that is listed and registered on a national securities exchange, subject to subparagraph (B); and

(ii) any security that is otherwise registered pursuant to this section, or that would be required to be so registered except for the exemption from registration provided in subparagraph (B) or (G) of subsection (g)(2) of this section, subject to subparagraph (E) of this paragraph.

(B) A national securities exchange may not extend unlisted trading privileges to a security described in subparagraph (A)(i) during such interval, if any, after the commencement of an initial public offering of such security, as is or may be required pursuant to subparagraph (C).

(C) Not later than 180 days after October 22, 1994, the Commission shall prescribe, by rule or regulation, the duration of the interval referred to in subparagraph (B), if any, as the Commission determines to be necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this chapter. Until the earlier of the effective date of such rule or regulation or 240 days after October 22, 1994, such interval shall begin at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered and end at the conclusion of the next day of trading.

(D) The Commission may prescribe, by rule or regulation such additional procedures or requirements for extending unlisted trading privileges to any security as the Commission deems necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this chapter.

(E) No extension of unlisted trading privileges to securities described in subparagraph (A)(ii) may occur except pursuant to a rule, regulation, or order of the Commission approving such extension or extensions. In promulgating such rule or regulation or in issuing such order, the Commission--

(i) shall find that such extension or extensions of unlisted trading privileges is consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this chapter;

(ii) shall take account of the public trading activity in such securities, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system; and

(iii) shall not permit a national securities exchange to extend unlisted trading privileges to such securities if any rule of such national securities exchange would unreasonably impair the ability of a dealer to solicit or effect transactions in such securities for its own account, or would unreasonably restrict competition among dealers in such securities or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

(F) An exchange may continue to extend unlisted trading privileges in accordance with this paragraph only if the exchange and the subject security continue to satisfy the requirements for eligibility under this paragraph, including any rules and regulations issued by the Commission pursuant to this paragraph, except that unlisted trading privileges may continue with regard to securities which had been admitted on such exchange prior to July 1, 1964, notwithstanding the failure to satisfy such requirements. If unlisted trading privileges in a security are discontinued pursuant to this subparagraph, the exchange shall cease trading in that security, unless the exchange and the subject security thereafter satisfy the requirements of this paragraph and the rules issued hereunder.

(G) For purposes of this paragraph--

(i) a security is the subject of an initial public offering if--

(I) the offering of the subject security is registered under the Securities Act of 1933 [[15 U.S.C.A. § 77a et seq.](#)]; and

(II) the issuer of the security, immediately prior to filing the registration statement with respect to the offering, was not subject to the reporting requirements of [section 78m](#) or [78o\(d\)](#) of this title; and

(ii) an initial public offering of such security commences at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered.

(2)(A) At any time within 60 days of commencement of trading on an exchange of a security pursuant to unlisted trading privileges, the Commission may summarily suspend such unlisted trading privileges on the exchange. Such suspension shall not be reviewable under section 78y of this title and shall not be deemed to be a final agency action for purposes of section 704 of Title 5. Upon such suspension--

(i) the exchange shall cease trading in the security by the close of business on the date of such suspension, or at such time as the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this chapter; and

(ii) if the exchange seeks to extend unlisted trading privileges to the security, the exchange shall file an application to reinstate its ability to do so with the Commission pursuant to such procedures as the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this chapter.

(B) A suspension under subparagraph (A) shall remain in effect until the Commission, by order, grants approval of an application to reinstate, as described in subparagraph (A)(ii).

(C) A suspension under subparagraph (A) shall not affect the validity or force of an extension of unlisted trading privileges in effect prior to such suspension.

(D) The Commission shall not approve an application by a national securities exchange to reinstate its ability to extend unlisted trading privileges to a security unless the Commission finds, after notice and opportunity for hearing, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this chapter. If the application is made to reinstate unlisted trading privileges to a security described in paragraph (1)(A)(ii), the Commission--

(i) shall take account of the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such a security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system; and

(ii) shall not grant any such application if any rule of the national securities exchange making application under this subsection would unreasonably impair the ability of a dealer to solicit or effect transactions in such security for its own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of marketmakers who are specialists and such dealers who are not specialists.

(3) Notwithstanding paragraph (2), the Commission shall by rules and regulations suspend unlisted trading privileges in whole or in part for any or all classes of securities for a period not exceeding twelve months, if it deems such suspension necessary or appropriate in the public interest or for the protection of investors or to prevent evasion of the purposes of this chapter.

(4) On the application of the issuer of any security for which unlisted trading privileges on any exchange have been continued or extended pursuant to this subsection, or of any broker or dealer who makes or creates a market for such security, or of any other person having a bona fide interest in the question of termination or suspension of such unlisted trading privileges, or on its own motion, the Commission shall by order terminate, or suspend for a period not exceeding twelve months, such unlisted trading privileges for such security if the Commission finds, after appropriate notice and opportunity for hearing, that such termination or suspension is necessary or appropriate in the public interest or for the protection of investors.

(5) In any proceeding under this subsection in which appropriate notice and opportunity for hearing are required, notice of not less than ten days to the applicant in such proceeding, to the issuer of the security involved, to the exchange which is seeking to continue or extend or has continued or extended unlisted trading privileges for such security, and to the exchange, if any, on which such security is listed and registered, shall be deemed adequate notice, and any broker or dealer who makes or creates a market for such security, and any other person having a bona fide interest in such proceeding, shall upon application be entitled to be heard.

(6) Any security for which unlisted trading privileges are continued or extended pursuant to this subsection shall be deemed to be registered on a national securities exchange within the meaning of this chapter. The powers and duties of the Commission under this chapter shall be applicable to the rules of an exchange in respect of any such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions, or for stated periods, exempt such securities from the operation of any provision of [section 78m](#), [78n](#), or [78p](#) of this title.

(g) Registration of securities by issuer; exemptions

(1) Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall--

(A) within 120 days after the last day of its first fiscal year ended on which the issuer has total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by either--

(i) 2,000 persons, or

(ii) 500 persons who are not accredited investors (as such term is defined by the Commission), and

(B) in the case of an issuer that is a bank or a bank holding company, as such term is defined in [section 1841 of Title 12](#), not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection, on which the issuer has total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons,

register such security by filing with the Commission a registration statement (and such copies thereof as the Commission may require) with respect to such security containing such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to subsection (b) of this section. Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct. Until such registration statement becomes effective it shall not be deemed filed for the purposes of [section 78r](#) of this title. Any issuer may register any class of equity security not required to be registered by filing a registration statement pursuant to the provisions of this paragraph. The Commission is authorized to extend the date upon which any issuer or class of issuers is required to register a security pursuant to the provisions of this paragraph.

(2) The provisions of this subsection shall not apply in respect of--

(A) any security listed and registered on a national securities exchange.

(B) any security issued by an investment company registered pursuant to [section 80a-8](#) of this title.

(C) any security, other than permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital, issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution.

(D) any security of an issuer organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual; or any security of a fund that is excluded from the definition of an investment company under [section 80a-3\(c\)\(10\)\(B\)](#) of this title.

(E) any security of an issuer which is a "cooperative association" as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, [[12 U.S.C.A. 1141 et seq.](#)], or a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

(F) any security issued by a mutual or cooperative organization which supplies a commodity or service primarily for the benefit of its members and operates not for pecuniary profit, but only if the security is part of a class issuable only to persons who purchase commodities or services from the issuer, the security is transferable only to a successor in interest or occupancy of premises serviced or to be served by the issuer, and no dividends are payable to the holder of the security.

(G) any security issued by an insurance company if all of the following conditions are met:

(i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

(ii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in [section 78p](#) of this title.

(H) any interest or participation in any collective trust funds maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (i) a stock-bonus, pension, or profit-sharing plan which meets the requirements for qualification under [section 401 of Title 26](#), (ii) an annuity plan which meets the requirements for deduction of the employer's contribution under [section 404\(a\)\(2\) of Title 26](#), or (iii) a church plan, company, or account that is excluded from the definition of an investment company under [section 80a-3\(c\)\(14\)](#) of this title.

(3) The Commission may by rules or regulations or, on its own motion, after notice and opportunity for hearing, by order, exempt from this subsection any security of a foreign issuer, including any certificate of deposit for such a security, if the Commission finds that such exemption is in the public interest and is consistent with the protection of investors.

(4) Registration of any class of security pursuant to this subsection shall be terminated ninety days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders of record of such class of security is reduced to less than 300 persons, or, in the case of a bank or a bank holding company, as such term is defined in [section 1841 of Title 12](#), 1,200 persons persons [\[FN1\]](#). The Commission shall after notice and opportunity for hearing deny termination of registration if it finds that the certification is untrue. Termination of registration shall be deferred pending final determination on the question of denial.

(5) For the purposes of this subsection the term "class" shall include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may for the purpose of this subsection define by rules and regulations the terms "total assets" and "held of record" as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. For purposes of this subsection, a security futures product shall not be considered a class of equity security of the issuer of the securities underlying the security

futures product.

(6) Exclusion for persons holding certain securities

The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(6) of the Securities Act of 1933 from the provisions of this subsection.

(h) Exemption by rules and regulations from certain provisions of section

The Commission may by rules and regulations, or upon application of an interested person, by order, after notice and opportunity for hearing, exempt in whole or in part any issuer or class of issuers from the provisions of subsection (g) of this section or from [section 78m](#), [78n](#), or [78o\(d\)](#) of this title or may exempt from [section 78p](#) of this title any officer, director, or beneficial owner of securities of any issuer, any security of which is required to be registered pursuant to subsection (g) hereof, upon such terms and conditions and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. The Commission may, for the purposes of any of the above-mentioned sections or subsections of this chapter, classify issuers and prescribe requirements appropriate for each such class.

(i) Securities issued by banks

In respect of any securities issued by banks and savings associations the deposits of which are insured in accordance with the Federal Deposit Insurance Act [[12 U.S.C.A. § 1811 et seq.](#)], the powers, functions, and duties vested in the Commission to administer and enforce this section and [sections 78j-1](#), [78m](#), [78n\(a\)](#), [78n\(c\)](#), [78n\(d\)](#), [78n\(f\)](#), and [78p](#) of this title, and [sections 7241](#), [7242](#), [7243](#), [7244](#), [7261\(b\)](#), [7262](#), [7264](#), and [7265](#) of this title, (1) with respect to national banks and Federal savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation are vested in the Comptroller of the Currency, (2) with respect to all other member banks of the Federal Reserve System are vested in the Board of Governors of the Federal Reserve System, and (3) with respect to all other insured banks and State savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation, are vested in the Federal Deposit Insurance Corporation. The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in them as provided in this subsection. In carrying out their responsibilities under this subsection, the agencies named in the first sentence of this subsection shall issue substantially similar regulations to regulations and rules issued by the Commission under this section and [sections 78j-1](#), [78m](#), [78n\(a\)](#), [78n\(c\)](#), [78n\(d\)](#), [78n\(f\)](#), and [78p](#) of this title, and [sections 7241](#), [7242](#), [7243](#), [7244](#), [7261\(b\)](#), [7262](#), [7264](#), and [7265](#) of this title, unless they find that implementation of substantially similar regulations with respect to insured banks and insured institutions are not necessary or appropriate in the public interest or for protection of investors, and publish such findings, and the detailed reasons therefor, in the Federal Register. Such regulations of the above-named agencies, or the reasons for failure to publish such substantially similar regulations to those of the Commission, shall be published in the Federal Register within 120 days of October 28, 1974, and, thereafter, within 60 days of any changes made by the Commission in its relevant regulations and rules.

(j) Denial, suspension, or revocation of registration; notice and hearing

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer, of such security has failed to comply with any provision of this chapter or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

(k) Trading suspensions; emergency authority

(1) Trading suspensions

If in its opinion the public interest and the protection of investors so require, the Commission is authorized by order--

(A) summarily to suspend trading in any security (other than an exempted security) for a period not exceeding 10 business days, and

(B) summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding 90 calendar days.

The action described in subparagraph (B) shall not take effect unless the Commission notifies the President of its decision and the President notifies the Commission that the President does not disapprove of such decision. If the actions described in subparagraph (A) or (B) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.

(2) Emergency orders

(A) In general

The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under the securities laws, as the Commission determines is necessary in the public interest and for the protection of investors--

(i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities);

(ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities); or

(iii) to reduce, eliminate, or prevent the substantial disruption by the emergency of--

(I) securities markets (other than markets in exempted securities), investment companies, or any other significant portion or segment of such markets; or

(II) the transmission or processing of securities transactions (other than transactions in exempted securities).

(B) Effective period

An order of the Commission under this paragraph shall continue in effect for the period specified by the Commission, and may be extended. Except as provided in subparagraph (C), an order of the Commission under this paragraph may not continue in effect for more than 10 business days, including extensions.

