ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

JUDGMENT No. 2017-1

Mr. "MM", Applicant v. International Monetary Fund, Respondent

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ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

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INTRODUCTION

1. On November 15, 2017, the Administrative Tribunal of the International Monetary Fund, composed for this case, pursuant to Article VII, Section 4 of the Tribunal's Statute, of Judge Catherine M. O'Regan, President, and Judges Jan Paulsson and Francisco Orrego Vicuña, met to adjudge the Application brought against the International Monetary Fund by Mr. "MM", a staff member of the Fund. Applicant, using the format provided by Annex B of the Tribunal's Rules of Procedure, designated in his Supplementary Application two legal practitioners, one in the District of Columbia and one in "Country X", to represent him in the Tribunal proceedings as his "duly authorized representatives and counsels." Nonetheless, Applicant himself, rather than either of these representatives, signed and submitted the Application, Supplementary Application, and Applicant's Views on Intervention. Respondent was represented by Ms. Juliet Johnson and Ms. Diana Benoit, both Senior Counsels in the IMF Legal Department. Intervenor was represented by Mr. Robert C. Liotta, Liotta, Dranitzke & Engel, LLP.

2. Applicant, a participant in the Staff Retirement Plan (SRP or Plan), challenges the decision of the SRP Administration Committee (Committee) granting a request made by Applicant's former spouse pursuant to SRP Section 11.3 to give effect to a District of Columbia divorce judgment awarding her one-half of the marital portion of Applicant's future pension payments. Applicant participated in the proceedings in the Committee and challenges the Committee's Decision on Review.

3. Applicant contends that the District of Columbia divorce judgment does not meet the criteria prescribed by the Rules of the Administration Committee under Section 11.3 of the Staff Retirement Plan (Section 11.3 Rules) for giving effect to an order for division of marital property. Applicant asserts that (i) the judgment is not "final and binding on the parties" (criterion (C) of the Section 11.3 Rules) because an appeal has been filed from that judgment,[1] and (ii) the judgment does not meet the requirement that it "does not conflict and is not inconsistent with any other valid court order or decree" (criterion (D) of the Section 11.3 Rules) because it is in conflict with the law of Applicant's home country ("Country X") and proceedings are underway there in which Applicant seeks to obtain a conflicting court order.

4. Applicant seeks as relief: (a) rescission of the Committee's decision; (b) acknowledgement that, in accordance with the law of Country X, Applicant's pension will be granted entirely to Applicant with no portion to his former spouse; and (c) registration and execution of a future court

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[1] In early 2017, following the filing of the Application with the Administrative Tribunal, the District of Columbia Court of Appeals denied that appeal and affirmed the Judgment of Absolute Divorce.

decision from Country X as the sole court decision to be acted upon by the IMF. Applicant also seeks costs, which the Tribunal may award, in accordance with Article XIV, Section 4 of the Statute, if it concludes that the Application is well-founded in whole or in part.

5. Respondent, for its part, maintains that the Committee correctly interpreted the provisions of the Plan and soundly applied them to the facts of the case and, accordingly, its decision should be sustained. In Respondent's view, the Committee correctly decided that the District of Columbia divorce judgment met the criteria prescribed by SRP Section 11.3 and the implementing Rules for giving effect to an order for division of marital property under the SRP.

6. Applicant's former spouse has participated as an Intervenor in the Tribunal proceedings,[2] opposing the Application and urging the Tribunal to uphold the Committee's decision. Intervenor maintains that there is no conflicting court order as contemplated by criterion (D) of the Section 11.3 Rules, and that all questions relating to the division of marital property have been finally adjudicated by a court of competent jurisdiction through proceedings in which both Applicant and Intervenor fully participated.

PROCEDURE

7. On December 2, 2016, Applicant filed an Application with the Administrative Tribunal, which was supplemented on February 2 and 21, 2017.[3] The Application, as supplemented, was transmitted to Respondent on February 21, 2017. On February 22, 2017, pursuant to Rule IV, para. (f), the Registrar circulated within the Fund a notice summarizing the issues raised in the Application. On April 7, 2017, Respondent filed its Answer to the Application.

A. Intervention

8. On April 20, 2017, the Tribunal suspended the exchange of pleadings and sought the views of the parties as to whether Applicant's former spouse should be invited to participate as an Intervenor pursuant to Rule XIV[4] of the Tribunal's Rules of Procedure, and, if so, how the

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[2] *See infra* PROCEDURE.

[3] Applicant was granted an unusually long period in which to supplement his Application under Rule VII, para. 6, on account of a health condition.

[4] Rule XIV (Intervention) provides:

> 1. Any person to whom the Tribunal is open under Article II, Section 1 of the Statute may, within thirty days of the issuance of the notice prescribed by Paragraph (f) of Rule IV (and, in exceptional circumstances, thereafter up until the closure of the written pleadings on petition to the President), apply to intervene in a case on the ground that he has a right which may be affected by the judgment to be given by the Tribunal. Such person shall for that purpose draw up and file an application to intervene in accordance with the conditions laid down in this Rule.
>
> 2. Rule VII, regarding the preparation and submission of an application shall apply *mutatis mutandis* to the application for intervention.

(continued)

schedule of pleadings should be modified to accommodate her participation. Respondent and Applicant submitted their respective views on May 3 and May 5, 2017. Neither objected to the proposed Intervention.

9. Rule XIV, para. 4, provides that the Tribunal may invite the Intervention of "any person to whom the Tribunal is open under Article II, Section 1 of the Statute and who has a right that may be affected by the judgment to be given by the Tribunal."[5] In *Mr. "P" (No. 2) v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2001-2 (November 20, 2001), paras. 48-68, the Tribunal held that when an ex-spouse is the beneficiary of a decision granting a request under SRP Section 11.3 and that decision is challenged before the Tribunal, the ex-spouse is a person to whom the Tribunal is open under Article II, Section 1, and has a right that may be affected by the Tribunal's judgment, thereby conferring standing to intervene in the proceedings. *See also Ms. "M" and Dr. "M", Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-6 (November 29, 2006), paras. 12-15.

10. On May 10, 2017, having considered its jurisprudence and the views of the parties, the Tribunal decided to invite the Intervention of Applicant's former spouse. The parties were so notified on May 12, 2017, and the schedule of pleadings modified to accommodate the Intervention. The Application was transmitted to Intervenor for her response within thirty days.

> 3. Upon ascertaining that the formal requirements of this Rule have been complied with, the Registrar shall transmit a copy of the application for intervention to the Applicant and to the Fund, each being entitled to present views on the issue of intervention within thirty days. At the request of a party or on his own initiative, the President may suspend the exchange of pleadings under Rules VII-X until the admissibility of the application for intervention has been decided. Upon expiration of the thirty-day period, whether or not the parties have replied, the Tribunal shall decide whether to grant the application to intervene. If the intervention is admitted, the intervenor shall thereafter participate in the proceedings as a party, and the schedule of pleadings shall be modified to accommodate his participation.
>
> 4. In the absence of an application for intervention, the Tribunal may invite the participation as an intervenor of any person to whom the Tribunal is open under Article II, Section 1 of the Statute and who has a right that may be affected by the judgment to be given by the Tribunal. The views of the Applicant and the Fund may be sought, in a manner consistent with Paragraph 3 of this Rule, on the question of whether an individual should be invited to intervene. If the intervention is admitted, the intervenor shall thereafter participate in the proceedings as a party, and the schedule of pleadings shall be modified to accommodate his participation.

[5] These requirements are also set out in the Tribunal's Statute, Article X, Section 2(b).

11. On June 9, 2017, Intervenor filed an "Application to Intervene" (Intervenor's Response). On June 12, 2017, in accordance with the modified schedule of pleadings, the Fund's Answer and Intervenor's Response were transmitted to Applicant who was given thirty days to submit a single Reply to those pleadings.[6]

B. Further exchange of pleadings

12. Applicant did not file a Reply. Nor did he or either of the individuals he had designated as his "duly authorized representatives and counsels" respond to a follow-up inquiry from the Registrar. In the circumstances, on July 31, 2017, the parties were advised that the President of the Tribunal had modified the application of the Rules of Procedure, pursuant to Rule XXI, paras. 2 and 3,[7] as follows: (1) the Intervenor's pleading would be transmitted to Respondent, which would have thirty days in which to submit a Comment; and (2) there would be no further pleadings in the case, with the exception of any that might be admitted in accordance with Rule XI (Additional Pleadings).