(C) Extension

An order of the Commission under this paragraph may be extended to continue in effect for more than 10 business days if, at the time of the extension, the Commission finds that the emergency still exists and determines that the continuation of the order beyond 10 business days is necessary in the public interest and for the protection of investors to attain an objective described in clause (i), (ii), or (iii) of subparagraph (A). In no event shall an order of the Commission under this paragraph continue in effect for more than 30 calendar days.

(D) Security futures

If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.

(E) Exemption

In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of--

(i) [section 78s\(c\)](#) of this title; or

(ii) [section 553 of Title 5](#).

(3) Termination of emergency actions by President

The President may direct that action taken by the Commission under paragraph (1)(B) or paragraph (2) of this subsection shall not continue in effect.

(4) Compliance with orders

No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in contravention of an order of the Commission under this subsection unless such order has been stayed, modified, or set aside as provided in paragraph (5) of this subsection or has ceased to be effective upon direction of the President as provided in paragraph (3).

(5) Limitations on review of orders

An order of the Commission pursuant to this subsection shall be subject to review only as provided in [section 78y\(a\)](#) of this title. Review shall be based on an examination of all the information before the Commission at the time such order was issued. The reviewing court shall not enter a stay, writ of mandamus, or similar relief unless the court finds, after notice and hearing before a panel of the court, that the Commission's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(6) Consultation

Prior to taking any action described in paragraph (1)(B), the Commission shall consult with and consider the views of the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and the Commodity Futures Trading Commission, unless such consultation is impracticable in light of the emergency.

(7) Definition

For purposes of this subsection, the term "emergency" means--

(A) a major market disturbance characterized by or constituting--

(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt--

(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

(ii) the transmission or processing of securities transactions.

(l) Issuance of any security in contravention of rules and regulations; application to annuity contracts and variable life policies

It shall be unlawful for an issuer, any class of whose securities is registered pursuant to this section or would be required to be so registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of this section, by the use of any means or instrumentality of interstate commerce, or of the mails, to issue, either originally or upon transfer, any of such securities in a form or with a format which contravenes such rules and regulations as the Commission may prescribe as necessary or appropriate for the prompt and accurate clearance and settlement of transactions in securities. The provisions of this subsection shall not apply to variable annuity contracts or variable life policies issued by an insurance company or its separate accounts.

CREDIT(S)

(June 6, 1934, c. 404, Title I, § 12, 48 Stat. 892; May 27, 1936, c. 462, § 1, 49 Stat. 1375; Aug. 10, 1954, c. 667, Title II, § 202, 68 Stat. 686; Aug. 20, 1964, Pub.L. 88-467, § 3, 78 Stat. 565; July 29, 1968, Pub.L. 90-439, § 1, 82 Stat. 454; Dec. 14, 1970, Pub.L. 91-547, § 28(c), 84 Stat. 1435; Oct. 28, 1974, Pub.L. 93-495, Title I, § 105(b), 88 Stat. 1503; June 4, 1975, Pub.L. 94-29, §§ 8, 9, 89 Stat. 117, 118; Oct. 22, 1986, Pub.L. 99-514, § 2, 100 Stat. 2095; Dec. 4, 1987, Pub.L. 100-181, Title III, § 314, 101 Stat. 1256; Aug. 9, 1989, Pub.L. 101-73, Title VII, § 744(u)(2), 103 Stat. 441; Oct. 16, 1990, Pub.L. 101-432, § 2, 104 Stat. 963; Oct. 22, 1994, Pub.L. 103-389, § 2, 108 Stat. 4081; Dec. 8, 1995, Pub.L. 104-62, § 4(d), 109 Stat. 685; Dec. 21, 2000, Pub.L. 106-554, § 1(a)(5) [Title II, §§ 206(e), 208(b)(1),(2)], 114 Stat. 2763, 2763A-431, 2763A-436; July 30, 2002, Pub.L. 107-204, § 3(b)(4), Title II, § 205(c)(1), 116 Stat. 749, 774; Oct. 25, 2004, Pub.L. 108-359, § 1(c)(2), 118 Stat. 1666; Oct. 30, 2004, Pub.L. 108-386, § 8(f)(4), 118 Stat. 2232; Dec. 17, 2004, Pub.L. 108-458, Title VII, §§ 7803(b)(1), (c), 118 Stat. 3861, 3862; Pub.L. 111-203, Title III, § 376(2), Title IX, § 986(a)(2), July 21, 2010, 124 Stat. 1569, 1935; Pub.L. 112-106, Title III, § 303(a), Title V, §§ 501, 502, Title VI, § 601(a), Apr. 5, 2012, 126 Stat. 321, 325, 326.)

[FN1] So in original. The second “persons” probably should not appear.

Except as otherwise provided in Pub.L. 111-203, § 364(a), amendments by subtitle E of Title III of Pub.L. 111-203 shall take effect on the transfer date [the date that is 1 year after July 21, 2010, unless extended by the

Secretary, see 12 U.S.C.A. § 5411], see Pub.L. 111-203, § 351, set out as a note under 2 U.S.C.A. § 906.

Current through P.L. 112-142 (excluding P.L. 112-140 and 112-141) approved 7-9-12

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C**Effective:[See Text Amendments]**United States Code Annotated [Currentness](#)

Title 22. Foreign Relations and Intercourse

▣ [Chapter 7](#). International Bureaus, Congresses, Etc.▣ [Subchapter XV](#). International Monetary Fund and Bank for Reconstruction and Development ([Refs & Annos](#))→→ **§ 286h. Status, privileges, and immunities of the United States**

The provisions of article IX, sections 2 to 9, both inclusive, and the first sentence of article VIII, section 2(b), of the Articles of Agreement of the Fund, and the provisions of article VI, section 5(i), and article VII, sections 2 to 9, both inclusive, of the Articles of Agreement of the Bank, shall have full force and effect in the United States and its Territories and possessions upon acceptance of membership by the United States in, and the establishment of, the Fund and the Bank, respectively.

CREDIT(S)

(July 31, 1945, c. 339, § 11, 59 Stat. 516.)

Current through P.L. 112-142 (excluding P.L. 112-140 and 112-141) approved 7-9-12

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Title 28. Judiciary and Judicial Procedure ([Refs & Annos](#))

▢ [Part IV. Jurisdiction and Venue \(Refs & Annos\)](#)

▢ [Chapter 83. Courts of Appeals \(Refs & Annos\)](#)

→→ **§ 1291. Final decisions of district courts**

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in [sections 1292\(c\) and \(d\) and 1295](#) of this title.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 929; Oct. 31, 1951, c. 655, § 48, 65 Stat. 726; July 7, 1958, Pub.L. 85-508, § 12(e), 72 Stat. 348; Apr. 2, 1982, [Pub.L. 97-164, Title I, § 124](#), 96 Stat. 36.)

Current through P.L. 112-142 (excluding P.L. 112-140 and 112-141) approved 7-9-12

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C**Effective: November 3, 2011**Code of Federal Regulations [Currentness](#)

Title 29. Labor

Subtitle B. Regulations Relating to Labor

Chapter XVII. Occupational Safety and Health Administration, Department of Labor

↗ [Part 1980](#). Procedures for the Handling of Retaliation Complaints Under Section 806 of the Sarbanes–Oxley Act of 2002, as Amended ([Refs & Annos](#))↗ [Subpart B](#). Litigation→ **§ 1980.106 Objections to the findings and the preliminary order and request for a hearing.**

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees under the Act, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to [§ 1980.105\(b\)](#). The objections, request for a hearing, and/or request for attorney's fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or email communication is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC 20001, and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which shall not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and preliminary order, regardless of any objections to the order. The respondent may file a motion with the Office of Administrative Law Judges for a stay of the Assistant Secretary's preliminary order of reinstatement, which shall be granted only based on exceptional circumstances. If no timely objection is filed with respect to either the findings or the preliminary order, the findings and/or preliminary order shall become the final decision of the Secretary, not subject to judicial review.

SOURCE: [76 FR 68092](#), Nov. 3, 2011, unless otherwise noted.

AUTHORITY: [18 U.S.C. 1514A](#), as amended by the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, [Pub.L. 111–203](#) (July 21, 2010); Secretary of Labor's Order No. 4–2010 (Sept. 2, 2010), [75 FR 55355](#) (Sept. 10, 2010); Secretary of Labor's Order No. 1–2010 (Jan. 15, 2010), [75 FR 3924](#) (Jan. 25, 2010).

29 C. F. R. § 1980.106, 29 CFR § 1980.106

Current through August 23, 2012; 77 FR 50953.

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C**Effective: November 3, 2011**Code of Federal Regulations [Currentness](#)

Title 29. Labor

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↗ [Part 1980](#). Procedures for the Handling of Retaliation Complaints Under Section 806 of the Sarbanes–Oxley Act of 2002, as Amended ([Refs & Annos](#))↗ [Subpart B](#). Litigation→ **§ 1980.110 Decision and orders of the Administrative Review Board.**

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board, U.S. Department of Labor (ARB), which has been delegated the authority to act for the Secretary and issue final decisions under this part. The decision of the ALJ will become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the ARB, and the ARB accepts the petition for review. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 10 business days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or email communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the Assistant

Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the ALJ will become the final order of the Secretary unless the ARB, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the ALJ will be inoperative unless and until the ARB issues an order adopting the decision, except that a preliminary order of reinstatement will be effective while review is conducted by the ARB, unless the ARB grants a motion by the respondent to stay the order based on exceptional circumstances. The ARB will specify the terms under which any briefs are to be filed. The ARB will review the factual determinations of the ALJ under the substantial evidence standard. If no timely petition for review is filed, or the ARB denies review, the decision of the ALJ will become the final order of the Secretary. If no timely petition for review is filed, the resulting final order is not subject to judicial review.

(c) The final decision of the ARB shall be issued within 120 days of the conclusion of the hearing, which will be deemed to be 10 business days after the date of the decision of the ALJ unless a motion for reconsideration has been filed with the ALJ in the interim. The ARB's final decision will be served upon all parties and the Chief Administrative Law Judge by mail. The final decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the final order will include all relief necessary to make the complainant whole, in-

cluding reinstatement with the same seniority status that the complainant would have had but for the retaliation; back pay with interest; and compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney's fees. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under [26 U.S.C. 6621](#) and will be compounded daily.

(e) If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent a reasonable attorney's fee, not exceeding \$1,000.

SOURCE: [76 FR 68092](#), Nov. 3, 2011, unless otherwise noted.

AUTHORITY: [18 U.S.C. 1514A](#), as amended by the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, [Pub.L. 111–203](#) (July 21, 2010); Secretary of Labor's Order No. 4–2010 (Sept. 2, 2010), [75 FR 55355](#) (Sept. 10, 2010); Secretary of Labor's Order No. 1–2010 (Jan. 15, 2010), [75 FR 3924](#) (Jan. 25, 2010).

29 C. F. R. § 1980.110, 29 CFR § 1980.110

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INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Articles of Agreement

(As amended effective June 27, 2012)

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ARTICLE VIII: Amendments**ARTICLE IX: Interpretation****ARTICLE X: Approval Deemed Given****ARTICLE XI: Final Provisions**

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INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Articles of Agreement

(As amended effective June 27, 2012)

The Governments on whose behalf the present Agreement is signed agree as follows:

INTRODUCTORY ARTICLE

The International Bank for Reconstruction and Development is established and shall operate in accordance with the following provisions:

ARTICLE I

Purposes

The purposes of the Bank are:

- (i) To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.
- (ii) To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing, on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources.
- (iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories.
- (iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.
- (v) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the immediate postwar years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.

The Bank shall be guided in all its decisions by the purposes set forth above.

ARTICLE II

Membership in and Capital of the Bank

SECTION 1. *Membership*

- (a) The original members of the Bank shall be those members of the International Monetary Fund which accept membership in the Bank before the date specified in Article XI, Section 2 (e).

(b) Membership shall be open to other members of the Fund, at such times and in accordance with such terms as may be prescribed by the Bank.

SECTION 2. *Authorized Capital*

(a) The authorized capital stock of the Bank shall be \$10,000,000,000, in terms of United States dollars of the weight and fineness in effect on July 1, 1944. The capital stock shall be divided into 100,000 shares¹ having a par value of \$100,000 each, which shall be available for subscription only by members.

(b) The capital stock may be increased when the Bank deems it advisable by a three-fourths majority of the total voting power.

SECTION 3. *Subscription of Shares*

(a) Each member shall subscribe shares of the capital stock of the Bank. The minimum number of shares to be subscribed by the original members shall be those set forth in Schedule A. The minimum number of shares to be subscribed by other members shall be determined by the Bank, which shall reserve a sufficient portion of its capital stock for subscription by such members.

(b) The Bank shall prescribe rules laying down the conditions under which members may subscribe shares of the authorized capital stock of the Bank in addition to their minimum subscriptions.