13. Respondent's Comment was filed on August 7, 2017, and transmitted to Applicant and Intervenor for their information. No further submissions were made by any of the parties.

14. On November 14, 2017, the day before the Tribunal's deliberations were to take place and following a six-month lapse in any communication from Applicant, the Registrar received a phone call from Applicant saying that he had been indisposed for several months. The Tribunal considered how to proceed in the light of this development. Because the Tribunal decides below that (a) Applicant would first need to submit to the SRP Administration Committee any allegedly conflicting court order (a procedure of which Applicant had been duly notified in the Committee's Decision on Review)[8] and that (b) Applicant's failure to file a Reply in the case does not bar the Tribunal from deciding the Application,[9] the Tribunal determined that it was appropriate to proceed with its scheduled deliberations and render a Judgment.

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[6] In accordance with the schedule of pleadings notified to the parties on May 12, 2017, Intervenor and Respondent were to file simultaneous Rejoinders to that Reply.

[7] Rule XXI (Miscellaneous Provisions), paras. 2 and 3, provides:

> 2. The Tribunal, or, when the Tribunal is not in session, the President after consultation where appropriate with the members of the Tribunal may in exceptional cases modify the application of these Rules, including any time limits thereunder.
>
> 3. The Tribunal or, when the Tribunal is not in session, the President may deal with any matter not expressly provided for in the present Rules.

[8] *See infra* Do any developments subsequent to the Committee's Decision on Review preclude the Tribunal from sustaining the Committee's decision?

[9] *See infra* Applicant's failure to file a Reply.

C. Tribunal's request for information

15. On July 31, 2017, the Tribunal issued a request for information, pursuant to Rule XVII, para. 3,[10] asking the parties to bring to the Tribunal's attention, and provide documentation of, any further developments in the courts of the District of Columbia or other jurisdiction pertinent to its consideration of the Application. The parties were placed under a continuing obligation to inform the Tribunal of such developments.

16. The Fund responded on August 7, 2017, that it was not aware of any such developments. Neither Applicant nor Intervenor filed a response to the Tribunal's request for information.

D. Applicant's request for anonymity

17. Applicant has requested anonymity pursuant to Rule XXII[11] of the Tribunal's Rules of Procedure.

18. Respondent does not oppose the anonymity request, given that the "facts of the case clearly concern 'family relations,'" citing *Mr. "HH", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2013-4 (October 9, 2013), para. 17, and that the Tribunal has afforded anonymity to parties in other cases arising under SRP Section 11.3.

19. The Tribunal's jurisprudence reflects that shielding the identities of persons involved in disputes concerning "matters of personal privacy such as health . . . or family relations" is a core ground for granting anonymity under Rule XXII. *See Ms. "AA", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2006-5 (November 27, 2006), para. 14. The Tribunal recently reaffirmed this approach in a case arising

[10] Rule XVII (Production of Documents), para. 3, provides:

> 3. The Tribunal may, subject to Article X, Section 1 of the Statute, order the production of documents or other evidence in the possession of the Fund, and may request information which it deems useful to its judgment, within a time period provided for in the order. The President may decide to suspend or extend time limits for pleadings to take account of a request for such an order.

[11] Rule XXII (Anonymity) provides:

> 1. In accordance with Rule VII, Paragraph 2(j), an Applicant may request in his application that his name not be made public by the Tribunal.
>
> 2. In accordance with Rule VIII, Paragraph 6, the Fund may request in its answer that the name of any other individual not be made public by the Tribunal. An intervenor may request anonymity in his application for intervention.
>
> 3. In accordance with Rule VIII, Paragraph 5, and Rule IX, Paragraph 6, the parties shall be given an opportunity to present their views to the Tribunal in response to a request for anonymity.
>
> 4. The Tribunal shall grant a request for anonymity where good cause has been shown for protecting the privacy of an individual.

from a SRP Section 11.3 request. *See Ms. "M" and Dr. "M" (No. 2), Applicants v. International Monetary Fund, Respondent (Interpretation of Judgment No. 2006-6),* IMFAT Judgment No. 2016-3 (October 31, 2016), note 1 (noting that the applicants, who earlier had been afforded anonymity in accordance with the Tribunal's practices pre-dating the adoption of Rule XXII, would retain anonymity consistent with the Tribunal's jurisprudence interpreting Rule XXII and the "private nature of the matters central to the dispute," which concerned a Section 11.3 request for child support).

20. In the light of the Tribunal's jurisprudence and the nature of the issues of the case, which involves the allocation of Applicant's pension entitlements upon divorce, Applicant and Intervenor will be afforded anonymity in this Judgment.

E. Oral proceedings

21. Article XII of the Tribunal's Statute provides that the Tribunal shall ". . . decide in each case whether oral proceedings are warranted." Rule XIII, para. 1, of the Rules of Procedure provides that such proceedings shall be held ". . . if . . . the Tribunal deems such proceedings useful." None of the parties has requested oral proceedings.

22. In view of the written record before it and in the absence of any request, the Tribunal decided not to conduct oral proceedings because they would not be useful to its disposition of the case.

FACTUAL BACKGROUND

23. The key facts, some of which are disputed between the parties, may be summarized as follows.

A. Background

24. Applicant has been a Fund staff member and SRP participant for more than twenty years. Applicant married Intervenor in the United States, and, in the following year, also in Country X. Both marriages took place prior to the commencement of Applicant's career with the Fund. Applicant is a citizen of Country X and a lawful permanent resident of the United States; Intervenor is a citizen of the United States. The couple lived in the District of Columbia while Applicant worked at Fund headquarters.

B. Proceedings in the District of Columbia courts

25. In 2012, Intervenor filed a complaint for divorce in the District of Columbia Superior Court. Following a four-day trial in 2014 and subsequent evidentiary hearings, the court granted Intervenor a Judgment of Absolute Divorce in 2015. (District of Columbia Superior Court, "Second Amended Findings of Fact and Conclusions of Law, and Judgment of Absolute Divorce.") The court found that it had jurisdiction over the matter, as Intervenor met the statutory requirement of having been a resident of the District of Columbia for more than six months prior to the filing of the complaint. The judgment also noted that "[b]oth parties were present and represented by counsel at all hearings before this Court." (*Id.*, pp. 1-2.)

26. The Judgment of Absolute Divorce included a series of orders pertaining to the division of marital property, including real estate and other assets. For purposes of the Tribunal's proceedings, what is pertinent is the District of Columbia court's award to Intervenor of "one-half of the marital portion of [Applicant]'s IMF Defined Benefit Pension, including pre-retirement death benefits and survivor annuity benefits." [12] (*Id.*, p. 27.)

27. The court additionally ordered Applicant to pay Intervenor alimony, which would terminate upon remarriage, death, or the date upon which she begins to receive monthly retirement benefits from Applicant's SRP pension. (*Id.*, p. 27.) The Judgment of Absolute Divorce also stated that it "shall not become effective to dissolve the bonds of matrimony until thirty days after the Judgment is docketed, unless a court grants a stay pending appeal, in which case the Judgment shall become effective upon the conclusion of the appeal." (*Id.*, p. 27.)

28. Applicant filed a motion for a stay of the judgment with the Superior Court and an appeal with the District of Columbia Court of Appeals. The District of Columbia Superior Court denied the motion for a stay in 2015. (District of Columbia Superior Court, "Omnibus Order," pp. 9-11.)

C. Proceedings in the SRP Administration Committee

29. SRP Section 11.3 permits, and provides a mechanism for, the Plan to give effect to a "legal obligation arising from a marital relationship or pursuant to a legal obligation to make child support payments, evidenced by an order of a court or by a settlement agreement incorporated into a court order." The Tribunal has previously observed that the Plan provision evolved as a response to diplomatic concerns expressed by the host country that staff of international intergovernmental organizations should not be permitted to evade family support obligations as a consequence of the organizations' immunities from judicial process.[13]

30. SRP Section 11.3(b) provides that in the event that a participant or retired participant fails to submit a timely written direction in compliance with a court order, a "spouse or former spouse . . . of such participant or retired participant who is a party to the court order or orders may request that the Administration Committee give effect to such court order or orders and treat the request in the same manner as if it were a direction from such participant or a retired participant." (SRP Section 11.3(b).) The instant controversy arises from such a request.

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[12] The court explained that, as of the date of its decision, the "marital portion" constituted 100 percent, as the pension had been accumulated during the marriage, but that Intervenor would be entitled to one-half of the "marital portion" as calculated at the time such payments commence. (*See* District of Columbia Superior Court, "Second Amended Findings of Fact and Conclusions of Law, and Judgment of Absolute Divorce," p. 14 and note 7.)