(c) If the authorized capital stock of the Bank is increased, each member shall have a reasonable opportunity to subscribe, under such conditions as the Bank shall decide, a proportion of the increase of stock equivalent to the proportion which its stock theretofore subscribed bears to the total capital stock of the Bank, but no member shall be obligated to subscribe any part of the increased capital.

SECTION 4. *Issue Price of Shares*

Shares included in the minimum subscriptions of original members shall be issued at par. Other shares shall be issued at par unless the Bank by a majority of the total voting power decides in special circumstances to issue them on other terms.

SECTION 5. *Division and Calls of Subscribed Capital*

The subscription of each member shall be divided into two parts as follows:

(i) twenty percent shall be paid or subject to call under Section 7 (i) of this Article as needed by the Bank for its operations;

(ii) the remaining eighty percent shall be subject to call by the Bank only when required to meet obligations of the Bank created under Article IV, Sections 1 (a) (ii) and (iii).

Calls on unpaid subscriptions shall be uniform on all shares.

SECTION 6. *Limitation on Liability*

Liability on shares shall be limited to the unpaid portion of the issue price of the shares.

SECTION 7. *Method of Payment of Subscriptions for Shares*

Payment of subscriptions for shares shall be made in gold or United States dollars and in the currencies of the members as follows:

¹ As of June 27, 2012, the authorized capital stock of the Bank is 2,307,600 shares.

(i) under Section 5 (i) of this Article two percent of the price of each share shall be payable in gold or United States dollars, and, when calls are made, the remaining eighteen percent shall be paid in the currency of the member;

(ii) when a call is made under Section 5 (ii) of this Article, payment may be made at the option of the member either in gold, in United States dollars or in the currency required to discharge the obligations of the Bank for the purpose for which the call is made;

(iii) when a member makes payments in any currency under (i) and (ii) above, such payments shall be made in amounts equal in value to the member's liability under the call. This liability shall be a proportionate part of the subscribed capital stock of the Bank as authorized and defined in Section 2 of this Article.

SECTION 8. *Time of Payment of Subscriptions*

(a) The two percent payable on each share in gold or United States dollars under Section 7 (i) of this Article, shall be paid within sixty days of the date on which the Bank begins operations, provided that

(i) any original member of the Bank whose metropolitan territory has suffered from enemy occupation or hostilities during the present war shall be granted the right to postpone payment of one-half percent until five years after that date;

(ii) an original member who cannot make such a payment because it has not recovered possession of its gold reserves which are still seized or immobilized as a result of the war may postpone all payment until such date as the Bank shall decide.

(b) The remainder of the price of each share payable under Section 7 (i) of this Article shall be paid as and when called by the Bank, provided that

(i) the Bank shall, within one year of its beginning operations, call not less than eight percent of the price of the share in addition to the payment of two percent referred to in (a) above;

(ii) not more than five percent of the price of the share shall be called in any period of three months.

SECTION 9. *Maintenance of Value of Certain Currency Holdings of the Bank*

(a) Whenever (i) the par value of a member's currency is reduced, or (ii) the foreign exchange value of a member's currency has, in the opinion of the Bank, depreciated to a significant extent within that member's territories, the member shall pay to the Bank within a reasonable time an additional amount of its own currency sufficient to maintain the value, as of the time of initial subscription, of the amount of the currency of such member which is held by the Bank and derived from currency originally paid in to the Bank by the member under Article II, Section 7 (i), from currency referred to in Article IV, Section 2 (b), or from any additional currency furnished under the provisions of the present paragraph, and which has not been repurchased by the member for gold or for the currency of any member which is acceptable to the Bank.

(b) Whenever the par value of a member's currency is increased, the Bank shall return to such member within a reasonable time an amount of that member's currency equal to the increase in the value of the amount of such currency described in (a) above.

(c) The provisions of the preceding paragraphs may be waived by the Bank when a uniform proportionate change in the par values of the currencies of all its members is made by the International Monetary Fund.

SECTION 10. *Restriction on Disposal of Shares*

Shares shall not be pledged or encumbered in any manner whatever and they shall be transferable only to the Bank.

ARTICLE III

General Provisions Relating to Loans and Guarantees

SECTION 1. *Use of Resources*

- (a) The resources and the facilities of the Bank shall be used exclusively for the benefit of members with equitable consideration to projects for development and projects for reconstruction alike.
- (b) For the purpose of facilitating the restoration and reconstruction of the economy of members whose metropolitan territories have suffered great devastation from enemy occupation or hostilities, the Bank, in determining the conditions and terms of loans made to such members, shall pay special regard to lightening the financial burden and expediting the completion of such restoration and reconstruction.

SECTION 2. *Dealings between Members and the Bank*

Each member shall deal with the Bank only through its Treasury, central bank, stabilization fund or other similar fiscal agency, and the Bank shall deal with members only by or through the same agencies.

SECTION 3. *Limitations on Guarantees and Borrowings of the Bank*

The total amount outstanding of guarantees, participations in loans and direct loans made by the Bank shall not be increased at any time, if by such increase the total would exceed one hundred percent of the unimpaired subscribed capital, reserves and surplus of the Bank.

SECTION 4. *Conditions on which the Bank may Guarantee or Make Loans*

The Bank may guarantee, participate in, or make loans to any member or any political sub-division thereof and any business, industrial, and agricultural enterprise in the territories of a member, subject to the following conditions:

- (i) When the member in whose territories the project is located is not itself the borrower, the member or the central bank or some comparable agency of the member which is acceptable to the Bank, fully guarantees the repayment of the principal and the payment of interest and other charges on the loan.
- (ii) The Bank is satisfied that in the prevailing market conditions the borrower would be unable otherwise to obtain the loan under conditions which in the opinion of the Bank are reasonable for the borrower.
- (iii) A competent committee, as provided for in Article V, Section 7, has submitted a written report recommending the project after a careful study of the merits of the proposal.
- (iv) In the opinion of the Bank the rate of interest and other charges are reasonable and such rate, charges and the schedule for repayment of principal are appropriate to the project.
- (v) In making or guaranteeing a loan, the Bank shall pay due regard to the prospects that the borrower, and, if the borrower is not a member, that the guarantor, will be in position to meet its obligations under the loan; and the Bank shall act prudently in the interests both of the particular member in whose territories the project is located and of the members as a whole.
- (vi) In guaranteeing a loan made by other investors, the Bank receives suitable compensation for its risk.
- (vii) Loans made or guaranteed by the Bank shall, except in special circumstances, be for the purpose of specific projects of reconstruction or development.

SECTION 5. *Use of Loans Guaranteed, Participated in or Made by the Bank*

(a) The Bank shall impose no conditions that the proceeds of a loan shall be spent in the territories of any particular member or members.

(b) The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.

(c) In the case of loans made by the Bank, it shall open an account in the name of the borrower and the amount of the loan shall be credited to this account in the currency or currencies in which the loan is made. The borrower shall be permitted by the Bank to draw on this account only to meet expenses in connection with the project as they are actually incurred.

SECTION 6. *Loans to the International Finance Corporation*²

(a) The Bank may make, participate in, or guarantee loans to the International Finance Corporation, an affiliate of the Bank, for use in its lending operations. The total amount outstanding of such loans, participations and guarantees shall not be increased if, at the time or as a result thereof, the aggregate amount of debt (including the guarantee of any debt) incurred by the said Corporation from any source and then outstanding shall exceed an amount equal to four times its unimpaired subscribed capital and surplus.

(b) The provisions of Article III, Sections 4 and 5 (c) and of Article IV, Section 3 shall not apply to loans, participations and guarantees authorized by this Section.

ARTICLE IV**Operations****SECTION 1. *Methods of Making or Facilitating Loans***

(a) The Bank may make or facilitate loans which satisfy the general conditions of Article III in any of the following ways:

(i) By making or participating in direct loans out of its own funds corresponding to its unimpaired paid-up capital and surplus and, subject to Section 6 of this Article, to its reserves.

(ii) By making or participating in direct loans out of funds raised in the market of a member, or otherwise borrowed by the Bank.

(iii) By guaranteeing in whole or in part loans made by private investors through the usual investment channels.

(b) The Bank may borrow funds under (a) (ii) above or guarantee loans under (a) (iii) above only with the approval of the member in whose markets the funds are raised and the member in whose currency the loan is denominated, and only if those members agree that the proceeds may be exchanged for the currency of any other member without restriction.

SECTION 2. *Availability and Transferability of Currencies*

(a) Currencies paid into the Bank under Article II, Section 7 (i), shall be loaned only with the approval in each case of the member whose currency is involved; provided, however, that if necessary, after the Bank's subscribed capital has been entirely called, such currencies shall, without restriction by the members whose currencies are offered, be used or exchanged for the currencies required to meet contractual payments of interest, other charges or amortization on the Bank's own borrowings, or to meet the Bank's liabilities with respect to such contractual payments on loans guaranteed by the Bank.

² Section added by amendment effective December 17, 1965.

(b) Currencies received by the Bank from borrowers or guarantors in payment on account of principal of direct loans made with currencies referred to in (a) above shall be exchanged for the currencies of other members or reloaned only with the approval in each case of the members whose currencies are involved; provided, however, that if necessary, after the Bank's subscribed capital has been entirely called, such currencies shall, without restriction by the members whose currencies are offered, be used or exchanged for the currencies required to meet contractual payments of interest, other charges or amortization on the Bank's own borrowings, or to meet the Bank's liabilities with respect to such contractual payments on loans guaranteed by the Bank.

(c) Currencies received by the Bank from borrowers or guarantors in payment on account of principal of direct loans made by the Bank under Section 1 (a) (ii) of this Article, shall be held and used, without restriction by the members, to make amortization payments, or to anticipate payment of or repurchase part or all of the Bank's own obligations.

(d) All other currencies available to the Bank, including those raised in the market or otherwise borrowed under Section 1 (a) (ii) of this Article, those obtained by the sale of gold, those received as payments of interest and other charges for direct loans made under Sections 1 (a) (i) and (ii), and those received as payments of commissions and other charges under Section 1 (a) (iii), shall be used or exchanged for other currencies or gold required in the operations of the Bank without restriction by the members whose currencies are offered.

(e) Currencies raised in the markets of members by borrowers on loans guaranteed by the Bank under Section 1 (a) (iii) of this Article, shall also be used or exchanged for other currencies without restriction by such members.

SECTION 3. *Provision of Currencies for Direct Loans*

The following provisions shall apply to direct loans under Sections 1 (a) (i) and (ii) of this Article:

(a) The Bank shall furnish the borrower with such currencies of members, other than the member in whose territories the project is located, as are needed by the borrower for expenditures to be made in the territories of such other members to carry out the purposes of the loan.

(b) The Bank may, in exceptional circumstances when local currency required for the purposes of the loan cannot be raised by the borrower on reasonable terms, provide the borrower as part of the loan with an appropriate amount of that currency.

(c) The Bank, if the project gives rise indirectly to an increased need for foreign exchange by the member in whose territories the project is located, may in exceptional circumstances provide the borrower as part of the loan with an appropriate amount of gold or foreign exchange not in excess of the borrower's local expenditure in connection with the purposes of the loan.

(d) The Bank may, in exceptional circumstances, at the request of a member in whose territories a portion of the loan is spent, repurchase with gold or foreign exchange a part of that member's currency thus spent but in no case shall the part so repurchased exceed the amount by which the expenditure of the loan in those territories gives rise to an increased need for foreign exchange.

SECTION 4. *Payment Provisions for Direct Loans*

Loan contracts under Section 1 (a) (i) or (ii) of this Article shall be made in accordance with the following payment provisions:

(a) The terms and conditions of interest and amortization payments, maturity and dates of payment of each loan shall be determined by the Bank. The Bank shall also determine the rate and any other terms and conditions of commission to be charged in connection with such loan.

In the case of loans made under Section 1 (a) (ii) of this Article during the first ten years of the Bank's operations, this rate of commission shall be not less than one percent per annum and not greater than one and one-half percent per annum, and shall be charged on the outstanding portion of any such loan. At the end of this period of ten years, the rate of commission may be reduced by the Bank with respect both to the outstanding portions of loans already made and to future loans, if the reserves accumulated by the Bank under

Section 6 of this Article and out of other earnings are considered by it sufficient to justify a reduction. In the case of future loans the Bank shall also have discretion to increase the rate of commission beyond the above limit, if experience indicates that an increase is advisable.

(b) All loan contracts shall stipulate the currency or currencies in which payments under the contract shall be made to the Bank. At the option of the borrowers however, such payments may be made in gold, or subject to the agreement of the Bank, in the currency of a member other than that prescribed in the contract.

(i) In the case of loans made under Section 1 (a) (i) of this Article, the loan contracts shall provide that payments to the Bank of interest, other charges and amortization shall be made in the currency loaned, unless the member whose currency is loaned agrees that such payments shall be made in some other specified currency or currencies. These payments, subject to the provisions of Article II, Section 9 (c), shall be equivalent to the value of such contractual payments at the time the loans were made, in terms of a currency specified for the purpose by the Bank by a three-fourths majority of the total voting power.

(ii) In the case of loans made under Section 1 (a) (ii) of this Article, the total amount outstanding and payable to the Bank in any one currency shall at no time exceed the total amount of the outstanding borrowings made by the Bank under Section 1 (a) (ii) and payable in the same currency.

(c) If a member suffers from an acute exchange stringency, so that the service of any loan contracted by that member or guaranteed by it or by one of its agencies cannot be provided in the stipulated manner, the member concerned may apply to the Bank for a relaxation of the conditions of payment. If the Bank is satisfied that some relaxation is in the interests of the particular member and of the operations of the Bank and of its members as a whole, it may take action under either, or both, of the following paragraphs with respect to the whole, or part, of the annual service:

(i) The Bank may, in its discretion, make arrangements with the member concerned to accept service payments on the loan in the member's currency for periods not to exceed three years upon appropriate terms regarding the use of such currency and the maintenance of its foreign exchange value; and for the repurchase of such currency on appropriate terms.

(ii) The Bank may modify the terms of amortization or extend the life of the loan, or both.

SECTION 5. Guarantees

(a) In guaranteeing a loan placed through the usual investment channels, the Bank shall charge a guarantee commission payable periodically on the amount of the loan outstanding at a rate determined by the Bank. During the first ten years of the Bank's operations, this rate shall be not less than one percent per annum and not greater than one and one-half percent per annum. At the end of this period of ten years, the rate of commission may be reduced by the Bank with respect both to the outstanding portions of loans already guaranteed and to future loans if the reserves accumulated by the Bank under Section 6 of this Article and out of other earnings are considered by it sufficient to justify a reduction. In the case of future loans the Bank shall also have discretion to increase the rate of commission beyond the above limit, if experience indicates that an increase is advisable.

(b) Guarantee commissions shall be paid directly to the Bank by the borrower.

(c) Guarantees by the Bank shall provide that the Bank may terminate its liability with respect to interest if, upon default by the borrower and by the guarantor, if any, the Bank offers to purchase, at par and interest accrued to a date designated in the offer, the bonds or other obligations guaranteed.

(d) The Bank shall have power to determine any other terms and conditions of the guarantee.

SECTION 6. Special Reserve

The amount of commissions received by the Bank under Sections 4 and 5 of this Article shall be set aside as a special reserve, which shall be kept available for meeting liabilities of the Bank in accordance with Section 7 of this Article. The special reserve shall be held in such liquid form, permitted under this Agreement, as the Executive Directors may decide.

SECTION 7. *Methods of Meeting Liabilities of the Bank in Case of Defaults*

In cases of default on loans made, participated in, or guaranteed by the Bank:

(a) The Bank shall make such arrangements as may be feasible to adjust the obligations under the loans, including arrangements under or analogous to those provided in Section 4 (c) of this Article.

(b) The payments in discharge of the Bank's liabilities on borrowings or guarantees under Section 1 (a) (ii) and (iii) of this Article shall be charged:

(i) first, against the special reserve provided in Section 6 of this Article;

(ii) then, to the extent necessary and at the discretion of the Bank, against the other reserves, surplus and capital available to the Bank.

(c) Whenever necessary to meet contractual payments of interest, other charges or amortization on the Bank's own borrowings, or to meet the Bank's liabilities with respect to similar payments on loans guaranteed by it, the Bank may call an appropriate amount of the unpaid subscriptions of members in accordance with Article II, Sections 5 and 7. Moreover, if it believes that a default may be of long duration, the Bank may call an additional amount of such unpaid subscriptions not to exceed in any one year one percent of the total subscriptions of the members for the following purposes:

(i) To redeem prior to maturity, or otherwise discharge its liability on, all or part of the outstanding principal of any loan guaranteed by it in respect of which the debtor is in default.

(ii) To repurchase, or otherwise discharge its liability on, all or part of its own outstanding borrowings.

SECTION 8. *Miscellaneous Operations*

In addition to the operations specified elsewhere in this Agreement, the Bank shall have the power:

(i) To buy and sell securities it has issued and to buy and sell securities which it has guaranteed or in which it has invested, provided that the Bank shall obtain the approval of the member in whose territories the securities are to be bought or sold.

(ii) To guarantee securities in which it has invested for the purpose of facilitating their sale.

(iii) To borrow the currency of any member with the approval of that member.

(iv) To buy and sell such other securities as the Directors by a three-fourths majority of the total voting power may deem proper for the investment of all or part of the special reserve under Section 6 of this Article.

In exercising the powers conferred by this Section, the Bank may deal with any person, partnership, association, corporation or other legal entity in the territories of any member.

SECTION 9. *Warning to be Placed on Securities*

Every security guaranteed or issued by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any government unless expressly stated on the security.

SECTION 10. *Political Activity Prohibited*

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.

ARTICLE V

Organization and Management

SECTION 1. *Structure of the Bank*

The Bank shall have a Board of Governors, Executive Directors, a President and such other officers and staff to perform such duties as the Bank may determine.

SECTION 2. *Board of Governors*

(a) All the powers of the Bank shall be vested in the Board of Governors consisting of one governor and one alternate appointed by each member in such manner as it may determine. Each governor and each alternate shall serve for five years, subject to the pleasure of the member appointing him, and may be reappointed. No alternate may vote except in the absence of his principal. The Board shall select one of the governors as chairman.

(b) The Board of Governors may delegate to the Executive Directors authority to exercise any powers of the Board, except the power to:

- (i) Admit new members and determine the conditions of their admission;
- (ii) Increase or decrease the capital stock;
- (iii) Suspend a member;
- (iv) Decide appeals from interpretations of this Agreement given by the Executive Directors;
- (v) Make arrangements to cooperate with other international organizations (other than informal arrangements of a temporary and administrative character);
- (vi) Decide to suspend permanently the operations of the Bank and to distribute its assets;
- (vii) Determine the distribution of the net income of the Bank.

(c) The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board or called by the Executive Directors. Meetings of the Board shall be called by the Directors whenever requested by five members or by members having one quarter of the total voting power.

(d) A quorum for any meeting of the Board of Governors shall be a majority of the Governors, exercising not less than two-thirds of the total voting power.

(e) The Board of Governors may by regulation establish a procedure whereby the Executive Directors, when they deem such action to be in the best interests of the Bank, may obtain a vote of the Governors on a specific question without calling a meeting of the Board.

(f) The Board of Governors, and the Executive Directors to the extent authorized, may adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Bank.

(g) Governors and alternates shall serve as such without compensation from the Bank, but the Bank shall pay them reasonable expenses incurred in attending meetings.

(h) The Board of Governors shall determine the remuneration to be paid to the Executive Directors and the salary and terms of the contract of service of the President.

SECTION 3. *Voting*³

(a) The voting power of each member shall be equal to the sum of its basic votes and share votes.

³ Section 3(a) has been modified by amendment effective June 27, 2012. Prior to the amendment each member had 250 basic votes.

(i) The basic votes of each member shall be the number of votes that results from the equal distribution among all members of 5.55 percent of the aggregate sum of the voting power of all the members, provided that there shall be no fractional basic votes.

(ii) The share votes of each member shall be the number of votes that results from the allocation of one vote for each share of stock held.

(b) Except as otherwise specifically provided, all matters before the Bank shall be decided by a majority of the votes cast.

SECTION 4. *Executive Directors*

(a) The Executive Directors shall be responsible for the conduct of the general operations of the Bank, and for this purpose, shall exercise all the powers delegated to them by the Board of Governors.

(b) There shall be twelve Executive Directors, who need not be governors, and of whom:

(i) five shall be appointed, one by each of the five members having the largest number of shares;

(ii) seven shall be elected according to Schedule B by all the Governors other than those appointed by the five members referred to in (i) above.

For the purpose of this paragraph, "members" means governments of countries whose names are set forth in Schedule A, whether they are original members or become members in accordance with Article II, Section 1 (b). When governments of other countries become members, the Board of Governors may, by a four-fifths majority of the total voting power, increase the total number of directors by increasing the number of directors to be elected.

Executive Directors shall be appointed or elected every two years.

(c) Each executive director shall appoint an alternate with full power to act for him when he is not present. When the executive directors appointing them are present, alternates may participate in meetings but shall not vote.

(d) Directors shall continue in office until their successors are appointed or elected. If the office of an elected director becomes vacant more than ninety days before the end of his term, another director shall be elected for the remainder of the term by the governors who elected the former director. A majority of the votes cast shall be required for election. While the office remains vacant, the alternate of the former director shall exercise his powers, except that of appointing an alternate.

(e) The Executive Directors shall function in continuous session at the principal office of the Bank and shall meet as often as the business of the Bank may require.

(f) A quorum for any meeting of the Executive Directors shall be a majority of the Directors, exercising not less than one-half of the total voting power.

(g) Each appointed director shall be entitled to cast the number of votes allotted under Section 3 of this Article to the member appointing him. Each elected director shall be entitled to cast the number of votes which counted toward his election. All the votes which a director is entitled to cast shall be cast as a unit.

(h) The Board of Governors shall adopt regulations under which a member not entitled to appoint a director under (b) above may send a representative to attend any meeting of the Executive Directors when a request made by, or a matter particularly affecting, that member is under consideration.

(i) The Executive Directors may appoint such committees as they deem advisable. Membership of such committees need not be limited to governors or directors or their alternates.

SECTION 5. *President and Staff*

(a) The Executive Directors shall select a President who shall not be a governor or an executive director or an alternate for either. The President shall be Chairman of the Executive Directors, but shall have no vote except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors, but

shall not vote at such meetings. The President shall cease to hold office when the Executive Directors so decide.

(b) The President shall be chief of the operating staff of the Bank and shall conduct, under the direction of the Executive Directors, the ordinary business of the Bank. Subject to the general control of the Executive Directors, he shall be responsible for the organization, appointment and dismissal of the officers and staff.

(c) The President, officers and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

(d) In appointing the officers and staff the President shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible.

SECTION 6. *Advisory Council*

(a) There shall be an Advisory Council of not less than seven persons selected by the Board of Governors including representatives of banking, commercial, industrial, labor, and agricultural interests, and with as wide a national representation as possible. In those fields where specialized international organizations exist, the members of the Council representative of those fields shall be selected in agreement with such organizations. The Council shall advise the Bank on matters of general policy. The Council shall meet annually and on such other occasions as the Bank may request.

(b) Councillors shall serve for two years and may be reappointed. They shall be paid their reasonable expenses incurred on behalf of the Bank.

SECTION 7. *Loan Committees*

The committees required to report on loans under Article III, Section 4, shall be appointed by the Bank. Each such committee shall include an expert selected by the governor representing the member in whose territories the project is located and one or more members of the technical staff of the Bank.

SECTION 8. *Relationship to Other International Organizations*

(a) The Bank, within the terms of this Agreement, shall cooperate with any general international organization and with public international organizations having specialized responsibilities in related fields. Any arrangements for such cooperation which would involve a modification of any provision of this Agreement may be effected only after amendment to this Agreement under Article VIII.

(b) In making decisions on applications for loans or guarantees relating to matters directly within the competence of any international organization of the types specified in the preceding paragraph and participated in primarily by members of the Bank, the Bank shall give consideration to the views and recommendations of such organization.

SECTION 9. *Location of Offices*

(a) The principal office of the Bank shall be located in the territory of the member holding the greatest number of shares.

(b) The Bank may establish agencies or branch offices in the territories of any member of the Bank.

SECTION 10. *Regional Offices and Councils*

(a) The Bank may establish regional offices and determine the location of, and the areas to be covered by, each regional office.

(b) Each regional office shall be advised by a regional council representative of the entire area and selected in such manner as the Bank may decide.

SECTION 11. *Depositories*

(a) Each member shall designate its central bank as a depository for all the Bank's holdings of its currency or, if it has no central bank, it shall designate such other institution as may be acceptable to the Bank.

(b) The Bank may hold other assets, including gold, in depositories designated by the five members having the largest number of shares and in such other designated depositories as the Bank may select. Initially, at least one-half of the gold holdings of the Bank shall be held in the depository designated by the member in whose territory the Bank has its principal office, and at least forty percent shall be held in the depositories designated by the remaining four members referred to above, each of such depositories to hold, initially, not less than the amount of gold paid on the shares of the member designating it. However, all transfers of gold by the Bank shall be made with due regard to the costs of transport and anticipated requirements of the Bank. In an emergency the Executive Directors may transfer all or any part of the Bank's gold holdings to any place where they can be adequately protected.

SECTION 12. *Form of Holdings of Currency*

The Bank shall accept from any member, in place of any part of the member's currency, paid in to the Bank under Article II, Section 7 (i), or to meet amortization payments on loans made with such currency, and not needed by the Bank in its operations, notes or similar obligations issued by the Government of the member or the depository designated by such member, which shall be non-negotiable, non-interest-bearing and payable at their par value on demand by credit to the account of the Bank in the designated depository.