[13] The history of the revisions to the SRP providing for giving effect to domestic relations orders in response to a request from an SRP participant or an affected spouse is detailed in *Mr. "P" (No. 2)*, paras. 69-87. *See also Ms. "M" and Dr. "M"*, paras. 121-122 (amendment of SRP Section 11.3 to include support orders for the benefit of children born out of wedlock).

It is notable that, although the revisions to the Fund's pension Plan were occasioned by concerns expressed by the host country, orders need not originate in the United States to be given effect pursuant to SRP Section 11.3. *See, e.g., Ms. "M" and Dr."M"*, para. 155 (observing that the "Tribunal responds to the policy of its forum, namely, the internal law of the Fund, which favors enforcement of family support orders wherever they originate and however drafted").

31. SRP Section 11.3(b) also provides that the Administration Committee will give effect to court orders "under such rules and conditions of acceptance" as the Committee might prescribe. Pursuant to that authority, the Committee has adopted the Section 11.3 Rules, setting out four criteria (A) through (D) by which it tests the adequacy of a court order that is the subject of a Section 11.3 request. In the absence of an objection, the Committee will presume that the order:

> (A) is valid by reason that:
>
> > (1) a reasonable method of notification has been employed and a reasonable opportunity to be heard has been afforded to the persons affected; and
> >
> > (2) the judgment has been rendered by a court of competent jurisdiction . . . and in accordance with such requirements of the state of [rendition] as are necessary for the valid exercise of power by the court;
>
> (B) is the product of fair proceedings;
>
> (C) is final and binding on the parties; and
>
> (D) does not conflict and is not inconsistent with any other valid court order or decree.

(Section 11.3 Rules, para. 2.) If an affected party submits an objection to the request, the Committee will assess the adequacy of the court order by reference to the same four criteria.

32. When presented with a Section 11.3 request, the Committee has three options. First, if the Committee determines that "there is no substantial reason for not giving effect to the court order or decree, it may accept the request and treat it in the same manner as if it were a direction made by the participant or retired participant." (Section 11.3 Rules, para. 1(b).) Second, if the Committee is "satisfied that there is a bona fide dispute as to the application, interpretation, effectiveness, finality or validity of the court order or decree, no action shall be taken on the request unless and until the matter is resolved to the satisfaction of the Administration Committee." (*Id.*) In such cases, activation of the direction or accepted request and any associated payment may be suspended until the dispute has been resolved in the judgment of the Committee. (Section 11.3 Rules, para. 1(c).) Third, if the Committee finds that the court order or decree "does not satisfy any one or more of the criteria listed in (A) through (D) above, the parties will be notified of its conclusions and the order or decree will not be given effect unless and until the deficiencies are remedied." (Section 11.3 Rules, para. 2.)

33. On December 7, 2015, following the denial by the District of Columbia Superior Court of Applicant's request for a stay of the Judgment of Absolute Divorce, Intervenor initiated a Request to the SRP Administration Committee pursuant to SRP Section 11.3 to give effect to the order that one-half of the marital portion of Applicant's pension entitlements be paid to her "if as and when they become payable to [Applicant]." (Intervenor's Request to Committee, December 7, 2015.)

34. In accordance with the Section 11.3 Rules, the Committee provided Applicant with notice and an opportunity to respond to Intervenor's Request. On January 26, 2016, Applicant filed his response with the Committee, seeking that the Request be rejected on the following grounds: (i) his appeal of the District of Columbia divorce judgment remained pending and therefore the court order on which Intervenor's Request was based was not "final and binding on the parties" in terms of criterion (C) of the Section 11.3 Rules; and (ii) the order did not meet the requirement that it "does not conflict and is not inconsistent with any other valid court order or decree" in terms of criterion (D) of those Rules. In support of the latter argument, Applicant asserted that he had initiated divorce proceedings in Country X where, he maintained, a divorced spouse is not permitted to receive any portion of the ex-spouse's pension benefits. (Applicant's January 26, 2016 Response to SRP Administration Committee.)

35. On March 10, 2016, the Committee issued its Decision, concluding that Applicant's objections did not form a basis to reject Intervenor's Request. The Committee found: (i) pursuant to District of Columbia law, a judgment of absolute divorce is final unless it has been stayed by the court, and there was no evidence that the court had granted such a stay; and (ii) there was no evidence of a court order from another jurisdiction that was inconsistent or in conflict with the District of Columbia judgment. The Decision additionally stated: "If in the future, there is a modification to the D.C. Superior Court's Judgment with regard to the division of your SRP benefits, you may bring this to the attention of the Administration Committee and request reconsideration of this issue." Applicant was also advised of his right to seek review by the Committee of its Decision, in accordance with the Committee's Rules of Procedure. (SRP Administration Committee Decision, March 10, 2016.)

CHANNELS OF ADMINISTRATIVE REVIEW

36. On June 7, 2016, pursuant to Rule VIII of the Committee's Rules of Procedure, Applicant submitted to the Committee his Request for Review of its March 10, 2016 Decision. Applicant again maintained that disputes pertinent to the Committee's consideration of Intervenor's Request remained unresolved in the courts of the United States and Country X. Applicant attached a copy of his brief in the District of Columbia Court of Appeals, along with a letter from an attorney in Country X stating that a petition for dissolution of the marriage had been filed in that jurisdiction in May 2016. Applicant asserted that a court decision is "pending in [Country X]" and "will be inconsistent and conflict with the D.C. Superior Court's Judgment." Applicant contended that it is "not according to Fund rules that the Administration Committee has accepted my spouse's Request, without waiting for the [Country X]'s court decision. The Committee should take into consideration both decisions." Applicant also requested an oral hearing before the Committee. (Applicant's Request for Review to SRP Administration Committee, June 7, 2016.)

37. On September 2, 2016, the Committee notified Applicant of its decision dated August 24, 2016, denying his Request for Review. (SRP Administration Committee Decision on Review, notified to Applicant September 2, 2016.) The Committee determined that the District of Columbia divorce judgment met each of the four criteria (A) through (D) prescribed by the Section 11.3 Rules for giving effect to an order for division of marital property, including that the court had properly exercised jurisdiction over the matter and afforded Applicant notice and opportunity to be heard.

38. As to the two disputed criteria (C) and (D), the Committee reasoned as follows. Under District of Columbia law, in the absence of a stay, a Judgment of Absolute Divorce becomes final thirty days after entry of the judgment; Applicant's motion for a stay had been denied. As for proceedings in Country X, the Committee observed that "[a]t the present time, there is no order from a [Country X] court in the record before the Committee." (*Id.*, p. 3.) The Committee rejected the suggestion that it "rely on [Applicant]'s speculation about the contents of a future order from a [Country X] court as a basis for rejecting a valid D.C. Superior Court judgment." (*Id.*)

39. The Committee also noted that the Section 11.3 Rules provide that in cases of a *bona fide* dispute as to the finality of an order, the Committee may suspend activation of a Request and any associated payments. This was not such a case, said the Committee, because (i) it did not consider that there was a *bona fide* dispute as to the finality of the District of Columbia divorce judgment, and (ii) neither Applicant, who remained an active staff member, nor his former spouse was receiving any SRP pension payments at the time; accordingly, there were no payments eligible for suspension. (*Id.*, pp. 3-4.)

40. The Decision on Review concluded: "As the Committee has previously advised [Applicant], if in the future either (a) the D.C. Court of Appeals reverses in whole or in part the D.C. Superior Court judgment with regard to the division of the SRP pension; or (b) a court in [Country X] issues an order that conflicts or is inconsistent with the D.C. judgment, [Applicant] may submit such new evidence to the Committee for its consideration." (*Id.*, p. 4.) The Committee additionally denied Applicant's request for an oral hearing before the Committee.

41. In accordance with Rule X of the SRP Administration Committee's Rules of Procedure, the channels of review provided by that Committee are exhausted for purposes of filing an application with the Administrative Tribunal when the Committee has notified the party requesting review of the results of its review of the contested decision.

42. On December 2, 2016, Applicant filed his Application with the Administrative Tribunal.

DEVELOPMENTS SUBSEQUENT TO APPLICANT'S EXHAUSTION OF ADMINISTRATIVE REVIEW

43. The following developments took place following Applicant's exhaustion of the channels of administrative review.

A. Proceedings in the District of Columbia courts

44. In early 2017, the District of Columbia Court of Appeals denied Applicant's appeal, affirming the Judgment of Absolute Divorce. (District of Columbia Court of Appeals, "Memorandum Opinion and Judgment.")

B. Proceedings in the Country X courts

45. In September 2016, the family court in Country X issued a decision declaring the "marriage of the litigants performed [in the United States and Country X] dissolved . . . and the divorce is hereby granted." That decision states that it was taken "[f]ollowing the hearing of the

application in the presence of [counsel] for the Applicant, and the Respondent not appearing . . . ." (September 30, 2016 order of Country X family court.) The decision additionally states that it was not appealed and became final on November 28, 2016. (*Id.*)

46. In December 2016, Applicant filed with the Country X courts an application for division of property, requesting *inter alia*: "Statement by the Court as the Court of competent jurisdiction to the effect that the respondent [Applicant's ex-spouse] is not entitled, on the basis of [statute of Country X] or on the basis of any other law or otherwise, to any share of the applicant's pension from the International Monetary Fund." (Application to Country X court for division of property, filed December 1, 2016.) Applicant additionally has attached to his Tribunal Application a "Legal Opinion" by his counsel in Country X concerning the law of that country in respect of property disputes between spouses following the dissolution of marriage. This "opinion" of Applicant's counsel states that a decision on Applicant's application to the Country X court for division of property is expected "within October 2017." ("Legal Opinion" by Applicant's Country X counsel.)

47. Intervenor, for her part, maintains that she was never served or notified of any proceedings in Country X and that, as of the date of her pleading filed with the Tribunal on June 9, 2017, she "still has not been served and is unaware of any proceedings in [Country X]."

SUMMARY OF PARTIES' PRINCIPAL CONTENTIONS

A. <u>Applicant's principal contentions</u>

48. The principal arguments presented by Applicant in his Application and Supplementary Application may be summarized as follows:

1. The SRP Administration Committee failed to take account of Applicant's appeal of the District of Columbia divorce judgment, which remained pending at the time of its decision on Intervenor's Request.

2. The Committee also failed to take account of the law of Country X, in which Applicant and Intervenor were also married and of which Applicant is a citizen. The law of Country X provides that pensions are non-marital assets and that a divorced spouse is not entitled to any portion of the pension of the former spouse.

3. Applicant is presently seeking a judgment in the courts of Country X that will determine his pension rights in accordance with the law of Country X.

4. According to the law of Country X, the competent court regarding divorce and property decisions in this case is the court of that country. The decision of the United States court is not recognized by Country X.

5. Applicant seeks as relief:

    a. rescission of the Committee's decision;

b. acknowledgement that, in accordance with the law of Country X, Applicant's pension will be granted entirely to Applicant with no portion to his former spouse;

c. registration and execution of a future court decision from Country X as the sole court decision to be acted upon by the IMF; and

d. costs, pursuant to Article XIV of the Tribunal's Statute.

B. Respondent's principal contentions

49. The principal arguments presented by Respondent in its Answer and Comment on Intervenor's Response may be summarized as follows:

1. The District of Columbia divorce judgment met all of the criteria required to give effect to a court order for division of marital property pursuant to SRP Section 11.3 and the Rules thereunder.

2. The District of Columbia divorce judgment was rendered by a court of competent jurisdiction, which afforded the parties due process.

3. At the time of the Committee's decision, the District of Columbia divorce judgment was final, notwithstanding Applicant's then pending appeal; District of Columbia law provides that if an application for a stay of a divorce judgment is denied, the judgment will become final upon entry of the court's order denying the stay. (Following the Committee's decision, in early 2017, the District of Columbia Court of Appeals denied the appeal.)

4. The District of Columbia divorce judgment is not in conflict or inconsistent with any other court order. Applicant brought no other court order to the attention of the Committee. The September 2016 order from Country X, which Applicant has submitted to the Tribunal, does not treat the division of marital property and therefore is not inconsistent with the District of Columbia order. Neither the Committee nor the Tribunal is required to examine pension law in various jurisdictions or to take account of a hypothetical conflicting order.

C. Intervenor's principal contentions

50. The principal arguments presented by Intervenor in her Response may be summarized as follows:

1. The District of Columbia divorce judgment is a final and binding order for division of marital property under SRP Section 11.3.

2. No other court order exists which is in conflict or inconsistent with that judgment. The September 2016 order from Country X does not address

distribution of assets or pensions and was obtained in disregard of even minimal standards of due process.

3. All matters relating to the adjudication of marital property have been decided by a court of competent jurisdiction as a result of proceedings in which both Applicant and Intervenor fully participated.

RELEVANT PROVISIONS OF THE FUND'S INTERNAL LAW

51. For ease of reference, the principal provisions of the Fund's internal law relevant to the consideration of the issues of the case are set out below.

A. SRP Section 11.3

52. The dispute in this case arises under SRP Section 11.3, which provides:

> 11.3 Notwithstanding the provisions set forth in Section 11.1, a participant or retired participant may, pursuant to a legal obligation arising from a marital relationship or pursuant to a legal obligation to make child support payments, evidenced by an order of a court or by a settlement agreement incorporated into a court order, direct in writing to the Secretary of the Administration Committee that a benefit that would otherwise be payable to him during his life under the Plan be paid to one or more former spouses or a current spouse from whom there is a decree of legal separation, his child or children, who are under 22 years of age, or the court approved guardian of such child or children.
>
> (a) The benefit payable shall not exceed:
>
> i. when payable to the spouse or former spouse, 50 percent of the portion of the participant's or retired participant's benefit that is attributable to his eligible service during the period of the couple's marriage whenever the obligation or obligations to which the court order relates are for support of the spouse or former spouse or division of marital property or both, and
>
> ii. when payable to a child or children or their parents or guardians, $16^{2}/_{3}$ of the benefit payable to the participant or retired participant whenever the court ordered obligation is for support of his child or children. The sum of payments to two or more children, or their parents or guardians on their behalf, shall not exceed $16^{2}/_{3}$ percent of the benefit payable to the participant or retired participant; such payments shall be made in equal shares unless

otherwise allocated by decision of the Administration Committee pursuant to rules adopted by it.

(b) In the event that a participant or retired participant fails to submit a timely written direction in compliance with the court order to the Secretary of the Administration Committee, under such rules and conditions of acceptance as are prescribed by the Administration Committee, a spouse or former spouse or a child or children, or parents or guardians acting on their behalf, of such participant or retired participant who is a party to the court order or orders may request that the Administration Committee give effect to such court order or orders and treat the request in the same manner as if it were a direction from such participant or a retired participant. Pending the Administration Committee's consideration of such request or the resolution of a dispute between a participant or retired participant and the spouse or former spouse, or the child or child's parent or guardian, regarding payment of amounts payable under the Plan, the Administration Committee may withhold, in whole or in part, payments otherwise payable to the participant or retired participant or the spouse or former spouse, child or child's parent or guardian.

(c) A direction or accepted request or payment incident thereto shall not convey to any person an interest in the Retirement Fund of the Plan or give any elective rights under the Plan to such person. A direction or accepted request must be consistent with the provisions of the Plan, which in the event of conflict will be deemed to override the direction or accepted request. Any direction or accepted request shall be irrevocable; provided, however, that a participant or retired participant, spouse or former spouse, child or child's parent or guardian, as the case may be, may request, upon evidence satisfactory to the Administration Committee based on a court order or a provision of a settlement agreement incorporated into a court order, that he be permitted to issue a new direction or submit a new request in writing that would increase, diminish, or discontinue the payment or payments; and provided, further, that any direction or accepted request shall cease to have effect following the death of the participant or retired participant. If a beneficiary under a direction or accepted request predeceases the participant or retired participant, the payments shall not commence or if they have commenced shall thereupon cease. In the event that the payment or payments under a direction or accepted request have been diminished, discontinued or have failed to commence or have ceased, the corresponding amount

> of benefit payable to the participant or the retired participant shall be restored less the value of any amounts paid as withdrawal or commuted sums.