SECTION 13. *Publication of Reports and Provision of Information*

(a) The Bank shall publish an annual report containing an audited statement of its accounts and shall circulate to members at intervals of three months or less a summary statement of its financial position and a profit and loss statement showing the results of its operations.

(b) The Bank may publish such other reports as it deems desirable to carry out its purposes.

(c) Copies of all reports, statements and publications made under this section shall be distributed to members.

SECTION 14. *Allocation of Net Income*

(a) The Board of Governors shall determine annually what part of the Bank's net income, after making provision for reserves, shall be allocated to surplus and what part, if any, shall be distributed.

(b) If any part is distributed, up to two percent non-cumulative shall be paid, as a first charge against the distribution for any year, to each member on the basis of the average amount of the loans outstanding during the year made under Article IV, Section 1 (a) (i), out of currency corresponding to its subscription. If two percent is paid as a first charge, any balance remaining to be distributed shall be paid to all members in proportion to their shares. Payments to each member shall be made in its own currency, or if that currency is not available in other currency acceptable to the member. If such payments are made in currencies other than the member's own currency, the transfer of the currency and its use by the receiving member after payment shall be without restriction by the members.

ARTICLE VI**Withdrawal and Suspension of Membership: Suspension of Operations****SECTION 1. *Right of Members to Withdraw***

Any member may withdraw from the Bank at any time by transmitting a notice in writing to the Bank at its principal office. Withdrawal shall become effective on the date such notice is received.

SECTION 2. *Suspension of Membership*

If a member fails to fulfill any of its obligations to the Bank, the Bank may suspend its membership by decision of a majority of the Governors, exercising a majority of the total voting power. The member so suspended shall automatically cease to be a member one year from the date of its suspension unless a decision is taken by the same majority to restore the member to good standing.

While under suspension, a member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, but shall remain subject to all obligations.

SECTION 3. *Cessation of Membership in International Monetary Fund*

Any member which ceases to be a member of the International Monetary Fund shall automatically cease after three months to be a member of the Bank unless the Bank by three-fourths of the total voting power has agreed to allow it to remain a member.

SECTION 4. *Settlement of Accounts with Governments Ceasing to be Members*

(a) When a government ceases to be a member, it shall remain liable for its direct obligations to the Bank and for its contingent liabilities to the Bank so long as any part of the loans or guarantees contracted before it ceased to be a member are outstanding; but it shall cease to incur liabilities with respect to loans and guarantees entered into thereafter by the Bank and to share either in the income or the expenses of the Bank.

(b) At the time a government ceases to be a member, the Bank shall arrange for the repurchase of its shares as a part of the settlement of accounts with such government in accordance with the provisions of (c) and (d) below. For this purpose the repurchase price of the shares shall be the value shown by the books of the Bank on the day the government ceases to be a member.

(c) The payment for shares repurchased by the Bank under this section shall be governed by the following conditions:

(i) Any amount due to the government for its shares shall be withheld so long as the government, its central bank or any of its agencies remains liable, as borrower or guarantor, to the Bank and such amount may, at the option of the Bank, be applied on any such liability as it matures. No amount shall be withheld on account of the liability of the government resulting from its subscription for shares under Article II, Section 5 (ii). In any event, no amount due to a member for its shares shall be paid until six months after the date upon which the government ceases to be a member.

(ii) Payments for shares may be made from time to time, upon their surrender by the government, to the extent by which the amount due as the repurchase price in (b) above exceeds the aggregate of liabilities on loans and guarantees in (c) (i) above until the former member has received the full repurchase price.

(iii) Payments shall be made in the currency of the country receiving payment or at the option of the Bank in gold.

(iv) If losses are sustained by the Bank on any guarantees, participations in loans, or loans which were outstanding on the date when the government ceased to be a member, and the amount of such losses exceeds the amount of the reserve provided against losses on the date when the government ceased to be a member, such government shall be obligated to repay upon demand the amount by which the repurchase price of its shares would have been reduced, if the losses had been taken into account when the repurchase price was determined. In addition, the former member government shall remain liable on any call for unpaid subscriptions under Article II Section 5 (ii), to the extent that it would have been required to respond if the impairment of capital had occurred and the call had been made at the time the repurchase price of its shares was determined.

(d) If the Bank suspends permanently its operations under Section 5 (b) of this Article, within six months of the date upon which any government ceases to be a member, all rights of such government shall be determined by the provisions of Section 5 of this Article.

SECTION 5. *Suspension of Operations and Settlement of Obligations*

(a) In an emergency the Executive Directors may suspend temporarily operations in respect of new loans and guarantees pending an opportunity for further consideration and action by the Board of Governors.

(b) The Bank may suspend permanently its operations in respect of new loans and guarantees by a vote of a majority of the Governors, exercising a majority of the total voting power. After such suspension of operations the Bank shall forthwith cease all activities, except those incident to the orderly realization, conservation, and preservation of its assets and settlement of its obligations.

(c) The liability of all members for uncalled subscriptions to the capital stock of the Bank and in respect of the depreciation of their own currencies shall continue until all claims of creditors, including all contingent claims, shall have been discharged.

(d) All creditors holding direct claims shall be paid out of the assets of the Bank, and then out of payments to the Bank on calls on unpaid subscriptions. Before making any payments to creditors holding direct claims, the Executive Directors shall make such arrangements as are necessary, in their judgment, to insure a distribution to holders of contingent claims ratably with creditors holding direct claims.

(e) No distribution shall be made to members on account of their subscriptions to the capital stock of the Bank until

(i) all liabilities to creditors have been discharged or provided for, and

(ii) a majority of the Governors, exercising a majority of the total voting power, have decided to make a distribution.

(f) After a decision to make a distribution has been taken under (e) above, the Executive Directors may by a two-thirds majority vote make successive distributions of the assets of the Bank to members until all of the assets have been distributed. This distribution shall be subject to the prior settlement of all outstanding claims of the Bank against each member.

(g) Before any distribution of assets is made, the Executive Directors shall fix the proportionate share of each member according to the ratio of its shareholding to the total outstanding shares of the Bank.

(h) The Executive Directors shall value the assets to be distributed as at the date of distribution and then proceed to distribute in the following manner:

(i) There shall be paid to each member in its own obligations or those of its official agencies or legal entities within its territories, insofar as they are available for distribution, an amount equivalent in value to its proportionate share of the total amount to be distributed.

(ii) Any balance due to a member after payment has been made under (i) above shall be paid, in its own currency, insofar as it is held by the Bank, up to an amount equivalent in value to such balance.

(iii) Any balance due to a member after payment has been made under (i) and (ii) above shall be paid in gold or currency acceptable to the member, insofar as they are held by the Bank, up to an amount equivalent in value to such balance.

(iv) Any remaining assets held by the Bank after payments have been made to members under (i), (ii), and (iii) above shall be distributed *pro rata* among the members.

(i) Any member receiving assets distributed by the Bank in accordance with (h) above, shall enjoy the same rights with respect to such assets as the Bank enjoyed prior to their distribution.

ARTICLE VII

Status, Immunities and Privileges

SECTION 1. *Purposes of the Article*

To enable the Bank to fulfill the functions with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Bank in the territories of each member.

SECTION 2. *Status of the Bank*

The Bank shall possess full juridical personality, and, in particular, the capacity:

- (i) to contract;
- (ii) to acquire and dispose of immovable and movable property;
- (iii) to institute legal proceedings.

SECTION 3. *Position of the Bank with Regard to Judicial Process*

Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

SECTION 4. *Immunity of Assets from Seizure*

Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

SECTION 5. *Immunity of Archives*

The archives of the Bank shall be inviolable.

SECTION 6. *Freedom of Assets from Restrictions*

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

SECTION 7. *Privilege for Communications*

The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

SECTION 8. *Immunities and Privileges of Officers and Employees*

All governors, executive directors, alternates, officers and employees of the Bank

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity;
- (ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien

registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members;

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

SECTION 9. *Immunities from Taxation*

(a) The Bank, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all customs duties. The Bank shall also be immune from liability for the collection or payment of any tax or duty.

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to executive directors, alternates, officials or employees of the Bank who are not local citizens, local subjects, or other local nationals.

(c) No taxation of any kind shall be levied on any obligation or security issued by the Bank (including any dividend or interest thereon) by whomsoever held:

(i) which discriminates against such obligation or security solely because it is issued by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

(d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Bank (including any dividend or interest thereon) by whomsoever held:

(i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

SECTION 10. *Application of Article*

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article and shall inform the Bank of the detailed action which it has taken.

ARTICLE VIII

Amendments

(a) Any proposal to introduce modifications in this Agreement, whether emanating from a member, a governor or the Executive Directors, shall be communicated to the Chairman of the Board of Governors who shall bring the proposal before the Board. If the proposed amendment is approved by the Board the Bank shall, by circular letter or telegram, ask all members whether they accept the proposed amendment. When three-fifths of the members, having eighty-five percent⁴ of the total voting power, have accepted the proposed amendments, the Bank shall certify the fact by formal communication addressed to all members.

(b) Notwithstanding (a) above, acceptance by all members is required in the case of any amendment modifying

(i) the right to withdraw from the Bank provided in Article VI, Section 1;

⁴ "Eighty-five percent" was substituted to "four-fifths" by amendment effective February 16, 1989.

(ii) the right secured by Article II, Section 3 (c);

(iii) the limitation on liability provided in Article II, Section 6.

(c) Amendments shall enter into force for all members three months after the date of the formal communication unless a shorter period is specified in the circular letter or telegram.

ARTICLE IX

Interpretation

(a) Any question of interpretation of the provisions of this Agreement arising between any member and the Bank or between any members of the Bank shall be submitted to the Executive Directors for their decision. If the question particularly affects any member not entitled to appoint an executive director, it shall be entitled to representation in accordance with Article V, Section 4 (h).

(b) In any case where the Executive Directors have given a decision under (a) above, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the result of the reference to the Board, the Bank may, so far as it deems necessary, act on the basis of the decision of the Executive Directors.

(c) Whenever a disagreement arises between the Bank and a country which has ceased to be a member, or between the Bank and any member during the permanent suspension of the Bank, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators, one appointed by the Bank, another by the country involved and an umpire who, unless the parties otherwise agree, shall be appointed by the President of the Permanent Court of International Justice or such other authority as may have been prescribed by regulation adopted by the Bank. The umpire shall have full power to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

ARTICLE X

Approval Deemed Given

Whenever the approval of any member is required before any act may be done by the Bank, except in Article VIII, approval shall be deemed to have been given unless the member presents an objection within such reasonable period as the Bank may fix in notifying the member of the proposed act.

ARTICLE XI

Final Provisions

SECTION 1. *Entry into Force*

This Agreement shall enter into force when it has been signed on behalf of governments whose minimum subscriptions comprise not less than sixty-five percent of the total subscriptions set forth in Schedule A and when the instruments referred to in Section 2 (a) of this Article have been deposited on their behalf, but in no event shall this Agreement enter into force before May 1, 1945.

SECTION 2. *Signature*

(a) Each government on whose behalf this Agreement is signed shall deposit with the Government of the United States of America an instrument setting forth that it has accepted this Agreement in accordance with its law and has taken all steps necessary to enable it to carry out all of its obligations under this Agreement.

(b) Each government shall become a member of the Bank as from the date of the deposit on its behalf of the

instrument referred to in (a) above, except that no government shall become a member before this Agreement enters into force under Section 1 of this Article.

(c) The Government of the United States of America shall inform the governments of all countries whose names are set forth in Schedule A, and all governments whose membership is approved in accordance with Article II, Section 1 (b), of all signatures of this Agreement and of the deposit of all instruments referred to in (a) above.

(d) At the time this Agreement is signed on its behalf, each government shall transmit to the Government of the United States of America one one-hundredth of one percent of the price of each share in gold or United States dollars for the purpose of meeting administrative expenses of the Bank. This payment shall be credited on account of the payment to be made in accordance with Article II Section 8 (a). The Government of the United States of America shall hold such funds in a special deposit account and shall transmit them to the Board of Governors of the Bank when the initial meeting has been called under Section 3 of this Article. If this Agreement has not come into force by December 31, 1945, the Government of the United States of America shall return such funds to the governments that transmitted them.

(e) This Agreement shall remain open for signature at Washington on behalf of the governments of the countries whose names are set forth in Schedule A until December 31, 1945.

(f) After December 31, 1945, this Agreement shall be open for signature on behalf of the government of any country whose membership has been approved in accordance with Article II, Section 1 (b).

(g) By their signature of this Agreement, all governments accept it both on their own behalf and in respect of all their colonies, overseas territories, all territories under their protection, suzerainty, or authority and all territories in respect of which they exercise a mandate.