B. <u>Rules of the Administration Committee Under Section 11.3 of the Staff Retirement Plan</u>

53. The SRP Administration Committee has adopted Rules governing the administration of SRP Section 11.3, which provide as follows:

> 1.(a) Any direction made by a participant or retired participant under Section 11.3 of the Staff Retirement Plan shall be addressed to the Secretary of the Administration Committee and accompanied by a copy of the relevant court order or decree (which shall be understood to include a judgment or other determination by a court of the rights of the parties). It shall indicate that a copy has been sent to the spouse or former spouse. It shall then be transmitted to the Legal Department for inspection. If deemed in order by that Department, and not inconsistent with the provisions of the Plan and these rules, the direction and court order or decree, as the case may be, shall be held in the files of the Secretary of the Administration Committee pending activation of the direction. An inconsistent or otherwise inappropriate direction or court order or decree that raises a substantial question as to its application, interpretation, effectiveness, finality or validity will be returned by the Secretary of the Administration Committee to the sender together with an explanation of it deficiencies. A notification of the filing of the direction shall be sent to the sender, the spouse or the former spouse, as the case may be, and to the members of the Administration Committee.
>
> (b) In the event that a participant or retired participant fails to submit a direction within thirty (30) working days of the issuance of a relevant court order or decree, the Administration Committee may accept a request made by the participant's or retired participant's spouse or former spouse to give effect to the relevant court order or decree and treat the request in the same manner as if it were a direction from the participant or retired participant. The Secretary of the Administration Committee will give a participant or retired participant written notice of such a request from a spouse or former spouse. The participant or retired participant will be allowed, as the Administration Committee shall specify, at least thirty (30) working days either to consent or to object to the request, giving a full written explanation for any objection. The Administration Committee will make its decision on whether or

not it will accept the request and treat it in the same manner as if it were a direction within forty-five (45) working days after the participant or retired participant responds or the time for a response expires. If the Administration Committee is satisfied that there is a bona fide dispute as to the application, interpretation, effectiveness, finality or validity of the court order or decree, no action shall be taken on the request unless and until the matter is resolved to the satisfaction of the Administration Committee. However, if the Administration Committee determines that there is no substantial reason for not giving effect to the court order or decree, it may accept the request and treat it in the same manner as if it were a direction made by the participant or retired participant under Section 11.3 of the Staff Retirement Plan. The Secretary of the Administration Committee will promptly notify in writing both parties of such determination or decision of the Committee. Any payment withheld pending the Committee's consideration of the request will be paid to the person determined by the Committee to be entitled to such payment; provided that the Administration Committee may deposit it in escrow in the Bank-Fund Staff Federal Credit Union in an interest-bearing account until such payment is made.

(c) The Administration Committee will not (i) interpret agreements between spouses or former spouses, directions or accepted requests to pay or orders or decrees of courts in cases of ambiguity, or (ii) resolve questions where there is a *bona fide* dispute about the efficacy, finality or meaning of an order or decree. In these cases, activation of the direction or accepted request and any associated payment may be suspended until such ambiguity or dispute shall have been settled in the judgment of the Administration Committee.

2. Unless a participant or retired participant, spouse or former spouse objects, the Administration Committee may presume that a court order or decree concerning the payment of amounts from the Staff Retirement Plan

(A) is valid by reason that:

(1) a reasonable method of notification has been employed and a reasonable opportunity to be heard has been afforded to the persons affected; and (2) the judgment has been rendered by a court of competent jurisdiction rendition and in accordance with such requirements of the state of as are necessary for the valid exercise of power by the court;

(B) is the product of fair proceedings;

(C) is final and binding on the parties; and

(D) does not conflict and is not inconsistent with any other valid court order or decree.

If a party objects to giving effect to a court order or decree, the Administration Committee will assess its adequacy based on the criteria listed in (A) through (D) in the preceding sentence. The Administration Committee will not review the court order or decree concerning the merits of the case and will not attempt to review the judgment of the court regarding the rights or equities between the parties. If the Administration Committee finds that the court order or decree does not satisfy any one or more of the criteria listed in (A) through (D) above, the parties will be notified of its conclusions and the order or decree will not be given effect unless and until the deficiencies are remedied. In addition, if there is an inconsistency or conflict under (D) above with the court order or decree that was the basis of a prior direction or accepted request, the Administration Committee will notify the parties that neither order or decree will be given effect unless and until the conflict or inconsistencies are resolved.

3. A direction or accepted request may apply to pension benefits, amounts to be commuted or withdrawn, and any other benefits payable under the Staff Retirement Plan which are payable during the life of the participant or retired participant. Payments to a spouse or former spouse pursuant to a direction or accepted request shall not commence prior to the effective date that payment of the participant's or retired participant's benefits under the Staff Retirement Plan commences. Such payments shall relate to the same type of benefits that the participant or retired participant elects to receive and shall not be payable in a manner that would apply a type of benefit to the spouse or former spouse that is different from the type of benefit applied to the participant or retired participant. Whenever payments to a spouse or any former spouses pursuant to a direction or accepted request are for support of the spouse or any former spouses or for the division of marital property or both in accordance with a court order or decree, such payments shall not exceed 50 percent of the benefits payable under the Staff Retirement Plan that are attributable to the number of months of eligible service during which the participant or retired participant was married to such spouse or former spouses. However, whenever the court order or decree includes child support, the aggregate of payments to a spouse or any

former spouses shall not exceed 66 2/3 percent of the benefit payable to the participant or retired participant under the Staff Retirement Plan. Any amounts of payments that exceed the limits applicable to payments to a spouse or any former spouses must be directly related to court ordered or approved child support payments. A participant may exercise his right to receive a commuted amount, a withdrawal amount, or a reduced pension with pension to survivor, to elect or change the currency or currencies in which his benefit is payable or to request a transfer of his accrued benefits to another international organization or member government, but no such exercise shall negate a direction once made. In the event of a conflict, the direction or accepted request shall override a subsequent inconsistent election or request to transfer. Directions and accepted requests may specify payment to a former spouse of: (a) a percentage of the retired participant's pension (not augmented by a cost of living pension supplement); (b) a fixed amount; or (c) either (a) or (b) increased by the applicable annual cost of living pension supplement calculated in the manner prescribed under Section 4.11 of the Plan. The amount of the payment will be calculated on the basis of the base amount in U.S. dollars or, if the retired participant elects another currency (or combination of currencies) in that currency (or the combination). A direction or accepted request specifying (a) or (b) shall be payable in the initial currency selection made by the retired participant at the end of the 90-day period specified in Section 16.3(a) of the Staff Retirement Plan and shall continue regardless of changes that the retired participant may elect subsequently. If a direction or accepted request specifies (c), the currency or currencies in which the direction shall be paid shall change in accordance with subsequent changes of currency that the retired participant may elect.

4. A payment from a withdrawal benefit or a commuted lump sum shall be paid in United States dollars. Other payments will be paid as described in paragraph 3 of these Rules. If upon or subsequent to retirement the retired participant is not entitled under Section 16 of the Staff Retirement Plan to the currency specified, the payment will be made in United States dollars from the amount of dollars which the retired participant may elect under Section 16.3(a). If the retired participant is not entitled to United States dollars and the currency specified is other than a currency which he is entitled to elect under Section 16.3, he will be so informed and requested, with the written consent of his former spouse to issue a new direction specifying a currency that he is entitled to receive under that provision.

Failure to issue a new direction or to obtain the written consent shall result in the payment being made in United States dollars which shall be deducted from the initial calculation of the payment to which the retired participant is entitled prior to any conversion that has been elected. The split currency election under Section 16 of the Staff Retirement Plan shall not be available at the option of a designee under a direction or under an accepted request. Benefit deductions shall be made on the basis of the amount of a retired participant's pension before payment of the former spouse's pension and shall be deducted solely from the portion due to the retired participant. Payment shall be effected by direct deposit in an account of the former spouse in a bank in the Washington locality or, at the expense of such person, to another account by wire transfer.

5. A direction or accepted request under Section 11.3 of the Staff Retirement Plan shall apply to benefits available under the Staff Retirement Plan or from the Supplemental Retirement Benefits Plans.

6. For purposes of the U.S. federal income tax law, unless otherwise established, (i) amounts paid in accordance with a direction or accepted request shall be included for income tax purposes in the gross income of the recipient rather than in the gross income of the retired participant and (ii) the retired participant and each other recipient shall be entitled to a pro rata allocation of the investment in the contract to the payment made.

7. If a direction has been given on the basis of a normal pension, but a disability pension is payable instead and the terms of the direction and the applicable court order or decree do not expressly provide for the case of disability, then the initial direction shall not be activated until the date that normal retirement would have occurred. Alternatively, the matter may be the subject of a new direction or accepted request.

8. A restoration of an amount of the benefit payable shall be prospective only, and shall be limited by any amounts that have been paid as withdrawal or commuted sums and any option that had become irrevocable under Section 4.6 of the Staff Retirement Plan. It shall be the duty of the participant or retired participant to notify the Secretary of the Administration Committee of any change that may give rise to a restoration.

9. Payments pursuant to a direction or an accepted request shall be prospective only; no payment will be made for amounts

> payable or due prior to the later of the date that the direction or request was received or the effective date referred to in the direction. No payment pursuant to a direction or accepted request will be payable sooner than the first day of the month which is a least 60 days after the Secretary of the Administration Committee has received a direction or request and an authenticated copy of the court order or decree, following the effective date of Section 11.3 of the Staff Retirement Plan.

CONSIDERATION OF THE ISSUES

54. The Application presents the following principal question for decision: Did the SRP Administration Committee err in granting Intervenor's request under SRP Section 11.3 to give effect to the District of Columbia divorce judgment awarding her one-half of the marital portion of Applicant's pension entitlements? If the Tribunal concludes that the Committee did not err, a second question arises: Do any developments subsequent to the Committee's Decision on Review preclude the Tribunal from sustaining the Committee's decision?

A. Did the SRP Administration Committee err in granting Intervenor's request under SRP Section 11.3 to give effect to the District of Columbia divorce judgment awarding her one-half of the marital portion of Applicant's pension entitlements?

(1) What standard of review governs Applicant's challenge to the decision of the SRP Administration Committee?

55. It is settled law in this Tribunal that when an application raises a challenge to a decision of the SRP Administration Committee, the Tribunal will consider whether the Committee has correctly interpreted the relevant Plan provisions and soundly applied them to the facts of the case.[14] *Mr. P. Nogueira Batista, Jr., Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2016-4 (November 1, 2016), paras. 48-50; *Ms. "J", Applicant v. International Monetary Fund, Respondent,* IMFAT Judgment No. 2003-1 (September 30, 2003), para. 128.[15] If the Tribunal concludes that the Committee's decision was "in error," it may rescind the decision. *See, e.g., Mr. "P" (No. 2)*, paras. 145, Decision (rescinding Committee's

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[14] The World Bank Administrative Tribunal (WBAT) has taken a similar approach to reviewing decisions taken in the administration of the staff retirement plan. *See generally Ms. "J"*, paras. 118-127 (surveying international administrative jurisprudence in formulating IMFAT's standard of review); *see also Courtney (No. 2) v. International Bank for Reconstruction and Development*, WBAT Decision No. 153 (1996), para. 30 (disability pension), quoted in *Ms. "J"*, para. 125; *Lecuona v. International Bank for Reconstruction and Development*, WBAT Decision No. 484 (2013), para. 41 (giving effect under pension plan to spousal support order).

[15] In *Ms. "J"*, para. 128, the Tribunal also formulated as part of the standard of review the questions whether the Committee's decision was taken in accordance with fair and reasonable procedures and whether it was arbitrary, capricious, discriminatory or improperly motivated. Those questions are considered in cases in which an applicant raises such issues as part of the challenge to the Committee's decision.

(continued)

decision to escrow disputed portion of pension payments; directing that court order for division of marital property be given effect pursuant to SRP Section 11.3).[16]

56. The Tribunal has explained that there are two reasons why it applies a different standard of review to challenges to decisions of the SRP Administration Committee as contrasted with challenges to discretionary decisions taken in the management of the staff of the Fund. First, pursuant to SRP Section 7.2(b), the authority to take an individual decision under the Plan is vested exclusively in the SRP Administration Committee, subject to appeal (following reconsideration by the Committee) to the Tribunal. Accordingly, in contrast to recommendations of the Fund's Grievance Committee, decisions of the SRP Administration Committee are not subject to later consideration by Fund management. The Tribunal has recognized the "unique nature of [this] appellate authority." *Ms. "J"*, para. 114, citing *Mr. "P" (No. 2)*, para. 141. Second, the process of construing the applicable terms of the Staff Retirement Plan and applying them to the facts of a particular case to determine an applicant's entitlement or not to the requested benefit "more closely resembles a judicial act than one typically taken pursuant to managerial authority." *Ms. "J"*, paras. 112-113; *Mr. R. Niebuhr, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgement No. 2013-1 (March 12, 2013), paras. 98-100.

57. Applying this standard to the instant case, the Tribunal will consider whether the Committee correctly interpreted the provisions of SRP Section 11.3 and the implementing Rules, and soundly applied them to the facts of the case when it granted Intervenor's request to give effect to that portion of the District of Columbia Judgment of Absolute Divorce awarding her "one-half of the marital portion of [Applicant]'s IMF Defined Benefit Pension, including pre-retirement death benefits and survivor annuity benefits."[17]

(2) <u>Did the Committee correctly interpret the provisions of SRP Section 11.3, and the implementing Rules, and soundly apply them to the facts of the case?</u>

58. As noted above, Section 11.3 of the Plan authorizes the Committee to give effect, "under such rules and conditions of acceptance" as the Committee may prescribe, to court orders meeting the requirements of the Plan. The Tribunal has recognized that there is a "clear hierarchy of norms" in relation to the SRP and implementing Rules promulgated by the Committee; when there is a conflict between a Plan provision and such Rules, the Plan provision must govern. *Mr. J. Prader, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2016-1 (March 15, 2016), para. 65. In the instant case, there is no allegation of inconsistency between

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[16] *See also Ms. "J"*, para 179 and Decision (rescinding Committee's decision denying disability pension and ordering that disability pension be granted under SRP Section 4.3); *Ms. "K", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2003-2 (September 30, 2003), paras. 116 and Decision (same); *Mr. J. Prader, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2016-1 (March 15, 2016), paras. 78 and Decision (concluding that Committee's decision denying request to revoke currency election under SRP Section 16.3 was "in error and must be rescinded").

[17] The Tribunal observes that Applicant has not raised as a separate claim that the Committee failed to take its decisions in his case in accordance with fair procedures. Insofar as his contentions on the merits may implicate procedural concerns, for example, in alleging that the Committee should not have given effect to the District of Columbia judgment without taking into consideration the law of Country X, the Tribunal will address these concerns as part of its consideration of the merits of the Application.

the requirements of SRP Section 11.3 and the Section 11.3 Rules. Nor does Applicant contend that the District of Columbia divorce judgment fails to meet any requirement prescribed by the Plan itself.

59. Accordingly, the Tribunal's review in this case will concern itself with the question whether the Committee correctly interpreted and soundly applied each of the criteria (A) through (D) identified in the Section 11.3 Rules for giving effect to a court order, namely, whether the order:

> (A) is valid by reason that:
>
> > (1) a reasonable method of notification has been employed and a reasonable opportunity to be heard has been afforded to the persons affected; and
> >
> > (2) the judgment has been rendered by a court of competent jurisdiction . . . and in accordance with such requirements of the state of [rendition] as are necessary for the valid exercise of power by the court;
>
> (B) is the product of fair proceedings;
>
> (C) is final and binding on the parties; and
>
> (D) does not conflict and is not inconsistent with any other valid court order or decree.

(Section 11.3 Rules, para. 2.) *See Mr. "P" (No. 2)*, para. 144. The Tribunal has emphasized that it is of "cardinal importance" that the court order at issue "conform [ ] to the criteria of enforceability" set out in these Rules. *Id.*, para. 155. In making this assessment, the Tribunal will necessarily look to its own jurisprudence in interpreting the Plan provision and the implementing Rules.

(a) <u>Did the Committee correctly interpret and soundly apply criteria (A) and (B) of the Section 11.3 Rules in concluding that the District of Columbia divorce judgment was rendered by a court of competent jurisdiction in which the parties were afforded fair process, including notice and an opportunity to be heard?</u>

60. Criteria (A) and (B) of the Section 11.3 Rules may reasonably be read together to require that the court order shall have been rendered by a court of competent jurisdiction in which the parties were afforded fair process, including notice and an opportunity to be heard. Applicant does not allege that the District of Columbia divorce judgment failed to meet these standards. Nonetheless, the Tribunal begins by addressing these essential criteria for giving effect to a court order under SRP Section 11.3.

61. The record before the Tribunal shows that the District of Columbia Superior Court rendered its Judgment of Absolute Divorce as the result of adversary proceedings spanning several years. These encompassed a four-day trial, additional evidentiary hearings, and an

extensive motions practice. Applicant does not dispute that he participated in these proceedings and that he did so with the assistance of counsel. The court expressly found that it had jurisdiction over the divorce action, consistent with the law of the District of Columbia, on the basis that Intervenor had been a resident of that jurisdiction for more than six months prior to the filing of the complaint. The District of Columbia judgment also confirmed that "[b]oth parties were present and represented by counsel at all hearings before this Court." (District of Columbia Superior Court, "Second Amended Findings of Fact and Conclusions of Law, and Judgment of Absolute Divorce," pp. 1-2.)