(h) In the case of governments whose metropolitan territories have been under enemy occupation, the deposit of the instrument referred to in (a) above may be delayed until one hundred and eighty days after the date on which these territories have been liberated. If, however, it is not deposited by any such government before the expiration of this period, the signature affixed on behalf of that government shall become void and the portion of its subscription paid under (d) above shall be returned to it.

(i) Paragraphs (d) and (h) shall come into force with regard to each signatory government as from the date of its signature.

SECTION 3. *Inauguration of the Bank*

(a) As soon as this Agreement enters into force under Section 1 of this Article, each member shall appoint a governor and the member to whom the largest number of shares is allocated in Schedule A shall call the first meeting of the Board of Governors.

(b) At the first meeting of the Board of Governors, arrangements shall be made for the selection of provisional executive directors. The governments of the five countries, to which the largest number of shares are allocated in Schedule A, shall appoint provisional executive directors. If one or more of such governments have not become members, the executive directorships which they would be entitled to fill shall remain vacant until they become members, or until January 1, 1946, whichever is the earlier. Seven provisional executive directors shall be elected in accordance with the provisions of Schedule B and shall remain in office until the date of the first regular election of executive directors which shall be held as soon as practicable after January 1, 1946.

(c) The Board of Governors may delegate to the provisional executive directors any powers except those which may not be delegated to the Executive Directors.

(d) The Bank shall notify members when it is ready to commence operations.

DONE at Washington, in a single copy which shall remain deposited in the archives of the Government of the United States of America, which shall transmit certified copies to all governments whose names are set forth in Schedule A and to all governments whose membership is approved in accordance with Article II, Section 1 (b).

SCHEDULE A

Subscriptions

(millions of dollars)

Australia	200.0	Iran	24.0
Belgium	225.0	Iraq	6.0
Bolivia	7.0	Liberia	0.5
Brazil	105.0	Luxembourg	10.0
Canada	325.0	Mexico	65.0
Chile	35.0	Netherlands	275.0
China	600.0	New Zealand	50.0
Colombia	35.0	Nicaragua	0.8
Costa Rica	2.0	Norway	50.0
Cuba	35.0	Panama	0.2
Czechoslovakia	125.0	Paraguay	0.8
Denmark ^(a)		Peru	17.5
Dominican Republic	2.0	Philippine Commonwealth	15.0
Ecuador	3.2	Poland	125.0
Egypt	40.0	Union of South Africa	100.0
El Salvador	1.0	Union of Soviet Socialist Republics	1,200.0
Ethiopia	3.0		
France	450.0	United Kingdom	1,300.0
Greece	25.0	United States	3,175.0
Guatemala	2.0	Uruguay	10.5
Haiti	2.0	Venezuela	10.5
Honduras	1.0	Yugoslavia	40.0
Iceland	1.0		
India	400.0	Total	9,100.0

a. The quota of Denmark shall be determined by the Bank after Denmark accepts membership in accordance with these Articles of Agreement.

SCHEDULE B

Election of Executive Directors

1. The election of the elective executive directors shall be by ballot of the Governors eligible to vote under Article V, Section 4 (b).
2. In balloting for the elective executive directors, each governor eligible to vote shall cast for one person all of the votes to which the member appointing him is entitled under Section 3 of Article V. The seven persons receiving the greatest number of votes shall be executive directors, except that no person who receives less than fourteen percent of the total of the votes which can be cast (eligible votes) shall be considered elected.
3. When seven persons are not elected on the first ballot, a second ballot shall be held in which the person who received the lowest number of votes shall be ineligible for election and in which there shall vote only (a) those governors who voted in the first ballot for a person not elected and (b) those governors whose votes for a person elected are deemed under 4 below to have raised the votes cast for that person above fifteen percent of the eligible votes.
4. In determining whether the votes cast by a governor are to be deemed to have raised the total of any person above fifteen percent of the eligible votes, the fifteen percent shall be deemed to include, first, the votes of the governor casting the largest number of votes for such person, then the votes of the governor casting the next largest number, and so on until fifteen percent is reached.
5. Any governor, part of whose votes must be counted in order to raise the total of any person above fourteen percent shall be considered as casting all of his votes for such person even if the total votes for such person thereby exceed fifteen percent.
6. If, after the second ballot, seven persons have not been elected, further ballots shall be held on the same principles until seven persons have been elected, provided that after six persons are elected, the seventh may be elected by a simple majority of the remaining votes and shall be deemed to have been elected by all such votes.



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Washington, Saturday, July 13, 1946

The President

Regulations

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THE PRESIDENT

EXECUTIVE ORDER 9751

DESIGNATING PUBLIC INTERNATIONAL ORGANIZATIONS ENTITLED TO ENJOY CERTAIN PRIVILEGES, EXEMPTIONS, AND IMMUNITIES

By virtue of the authority vested in me by section 1 of the International Organizations Immunities Act, approved December 29, 1945 (Public Law 291, 79th Congress), and having found that the United States participates in the following-named international organizations pursuant to a treaty or under the authority of an act of Congress authorizing such participation or making an appropriation therefor, I hereby designate such organizations as public international organizations entitled to enjoy the privileges, exemptions, and immunities conferred by the said Act:

Inter-American Coffee Board
Inter-American Institute of Agricultural Sciences
Inter-American Statistical Institute
International Bank for Reconstruction and Development
International Monetary Fund
Pan American Sanitary Bureau

The designation of the above-named organizations and of those named in Executive Order No. 9698 of February 19, 1946, as public international organizations within the meaning of the said International Organizations Immunities Act is not intended to abridge in any respect privileges and immunities which such organizations have acquired or may acquire by treaty or Congressional action; provided, that with respect to the International Bank for Reconstruction and Development, such designation shall not be construed to affect in any way the applicability of the provisions of section 3, Article VII, of the Articles of Agreement of the Bank as adopted by the Congress of the United States in the Bretton-Woods Agreements Act of July 31, 1945 (Public Law 171, 79th Congress).

HARRY S. TRUMAN

THE WHITE HOUSE,
July 11, 1946.

[F. R. Doc. 46-12072; Filed, July 12, 1946;
10:59 a. m.]

TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of
Agriculture

PART 1—ADMINISTRATIVE REGULATIONS

DELEGATION OF AUTHORITY TO ADMINISTRATOR OF PRODUCTION AND MARKETING ADMINISTRATION

Pursuant to the powers vested in me by the statutes of the United States and the executive orders of the President, there is hereby delegated to the Administrator, Production and Marketing Administration, all authority heretofore delegated to and vested in the Assistant Administrator for Regulatory and Marketing Service Matters, Production and Marketing Administration, by delegation of authority dated August 25, 1945 (10 F.R. 10988), with respect to the formulation, administration and enforcement of war food orders, the administration of regulatory statutes (including the Commodity Exchange Act), the rules, regulations, orders, and marketing agreements thereunder, the formulation and issuance of grades and standards, all matters pertaining to commodity market news and grading and inspection services, and coordination of the operation of industry committees.

The Administrator may redelegate to any employee of the United States Department of Agriculture any or all the authority vested in him hereunder.

Any action heretofore taken by the Administrator or any Assistant Administrator of the Production and Marketing Administration with respect to the foregoing matters is hereby ratified and confirmed, and shall remain in full force and effect unless and until expressly, modified, amended, suspended, revoked or terminated.

Done at Washington, D. C., this 11th
day of July 1946.

[SEAL] N. E. DODD,
Acting Secretary of Agriculture.

[F. R. Doc. 46-12076; Filed, July 12, 1946;
11:17 a. m.]

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Current through April 2012

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Part IV. Jurisdiction And Judgments

Chapter 6. Immunities Of Diplomats, Consuls, And International Organizations

Subchapter B. Immunities Of International Organizations

§ 467. Privileges And Immunities Of International Organizations

[Link to Case Citations](#)

(1) Under international law, an international organization generally enjoys such privileges and immunities from the jurisdiction of a member state as are necessary for the fulfillment of the purposes of the organization, including immunity from legal process, and from financial controls, taxes, and duties.

(2) Under the law of the United States, international organizations are entitled to the privileges and immunities provided by international agreements to which the United States is party, and organizations designated by the President under the International Organizations Immunities Act are entitled to the privileges and immunities provided in that Act.

Comment:

a. Privileges and immunities by international agreement and under customary law. The principal international organizations enjoy the privileges and immunities indicated in Subsection (1) under the charters of the organizations and under supplementary agreements that have been widely adhered to by the members of the organizations. See Comment *b*. The United Nations and its Specialized Agencies, and regional and other major organizations, have international legal personality vis-à-vis all states including nonmember states (see § 223, Comment *e*), and these organizations are commonly deemed to enjoy privileges and immunities in relation to nonmember states as a matter of customary law. Other international organizations enjoy specified privileges and immunities by international agreement and therefore only in relation to parties to those agreements, or under state legislation such as that of the United States (the International Organizations Immunities Act). See Comment *f*. In some cases, an international organization might be considered a grouping of individual states entitled to the privileges and immunities of the constituent states. See Reporters' Note 4. "International organization" is defined in § 221.

International law and international agreements commonly refer to "privileges and immunities" of international organizations without distinguishing between the two terms or indicating their respective content.

The provisions in international agreements dealing with privileges and immunities of international organizations do not distinguish between immunity from jurisdiction to prescribe, to adjudicate, or to enforce by nonjudicial means. The immunities contemplated are principally immunities from judicial process and police interference, but immunity from any exercise of jurisdiction could be claimed if it is necessary for the fulfillment of the purposes of the organization. See also Comment *c*. Compare § 463.

b. Source and content of privileges and immunities. Subsection (1) is derived from Article 105 of the United Nations Charter and similar provisions in the charters of other contemporary international organizations. In the case of the United Nations, the Charter provision is given specific content by the Convention on Privileges and Immunities of the United Nations, which accords the organization “immunity from every form of legal process” (Section 2), from financial, monetary, and currency controls (Sections 5, 6), from “all direct taxes,” and from customs duties and restrictions on imports and exports in respect of articles for its official use and its publications (Section 7). Essentially the same privileges and immunities are enjoyed by the other major international organizations under their charters and supplementary conventions, notably the Convention on Privileges and Immunities of the Specialized Agencies. The charters of some international financial institutions, such as the International Bank for Reconstruction and Development (the World Bank), provide an exception to the organization's immunity from legal process for suits by some creditors under certain circumstances. See Reporters' Note 3.

c. Immunity from jurisdiction to prescribe. The agreements on privileges and immunities implementing the general principle set forth in this section specify some immunities from a state's jurisdiction to prescribe, including, immunity from financial controls, taxes, and restrictions and duties on goods imported for official use. See Comment *b*. In principle, an organization can also claim immunity from the application of other laws, if such immunity is necessary for the fulfillment of the organization's purposes. Except where the organization is immune from jurisdiction to prescribe, or as otherwise provided by agreement (see, e.g., § 468, Comment *c*), the organization is obligated generally to obey the law of the state in which it has its headquarters or conducts other activities, even if it is immune from legal process to enforce that law.

d. Applicability of restrictive theory of immunity. It appears that the restrictive theory that limits the immunity of a state from legal process (see § 451) does not apply to the United Nations, to most of its Specialized Agencies, or to the Organization of American States. These organizations enjoy immunity from jurisdiction to adjudicate in all cases, both under their charters and other international agreements (see Comment *b*), and under the law of the United States. Whether other international organizations enjoy absolute or restricted immunity under international law is unclear, but at least until that question is authoritatively resolved they will probably be accorded only restricted immunity under the law of the United States. See Reporters' Note 4.

e. Waiver of immunity. Immunity may be waived by an appropriate organ of the organization, usually the secretary-general or other chief executive officer, by authority implied in his office or delegated by the general assembly of the organization. Waiver must be express. The Secretary-General of the United Nations or the chief executive officer of a Specialized Agency may waive the immunity of the organization in a particular case, and may agree to arbitration (see Reporters' Note 7), but at least without specific authorization, he may not waive immunity from any measure of execution. See Reporters' Note 3. In the case of international financial institutions, the charter of the organization itself provides an exception to immunity for certain suits by creditors, which is sometimes characterized as a waiver. See Reporters' Note 3.

f. Immunities of international organizations in the United States. The charters of the United Nations, its Specialized Agencies, the Organization of American States, and other international organizations of which the United States is a member, provide for the privileges and immunities indicated in Subsection (1), as elaborated in Comment *b*. These charters are treaties or other international agreements of the United States and therefore law of the United States. See § 111. The Convention on Privileges and Immunities of the United Nations, the Headquarters Agreement between the United States and the United Nations, and a bilateral agreement on privileges and immunities between the United States and the Organization of American States (§ 470, Reporters' Note 2), are also law in the United States. The immunities provisions in those agreements are probably self-

executing and to be given effect even without legislative implementation. See § 111(3) and Comment *h* thereto. In effect, those provisions have largely been implemented in the International Organizations Immunities Act, 22 U.S.C. §§ 288-288f, providing specified privileges and immunities to organizations of which the United States is a member and which the President designates for the purpose. Some international organizations of which the United States is not a member have also been designated pursuant to authorization by special statute, e.g., The Commission of the European Communities, by Section 288h, the European Space Research Organization in Section 288f-1, the Organization of African Unity, in Section 288f-2. For a list of designated organizations, see 22 U.S.C.A. § 288, Historical Note. To the extent that the provisions of an agreement and of the Act are not identical, an organization enjoys the benefits of both. Organizations of which the United States is not a member, and that have not been designated under the International Organizations Immunities Act, do not enjoy privileges and immunities in the United States except insofar as a particular organization might be entitled to them by customary law. See Comment *a*.