62. Intervenor emphasizes that "[a]ll matters relating to the adjudication of marital property have been decided by a Court which had agreed-upon jurisdiction over both parties and in which both parties fully participated." The Fund supports this view.

63. In *Mr. "P" (No. 2)*, para. 152, the Tribunal observed that the "Fund's internal law favors legal decisions that are the result of adversary proceedings, in which reasonable notice and the opportunity to be heard are the essential elements." The Tribunal in that Judgment underscored that notice and hearing are "essential principles of international administrative law," recognized by the Tribunal in its jurisprudence and in the Report of the IMF Executive Board[18] recommending adoption of the Tribunal's Statute. *Id.*

64. Furthermore, the Tribunal in *Mr. "P" (No. 2)*, in concluding that the Committee had erred in failing to give effect to an order for division of marital property as requested by Mr. "P"'s ex-spouse, emphasized that the order was the "product of adversary legal proceedings": "Mr. "P" participated fully in the court proceedings, filing pleadings and appearing at hearings . . . . " *Id.*, para. 104. In that Judgment, the Tribunal contrasted the court order to be given effect under Section 11.3 with an "ex parte divorce declaration" that Mr. "P" had later made in another jurisdiction. *Id.*, para. 144.[19] The Tribunal additionally found it significant that Mr. "P" had "submitted himself to the jurisdiction of the Maryland Court to adjudicate the termination of his marriage" and then summarily left the country to declare a divorce in Egypt in an effort to repudiate the jurisdiction of the Maryland court. *Id.*, para. 153. *See also Aleem and Aleem v. International Bank for Reconstruction and Development*, WBAT Decision No. 424 (2009), paras. 62, 70 (giving effect under analogous provision of World Bank's pension plan to Maryland court order where applicant "voluntarily submitted to the jurisdiction of the Maryland Circuit Court" and then declared a unilateral divorce under the laws of Pakistan).

65. In this case, the District of Columbia divorce proceedings bear the essential indicia of fair adversarial proceedings, conducted by a court of competent jurisdiction. Applicant has not alleged otherwise. For these reasons, the Tribunal concludes that the Committee did not err in

[18] *See* Report the Executive Board to the Board of Governors on the Establishment of an Administrative Tribunal for the International Monetary Fund (1992) and the Report of the Executive Board to the Board of Governors on Amendments to the Statute of the Administrative Tribunal for the International Monetary Fund (2009) ("Commentary on the Statute"), p. 18, quoted in *Mr. "P" (No. 2)*, para. 152.

[19] In giving effect to the Maryland order, the Tribunal also emphasized that the "Egyptian divorce contains no provisions governing the disposition of marital assets. Only the Maryland Court Judgment treats the division of marital property and it does so in clear and specific terms." *Mr. "P" (No. 2)*, para. 154.

deciding that the District of Columbia divorce judgment met criteria (A) and (B) of the Section 11.3 Rules.

(b) Did the Committee correctly interpret and soundly apply criterion (C) of the Section 11.3 Rules in concluding that the District of Columbia divorce judgment was "final and binding on the parties"?

66. Criterion (C) of the Section 11.3 Rules requires that to be given effect under the Plan the court order shall be "final and binding on the parties." Applicant contends that the District of Columbia divorce judgment was not a "final" order because his appeal of that judgment was pending in the District of Columbia Court of Appeals at the time of the Committee's decisions. Applicant made this same argument before the Committee.[20] The Fund, for its part, asks the Tribunal to confirm that the Committee did not err in determining that the order was "final and binding on the parties" within the meaning of the Section 11.3 Rules, at the time of the Committee's Decision of March 10, 2016 and Decision on Review of August 24, 2016. (The record before the Tribunal shows that, in early 2017, the District of Columbia Court of Appeals denied Applicant's appeal and affirmed the judgment of the Superior Court.) [21]

67. In support of its position, the Fund cites District of Columbia law providing that a judgment of absolute divorce "shall become effective to dissolve the bonds of matrimony" thirty days after docketing unless either party applies for a stay, and "[i]f the application for a stay is denied, the judgment will become final upon entry of the court's order denying the stay." (D.C. Code Section 16-920.) (The text of the Judgment of Absolute Divorce reflected this rule. [22]) The record shows that Applicant did file for a stay but that his application was denied by the District of Columbia Superior Court in 2015, prior to the Intervenor's initiating her Request to the Committee under SRP Section 11.3.[23]

68. Applicant fails to submit any convincing argument in support of his assertion that the pendency of his appeal to the District of Columbia Court of Appeals rendered the judgment of the District of Columbia Superior Court not "final and binding on the parties" in terms of the Section 11.3 Rules. The fact that the Court of Appeals later denied the appeal serves to negate any doubt that may remain as to the judgment's finality.

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[20] *See supra* FACTUAL BACKGROUND and CHANNELS OF ADMINISTRATIVE REVIEW.

[21] *See supra* DEVELOPMENTS SUBSEQUENT TO APPLICANT'S EXHAUSTION OF ADMINISTRATIVE REVIEW.

[22] The Judgment of Absolute Divorce stated that it "shall not become effective to dissolve the bonds of matrimony until thirty days after the Judgment is docketed, unless a court grants a stay pending appeal, in which case the Judgment shall become effective upon the conclusion of the appeal." (District of Columbia Superior Court, "Second Amended Findings of Fact and Conclusions of Law, and Judgment of Absolute Divorce," p. 27.)

[23] *See supra* FACTUAL BACKGROUND.

69. In the light of the prevailing law of the District of Columbia, which Applicant has not disputed, the Tribunal cannot say that the Committee erred in determining that the Judgment of Absolute Divorce was "final and binding on the parties" within the meaning of criterion (C) of the Section 11.3 Rules. An important consideration in construing that provision is that were the Committee to require "final order" to mean "unappealable order," then the object of the Plan provision to encourage enforcement of orders for family support and division of marital property (*see Mr. "P" (No. 2)*, para. 151) might be frustrated because, in some legal systems, a retiree could delay implementation of a court order by repeatedly filing appeals against it.[24]

70. A further consideration is that SRP Section 11.3 provides, and the Committee has created a mechanism, for a Plan participant or affected spouse to return to the Committee with a subsequently rendered court order.[25] The Committee's Decision on Review advised Applicant that "if in the future[,] . . . the D.C. Court of Appeals reverses in whole or in part the D.C. Superior Court judgment with regard to the division of the SRP pension . . . , [Applicant] may submit such new evidence to the Committee for its consideration." (SRP Administration Committee Decision on Review, notified to Applicant September 2, 2016, p. 4.)[26] For this reason also, the Tribunal holds that the Committee correctly applied the requirement of the Section 11.3 Rules that the court order be "final and binding on the parties" and soundly applied that requirement in the circumstances of Applicant's case.[27]

71. For the foregoing reasons, the Tribunal concludes that the Committee did not err in deciding that the District of Columbia divorce judgment was "final and binding on the parties," as required by criterion (C) of the Section 11.3 Rules.

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[24] The World Bank Administrative Tribunal (WBAT) reached a similar conclusion in interpreting an analogous provision of the World Bank's pension plan. *See Lecuona v. International Bank for Reconstruction and Development*, WBAT Decision No. 484 (2013), paras. 61-62. Likewise, it appears that similar considerations may have animated the decision of the District of Columbia Council to enact the Domestic Relations Laws Clarification Act of 2002, providing for the effectiveness of divorce judgments that have not been stayed pending appeal. According to the Fund, the "D.C. Council expressly rewrote this section in 2002, thereby eliminating the ability of one party to forestall the finality of a divorce judgment by merely noticing an appeal of the judgment."

[25] The pertinent provisions of the Plan and the Section 11.3 Rules are discussed in greater detail below.

[26] The Committee's initial Decision of March 10, 2016, also advised: "If in the future, there is a modification to the D.C. Superior Court's Judgment with regard to the division of your SRP benefits, you may bring this to the attention of the Administration Committee and request reconsideration of this issue."

[27] In *Lecuona* , para. 63, the WBAT similarly concluded that the reasonableness of the Bank's interpretation of its pension plan was supported by the fact that the provision in question afforded opportunity to adjust payments in response to subsequent court orders, which served to "balance the rights of a spouse who seeks to appeal an order against those of a spouse who seeks enforcement of an existing order."