Under Section 2(b) of the International Organizations Immunities Act, adopted in 1945, international organizations, their property and assets, “enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.” The immunity from jurisdiction to adjudicate applicable to foreign states has changed significantly since 1945, see Introductory Note to Chapter 5, Subchapter A, but the legislative changes have apparently not affected the immunity of international organizations from legal process under United States law. See Reporters' Note 4. Under Section 2(c) of the Act, property and assets of international organizations are immune from search and confiscation, and their archives are inviolable. Designated organizations are accorded also the same privileges and immunities as foreign governments in respect of customs duties and procedures, the registration of foreign agents, and the treatment of official communications.

REPORTERS' NOTES

1. *Immunities of international organizations under customary law.* Since membership in the principal international organizations is virtually universal, these organizations enjoy privileges and immunities in virtually every state under the charters of the organization, which are international agreements, as well as under general conventions on the immunities of international organizations. For the view that the United Nations now enjoys those privileges and immunities under customary law, see the statement of the legal counsel of the United Nations in Annual Report of the Secretary-General, 23 U.N. GAOR, Supp. No. 1 at 208-209 (1968).

The Statute of the International Court of Justice provides for diplomatic privileges and immunities for the Judges “when engaged on the business of the Court.” Art. 19. “The agents, counsel and advocates of parties” before the Court enjoy privileges and immunities “necessary to the independent exercise of their duties.” Art. 42(3). Though the Court as an institution is not expressly accorded privileges and immunities, it enjoys them in fact. See Jenks, *International Immunities* 93-95 (1961). The Court, the judges, and the staff of the Court enjoy privileges and immunities at its headquarters by agreement with the Netherlands, 8 U.N.T.S. 61; *International Court of Justice, Acts and Documents Concerning the Organization of the Court*, No. 4 (1978) at 186-213.

The immunities of an international organization generally derive from obligations assumed by its members under its charter, but states withdrawing from membership—for example, the United States and the United Kingdom from UNESCO in the 1980's, § 222, Reporters' Note 3—have not purported to terminate the privileges and immunities of the organization. These organizations would presumably be entitled to the same privileges and

immunities under customary law as they enjoy under their charters.

This section deals with the privileges and immunities of international organizations as defined in § 221. Other entities have no immunities under international law unless provided by international agreement, but a grouping that includes states might claim some of the immunity of its member states. See Reporters' Note 4. INTERPOL was held not to enjoy privileges and immunities, cf. [Steinberg v. International Criminal Police Organization](#), 672 F.2d 927 (D.C.Cir.1981), but in 1983 was designated under the International Organizations Immunities Act, Comment *f*.

2. *Source of privileges and immunities in international agreements.* Article 105(1) of the United Nations Charter provides: "The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes." The General Assembly, authorized to make recommendations or propose conventions as to the details (Art. 105(3)), recommended the Convention on Privileges and Immunities of the United Nations, to which the United States is party. There are similar clauses in charters of other organizations, which are implemented by the Convention on Privileges and Immunities of the Specialized Agencies, and the Multilateral Agreement on Privileges and Immunities of the Organization of American States (1949) (Pan American Union, Law and Treaty Series, No. 31). The United States is not a party to either of these agreements.

The immunity of an international organization does not generally extend to independent contractors engaged by the organization. See [Herbert Harvey, Inc. v. N.L.R.B.](#), 424 F.2d 770 (D.C.Cir.1969) (independent contractor providing maintenance and operating services for World Bank is not so related to the functions of the Bank as to warrant exemption from National Labor Relations Act and jurisdiction of NLRB).

3. *Immunity from legal process.* Section 2 of the Convention on Privileges and Immunities of the United Nations provides: "The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution." A similar provision is in Section 4 of the Convention on Privileges and Immunities of the Specialized Agencies. It is not clear whether under that provision the organization, acting through its principal policy-making organ, could waive its immunity from execution.

The immunity from legal process of the United Nations and of other organizations has been widely and uniformly upheld. For United States cases, see, e.g., [Curran v. City of New York](#), 191 Misc. 229, 77 N.Y.S.2d 206 (1947), affirmed, 275 App.Div. 784, 88 N.Y.S.2d 924 (2d Dep't 1949) (United Nations immune from suit seeking to enjoin establishment of its headquarters in New York); [Gregoire v. Gregoire](#), Sup. Ct.N.Y., N.Y.L.J. p. 810, col. 2, Feb. 28, 1952, and [Shamsee v. Shamsee](#), 74 A.D.2d 357, 428 N.Y.S.2d 33 (2d Dep't 1980), affirmed, 53 N.Y.2d 739, 439 N.Y.S.2d 356, 421 N.E.2d 848 (1981), certiorari denied, 454 U.S. 893, 102 S.Ct. 389, 70 L.Ed.2d 207 (1981) (proceeding by wife of former United Nations employee to sequester defendant's United Nations pension benefits dismissed because United Nations immune from legal process); [Wencak v. United Nations](#), Sup.Ct.N.Y., N.Y.L.J. p. 6, col. 7, Jan. 19, 1956, 23 Int'l L.Rep. 509 (action against United Nations arising out of accident claim against UNRRA dismissed because of United Nations immunity); [Weidner v. International Telecommunications Satellite Org.](#), 392 A.2d 508 (D.C. App.1978) (employee's suit for breach of contract dismissed because organization immune). Whether the Organization of Petroleum Exporting Countries is an international organization, and whether it is entitled to immunity as a matter of customary law (Comment *a*), was not considered in [International Association of Machinists v. OPEC](#), 477 F.Supp. 553 (C.D.Cal. 1979), affirmed on

other grounds, 649 F.2d 1354 (9th Cir.1981), certiorari denied, 454 U.S. 1163, 102 S.Ct. 1036, 71 L.Ed.2d 319 (1982); the court found that OPEC had not been and could not be served with process. See Contemporary Practice of the United States, 74 Am.J. Int'l L. 917 (1980); see also the study by the United Nations Secretariat "The Practice of the United Nations, the Specialized Agencies and the International Atomic Energy Agency Concerning their Status, Privileges and Immunities," [1967] 2 Y.B.Int'l L.Comm. 154, 222-26.

The charters of the International Bank for Reconstruction and Development and other international financial institutions contain provisions permitting suits against the organization under some circumstances and in selected venues; these provisions were designed to permit suits by bondholders and related creditors. In such cases, however, the property and assets of the Bank are immune from attachment or execution before final judgment. Art. VII, Sec. 3, Articles of Agreement of the International Bank for Reconstruction and Development, 60 Stat. 1440, 1457-58, T.I.A.S. No. 1502, 2 U.N.T.S. 134, 180. The Articles of Agreement provide for such immunity only prior to final judgment, which might imply waiver of immunity from execution after judgment, but the Bank is an organization designated pursuant to the International Organizations Immunities Act, and Section 2(b) of that Act seems to require that any waiver be express and that it be "for the purpose of any proceedings or by the terms of any contract." Compare *Mendaro v. The World Bank*, 717 F.2d 610 (D.C.Cir.1983), holding that Article VII permits suits only in respect of the Bank's external affairs but not, for example, a suit by a former employee in respect of her employment by the Bank. See also Article 50 of the Asian Development Bank Agreement, 17 U.S.T. 1418, T.I.A.S. No. 6103, 571 U.N.T.S. 123; Article XI of the Inter-American Bank Agreement, 10 U.S.T. 3029, T.I.A.S. No. 4397, 389 U.N.T.S. 69. See *Lutcher S.A. Celulose e Papel v. Inter-American Development Bank*, 382 F.2d 454 (D.C.Cir.1967), interpreting that bank's agreement as constituting a broad "waiver," broader than that in the Asian Development Bank Agreement. Provisions to the same general effect are contained also in the Articles of Agreement of the International Finance Corporation, 1956, 7 U.S.T. 2197, T.I.A.S. No. 3620, 264 U.N.T.S. 117, and of the International Development Association, 1960, 11 U.S.T. 2284, T.I.A.S. No. 4607, 439 U.N.T.S. 249, and the Agreement establishing the African Development Bank, 1963, 510 U.N.T.S. 3.

4. *Applicability of restrictive theory of immunity to international organizations.* Expansion and change in the character of the activities of governments led to the "restrictive theory," limiting the immunity of states under international law essentially to activities of a kind not carried on by private persons. See § 451 and Comment *a* thereto. Since activities of international organizations are prescribed by their charters, and their privileges and immunities are generally only those "necessary to the fulfillment of their purposes," it is open to question whether absolute immunity is required to that end. As regards the United Nations and the Specialized Agencies, however, privileges and immunities are the subject of special international agreements that have not purported to distinguish among the organizations' activities for purposes of immunity from jurisdiction to adjudicate or enforce law. Section 2 of the Convention on Privileges and Immunities of the United Nations states that "the United Nations . . . shall enjoy immunity from every form of legal process," suggesting absolute immunity from a state's jurisdiction to adjudicate or enforce its law by legal process, and states have not sought to restrict that immunity of the United Nations by interpretation or amendment. A similar provision is contained in the Specialized Agencies Convention (Sec. 4) and in that of the Organization of American States (Art. 2). But cf. *Branno v. Ministry of War*, [1959] II Foro 515, 22 Int'l L.Rep. 756, Italian Court of Cassation (United Chambers, June 14, 1954), holding that although the NATO agreement gave the organization immunity "from every form of legal process," NATO implicitly waived its immunity by entering into a commercial contract with a private person. The conventions on privileges and immunities do not provide absolute immunity from a state's jurisdiction to prescribe, but only several specific exemptions from such jurisdiction (see Comments b, c), and an organization

could claim immunity from jurisdiction to prescribe other law only if a particular immunity is shown to be necessary for the fulfillment of the organization's purposes. For special restrictions on the immunity of international financial institutions, see Reporters' Note 3.

Without special provision in the charter of an international organization or other applicable agreement, it is generally accepted that national courts will not entertain suits against an international organization by its employees under their employment contracts. See, e.g., *International Institute of Agriculture (IIA) v. Profile*, Court of Cassation, Italy, 1931; see also *Mendaro*, Reporters' Note 3, *Broadbent and Tuck*, *infra*, and the brief on behalf of the United States in *Broadbent*. See, generally, *Law Suits Against International Organizations: cases in national courts involving staff and employment*, World Bank Legal Dep't, 1982.

In the United States, since the International Organizations Immunities Act came into effect, the immunities of states under the law of the United States were reduced by the adoption of the restrictive theory of immunity, confirmed by the Foreign Sovereign Immunities Act. See this Part, Chapter 5. Since the International Organizations Immunities Act gives to designated international organizations “the same immunity from suit and every form of judicial process as is enjoyed by foreign governments,” it would appear that the Foreign Sovereign Immunities Act has the effect of applying the restrictive theory also to international organizations generally; but there is no indication in the legislative history of the FSIA that Congress contemplated that result. In any event, the International Organizations Immunities Act, [22 U.S.C. § 288](#), authorizes the President, by executive order, to withdraw or reduce the immunities of international organizations under the Act, and the possibility of limiting the immunity of an organization engaged in commercial activities was expressly contemplated, even before the restrictive theory of sovereign immunity for states became United States policy. See S.Rep. No. 861, 79th Cong., 1st sess. 2 (1945). The President has limited the immunity under the Act of international financial institutions to the extent that immunity is limited or waived in the charter of the organization. See *Lutcher S.A. Celulose e Papel v. Inter-American Development Bank*, Reporters' Note 3.

However, the law appears to be different as regards the United Nations, and perhaps also the Specialized Agencies and the Organization of American States. The operative sections of the Foreign Sovereign Immunities Act are expressly “subject to existing international agreements to which the United States is a party” [28 U.S.C. §§ 1604, 1609](#). Since the Convention on Privileges and Immunities of the United Nations exempts the United Nations “from every form of legal process,” conflict with United States obligations under the Convention can be avoided only by interpreting the Foreign Sovereign Immunities Act as not applying to suits against the United Nations. See [§ 115](#). Although the United States is not party to the parallel convention for the Specialized Agencies or that for the Organization of American States, those organizations were accorded privileges and immunities in their charters by language similar to that applicable to the United Nations in the United Nations Charter, and it is clear that these organizations were intended to have similar privileges and immunities. It is plausible, therefore, that the Foreign Sovereign Immunities Act, and the restrictive theory, should not be applied to those organizations either. The argument that the restrictive theory should apply to international organizations generally under the Foreign Sovereign Immunities Act was made, and supported in a brief *amicus curiae* by the United States, in [Broadbent v. Organization of American States](#), [628 F.2d 27 \(D.C. Cir.1980\)](#), but the court did not reach the issue. (The United States brief, while urging the restrictive theory, agreed that, in the particular case, involving a suit in respect of an employee's contract with the organization, the organization was immune.) See also [Tuck v. Pan American Health Organization](#), [668 F.2d 547 \(D.C.Cir.1981\)](#) (issue not reached since organization would be immune even under restrictive theory); also *Mendaro v. The World Bank*, Reporters' Note 3.

In special cases an international organization might be treated as a group of states enjoying the immunities of the constituent members. See, e.g., [Revenue Ruling 68-309, 1968-1 C.B. 338](#), as to the tax status of the European Economic Community.

5. *Exemption from currency controls.* Section 5 of the Convention on Privileges and Immunities of the United Nations provides that the United Nations may hold funds, gold, or currency of any kind and operate accounts in any currency, and shall be free to transfer its funds, gold, or currency from one country to another or within any country, and to convert any currency held by it into any other currency. However, the United Nations is required “to pay due regard to any representations made by the Government of any Member in so far as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.” Section 6. Similar provisions are included in the Convention on Privileges and Immunities of the Specialized Agencies (Sections 7 and 8).

6. *Exemption from taxes and customs restrictions.* In according the United Nations immunity from taxes and customs restrictions, Section 7 of the Convention on Privileges and Immunities of the United Nations adds: “it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services.” It is also understood that “articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country.” Although “the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price,” when the United Nations makes important purchases for official use, states generally make appropriate administrative arrangements for the remission or return of the amount of duty or tax. See Section 8. Similar provisions are included in the Convention on Privileges and Immunities of the Specialized Agencies, Sections 9 and 10. The charters of the principal international financial institutions expressly exempt them in comprehensive terms from paying or collecting taxes. See the articles of agreement of the World Bank, Art. VII, Sec. 9, and of the International Monetary Fund, Art. IX, Sec. 9. Under United States law, income received by an organization designated under the International Organizations Immunities Act, Comment *f*, from any source in the United States, is exempt from taxes. [26 U.S.C. § 892](#). See also the exemption from taxes on communications, [§ 468](#), Reporters' Note 8. See generally Tillinghast, “Sovereign Immunity from the Tax Collector: United States Income Taxation on Foreign Governments and International Organizations, 10 L. & Pol'y in Int'l Bus. 495 (1978).

7. *Waiver of immunity.* Waivers of immunity by international organizations were clearly contemplated. See, e.g., Section 2 of the Convention on Privileges and Immunities of the United Nations, Reporters' Note 3. Subject to the limitations on waivers imposed by the Convention (*ibid.*), the authority to waive the immunity of the United Nations is exercised by the Secretary-General in his capacity as chief administrative officer of the Organization. U.N. Charter, Art. 97. See [1967] 2 Y.B.Int'l L.Comm. 225. In principle, since an international organization is accorded only such immunity as is necessary for the fulfillment of its purposes, it is arguable that the organization should waive its immunity wherever it can do so without hampering the achievement of its purposes. Compare Section 20 of the Convention on Privileges and Immunities of the United Nations as to the waiver of the immunities of officials, [§ 469](#), Comment *f*.

It is accepted that under Section 2 of the Convention on Privileges and Immunities of the United Nations, see Reporters' Note 3, the United Nations may waive immunity in a particular case, but may not waive its immunity in advance, for example, by provision in a contract waiving immunity from jurisdiction to adjudicate. Compare the articles of agreement of the International Monetary Fund (Art. IX, Sec. 3), which provide that the institution may waive immunity by contract. However, under section 29 of the Convention, the United Nations is required

to make provision for appropriate modes of settlement of disputes arising out of contracts or other private law disputes; United Nations contracts generally provide for arbitration. The United Nations carries insurance for liability for personal injury or property damage and asserts no immunity for purposes of suit on such claims. The Specialized Agencies generally follow the same practice. See, generally, Law Applicable to Contracts Concluded by the United Nations with Private Parties--Procedure for Settling Disputes Arising out of such Contracts--Relevant Rules and Practices, [1976] U.N.Jur.Y.B. 151, 174-176. See Ehrenfeld, "United Nations Immunity Distinguished from Sovereign Immunity," [1958] 52 Proc.Am.Soc.Int'l L. 88, 93; The Practice of the United Nations, the Specialized Agencies and the International Atomic Energy Agency concerning their Status, Privileges and Immunities: Study prepared by the Secretariat, [1967] 2 Y.B.Int'l L.Comm. 154, 225; 13 Whiteman, Digest of International Law 61-63 (1968). However, in a decision involving the International Tin Council, an international organization with headquarters in London, the English High Court held that a clause in a loan agreement designating that court as a forum for adjudicating any controversies that might arise was a specific waiver of immunity within the meaning of the immunity provision in the Headquarters Agreement modeled on the conventions. See *Standard Chartered Bank v. International Tin Council*, [1986] 3 All E.R., 25 Int'l Leg.Mat. 650 (1986).

In 1986, the United Nations introduced a "self-insurance" program because of the high costs of commercial insurance. See Report of the Secretary General, A/C.5/41/11, 10 October 1986; Seventh Report of the Advisory Committee on Administrative and Budgetary Questions, A/ 41/7/Add. 6, 7 November 1986. (The General Assembly tacitly approved that program, by adopting the budget based in part on those reports). In cases not covered by commercial insurance, the United Nations does not accept service or suit, but negotiates with the claimant and sometimes submits claims to arbitration. The General Assembly also adopted a regulation setting a limit to the amount of compensation or damages payable by the United Nations for acts or omissions occurring within the United Nations Headquarters District. See GA Res. 41-210, 11 Dec. 1986. See Szasz, "The United Nations Legislates to Limit Its Liability," 81 Am.J.Int'l L. 739 (1987).

Disputes between an organization and its own employees are resolved by internal bodies such as the Administrative Tribunals of the United Nations and of the International Labour Organization, which have been given jurisdiction also of disputes in most Specialized Agencies and other international organizations. See Jenks, International Immunities 161 (1961); Meron, The United Nations Secretariat: The Rules and the Practice (1977); Akehurst, The Law Governing Employment in International Organizations (1967). See also Employment Conditions in the International Civil Service, World Bank Administrative Tribunal (1980). In an advisory opinion, the International Court of Justice ruled that the General Assembly was obligated to give effect to a compensation award made by the United Nations Administrative Tribunal. *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, [1954] I.C.J. Rep. 47.

For waivers included in charters of some international institutions, see Reporters' Note 3.

8. *Settlement of disputes.* Under the Convention on Privileges and Immunities of the United Nations (Section 30), differences arising out of the interpretation or application of the Convention are to be referred to the International Court of Justice unless the parties agree to another mode of settlement. The Convention provides also for advisory opinions from the International Court of Justice in disputes between the United Nations and a state party, and the parties to the Convention have agreed to accept such advisory opinions as decisive. See also Section 24 of the Convention on Privileges and Immunities of the Specialized Agencies. The charters of a number of international organizations provide procedures for settling disputes between the organization and a member as to interpretation of the Articles, e.g., the articles of agreement of the World Bank, Art. IX, the International

Monetary Fund, Art. XVIII. See the [All America Cables case](#), 17 F.C.C. 450, § 468, Reporters' Note 8, holding that a determination under those articles is binding on the United States. As to contract and other disputes with private persons, see Reporters' Note 7.

9. *Headquarters agreements.* A number of international organizations have a headquarters agreement with the state in whose territory the organization has its headquarters. In the case of the principal organizations in the United Nations system, the headquarters agreement generally supplements the provisions of the Convention on Privileges and Immunities of the United Nations or the parallel convention of the Specialized Agencies by granting additional privileges and immunities particular to the headquarters state. See, for example, the Headquarters Agreement between the United States and the United Nations, 61 Stat. 3416, T.I. A.S. No. 1676, 11 U.N.T.S. 11 (1947), supplemented, 17 U.S.T. 74, T.I.A.S. No. 5961, 554 U.N.T.S. 308 (1966); 20 U.S.T. 2810, T.I.A.S. No. 6750, 687 U.N.T.S. 408 (1969). See § 468, Comment c; § 469, Comment g and Reporters' Note 1. For a list of headquarters agreements, see 13 Whiteman, Digest of International Law 45 (1968). Special arrangements for privileges and immunities are usually made when an international organization holds a conference or establishes an office in a state other than the headquarters state.

Research References

1. Digest System Key Numbers

[International Law](#)  10.46.

Case Citations

[Case Citations through June 2011](#)

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C.A.D.C.1983. Subsec. (1) quot. in disc. and cit. in ftn., com. (a) cit. in ftn., Rptr's Notes 4 and 7 cit. in ftn. (citing § 464, T.D. No. 4, 1983, which is now § 467). An employee of the World Bank appealed from dismissal of her Title VII action for lack of jurisdiction. The plaintiff argued that the Bank's articles of agreement waived its right to immunity under the International Organizations Immunities Act. The court recognized that an international organization was entitled to whatever immunity was necessary for it to fulfill its purpose. Interference by member states was therefore limited, and immunities often extended to the officials of these organizations. Customarily, international organizations were also immune from employees' suits arising out of the employment relationship. Organizations could waive this immunity if the waiver was express, but courts should be reluctant to find an inadvertent waiver. In the instant case, the Bank expressly waived its immunity as necessary to facilitate its banking and other external activities. Since this waiver could not be construed as embracing the Bank's internal administration of its employees, dismissal was affirmed. [Mendaro v. World Bank](#), 717 F.2d 610, 615–616.

C.A.D.C.2009. Rptr's Note 3 cit. in disc. Lebanese businessman sued international organization that invested in private enterprises in developing countries, after his deal to purchase one of defendant's investments fell through, asserting claims for breach of contract, promissory estoppel, and breach of confidentiality. The district court denied defendant's motion to dismiss the latter two claims, holding that defendant had waived its immunity from suit under the International Organizations Immunities Act. Affirming, this court held that the

broad language of the waiver in defendant's charter was controlling. The court noted that the language was identical to that appearing in the charter of defendant's parent entity, the World Bank, and was common in the charters of other international financial institutions. [Osseiran v. International Finance Corp.](#), 552 F.3d 836, 839.

D.Ariz.Bkrcty.Ct.1995. Quot. in sup., coms. (a) and (f) quot. in sup. Chapter 7 debtors filed a motion challenging the standing and legal capacity of the Arab Monetary Fund (AMF) to participate in their bankruptcy cases based upon AMF's claim against debtors pursuant to a fraud judgment entered in English courts. This court held that AMF had standing and legal capacity to participate in the bankruptcy proceedings; therefore, the court had personal and subject matter jurisdiction over the AMF. The court stated that because the AMF was comprised of the governments of 20 Arab states and Palestine, it constituted an international organization. Since the International Organizations Immunities Act was not the exclusive source of legal capacity for international organizations, and in light of the AMF's status as a persona ficta under English law with the attributes of a corporation, the AMF had legal capacity to appear in the court. [In re Hashim](#), 188 B.R. 633, 646.

D.D.C.1985. Subsec. (1) quot. in case cit. in sup. (citing § 464, T.D. No. 4, 1983, which is now § 467). The decedent and her husband flew to their hometown in Ecuador with tickets paid for and authorized by the decedent's employer, the World Bank in the District of Columbia. While in Ecuador the couple attempted to visit another city, but they were killed when their plane crashed en route. This side trip was made without the authorization of the World Bank and was paid for by the decedent and her husband. The personal representative and named beneficiaries under the deceased World Bank employee's benefits plan sued the World Bank and its insurer to recover under a travel accident policy. The district court granted the defendants' motion to dismiss, holding that the employer was immune from suit because the event arose out of an international organization's relations with its own employee, and that the travel accident policy did not cover the employee's death because the side trip was not authorized travel to or from a duty station. [Chiriboga v. International Bank for Reconstruction](#), 616 F.Supp. 963, 966.

D.D.C.1998. Subsec. (1) quot. in ftn. in sup. (citing § 464, T.D. No. 4, 1983, which is § 467 of the Official Draft). World Bank brought suit to recover monies paid to the District of Columbia to satisfy tax-deficiency assessments levied against plaintiff's cafeteria operations. Granting plaintiff's motion for summary judgment, the court held, inter alia, that plaintiff's food service program and its related transactions were properly considered part of plaintiff's "ordinary business" and therefore fell within the scope of plaintiff's authorized "operations and transactions," which were immune from all taxation pursuant to treaty. [International Bank v. District of Columbia](#), 996 F.Supp. 31, 36, reversed 171 F.3d 687 (D.C.Cir.1999).

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