(c) Did the Committee correctly interpret and soundly apply criterion (D) of the Section 11.3 Rules in concluding that the District of Columbia divorce judgment did not "conflict and [was] not inconsistent with any other valid court order or decree"?

72. Criterion (D) of the Section 11.3 Rules requires that to be given effect under the Plan the court order shall not "conflict and [not be] inconsistent with any other valid court order or decree." Applicant's principal argument before the Tribunal is that the District of Columbia divorce judgment is inconsistent with the law of Country X, in which the parties were also married and of which Applicant is a citizen. In Applicant's view, the Committee erred in not taking account of the law of that country, which Applicant asserts provides that pensions are non-marital assets and that "in no case is a divorced spouse entitled to any portion of the pension of her previous spouse." Furthermore, submits Applicant, according to the law of Country X, the competent court regarding divorce and property decisions in his case is the court of that country and the decision of the court in the United States is not recognized by Country X.

73. Applicant had presented these same arguments to the Committee in an effort to persuade it that the District of Columbia divorce judgment did not meet criterion (D) of the Section 11.3 Rules. In his first submission to the Committee, Applicant indicated that he had initiated divorce proceedings in Country X. (Applicant's January 26, 2016 Response to SRP Administration Committee.) With his Request for Review, Applicant included a letter from an attorney, stating that Applicant had filed a petition for dissolution of the marriage in the Country X courts in May 2016. Applicant maintained that a court decision was "pending in [Country X]" and "*will be* inconsistent and conflict with the D.C. Superior Court's Judgment." (Applicant's Request for Review to SRP Administration Committee, June 7, 2016.) (Emphasis added.) Furthermore, Applicant contended in his Request for Review to the Committee: "It is not according to Fund rules that the Administration Committee has accepted my spouse's Request, without waiting for the [Country X]'s court decision. The Committee should take into consideration both decisions."

74. The Fund, for its part, maintains that the Committee is "not empowered to reject a valid D.C. Superior Court judgment under criterion (D) when no other valid court order exists with which there could theoretically be any conflict."

75. In the view of the Tribunal, the Committee cannot be said to have erred in failing to take account of a court order that did not exist at the time it rendered either its initial Decision or its Decision on Review. Nor did the Committee deny Applicant fair process when it considered only the order that was the subject of his ex-spouse's request, in the absence of being presented with any other court order. The Committee is not authorized to speculate as to the content of future court orders or required to hold the proceedings in abeyance while awaiting the emergence of a new court order, when it finds that the order presented meets the requirements of the Section 11.3 Rules.

76. In this regard, it is significant that the SRP provides, and the Committee has created a mechanism, for a Plan participant or affected spouse to return to the Committee with a subsequently rendered, conflicting order. By the terms of SRP Section 11.3(c), "[a]ny direction or accepted request shall be irrevocable; provided, however, that a participant or retired participant, spouse or former spouse, . . . may request, upon evidence satisfactory to the

Administration Committee based on a court order or a provision of a settlement agreement incorporated into a court order, that he be permitted to issue a new direction or submit a new request in writing that would increase, diminish, or discontinue the payment or payments."

77. The Section 11.3 Rules similarly contemplate that a later inconsistent order could be brought to the attention of the Committee. *See* Section 11.3 Rules, para. 2 ("[I]f there is an inconsistency or conflict under (D) above with the court order or decree that was the basis of a prior direction or accepted request, the Administration Committee will notify the parties that neither order or decree will be given effect unless and until the conflict or inconsistencies are resolved.") *See also Mr. "P" (No. 2)*, para. 144 ("text of the Rule suggests that factor "D" relates to a court order or decree that formed the basis of a *prior direction or accepted request* under the Plan"). (Emphasis in original.)

78. The Committee's Decision on Review advised Applicant: "[I]f in the future either (a) the D.C. Court of Appeals reverses in whole or in part the D.C. Superior Court judgment with regard to the division of the SRP pension; or (b) *a court in [Country X] issues an order that conflicts or is inconsistent with the D.C. judgment, [Applicant] may submit such new evidence to the Committee for its consideration.*" (*Id.*, p. 4.) (Emphasis added.) Accordingly, consistent with the Plan and the Rules, Applicant was informed that the procedure for challenging the decision to give effect to the District of Columbia judgment on the basis of a subsequently rendered, allegedly conflicting order is to return to the Committee with that order.

79. For the foregoing reasons, the Tribunal concludes that the Committee did not err in deciding that the District of Columbia divorce judgment did not "conflict and [was] not inconsistent with any other valid court order or decree," as required by criterion (D) of the Section 11.3 Rules.

80. Accordingly, in the view of the Tribunal, the Committee correctly interpreted the provisions of the Plan and soundly applied then to the facts of the case, as those facts were established at the time of the Committee's Decision of March 10, 2016 and Decision on Review of August 24, 2016. The Committee did not err in taking the decision to grant the request of Applicant's ex-spouse to give effect to the District of Columbia divorce judgment awarding her one-half of the marital portion of Applicant's IMF pension entitlements.

B. Do any developments subsequent to the Committee's Decision on Review preclude the Tribunal from sustaining the Committee's decision?

81. Having concluded that the Committee did not err in taking the decision to grant the Section 11.3 request of Applicant's ex-spouse, the Tribunal now turns to the question whether developments subsequent to the Committee's Decision on Review preclude the Tribunal from sustaining that decision.

82. Applicant asks the Tribunal to consider two developments that have taken place following the exhaustion of administrative review in this case, namely: in September 2016, the "[Country X] family court has issued a divorce decision dissolving the marriage"; and, in December 2016, Applicant applied to the Country X courts for "division of property," seeking a

judgment that will "include [his] pension rights according to the [Country X] law."[28] Applicant asks the Tribunal to grant as relief not only rescission of the Committee's decision but also "[a]cknowledgement, that in accordance to [Country X] Law, all my pension will be granted to me, without any portion granted to my ex-wife" and "[r]egistration and execution of the Court Decision of the Family Court of [location in Country X], Property Disputes Division, as the sole court decision to be registered and executed by the IMF."

83. Applicant apparently seeks to raise the following questions for the Tribunal's determination: (1) Is the District of Columbia divorce judgment, awarding Intervenor one-half of the marital portion of Applicant's SRP entitlements, in conflict or inconsistent with the September 2016 order of the Country X court, declaring the marriage dissolved? (2) Does ongoing litigation in Country X, in which Applicant seeks a declaration of his "pension rights according to the [Country X] law," preclude the Tribunal from sustaining the Committee's decision?

84. The Tribunal observes that both the Fund and Intervenor have responded on the merits to the essence of these questions.[29] In the view of the Tribunal, however, neither question is ripe for the Tribunal's consideration. To decide these questions in the absence of their determination in the first instance by the Committee would run counter to the intentions of the pension Plan and this Tribunal's Statute.

85. As described above,[30] SRP Section 11.3 and the implementing Rules provide that the Committee may consider a subsequently rendered, allegedly conflicting court order to "increase, diminish, or discontinue" (SRP Section 11.3(c)) payments to an ex-spouse. Vesting this authority in the Committee in the first instance is consistent with SRP Section 7.2(b),[31] which governs the

[28] *See supra* DEVELOPMENTS SUBSEQUENT TO APPLICANT'S EXHAUSTION OF ADMINISTRATIVE REVIEW.

[29] *See supra* SUMMARY OF PARTIES' PRINCIPAL CONTENTIONS.

[30] *See supra* "Did the Committee correctly interpret and soundly apply criterion (D) of the Section 11.3 Rules in concluding that the District of Columbia divorce judgment did not 'conflict and [was] not inconsistent with any other valid court order or decree?'"

[31] As quoted in *Nogueira Batista*, para. 45, the pertinent sentence of SRP Section 7.2(b) provides in full:

> Except as may be herein otherwise expressly provided, the Administration Committee shall have the exclusive right to interpret the Plan, to determine whether any person is or was a staff member, participant or retired participant, to direct the employer to make disbursements from the Retirement Fund in payment of benefits under the Plan, to determine whether any person has a right to any benefit hereunder and, if so, the amount thereof, and to determine any question arising hereunder in connection with the administration of the Plan or its application to any person claiming any rights or benefits hereunder, and its decision or action in respect thereof shall be conclusive and binding upon all persons interested, subject to appeal in accordance with the procedures of the Administrative Tribunal.

Committee's responsibilities in general, and grants it the "exclusive right to interpret the Plan . . . subject to appeal in accordance with the procedures of the Administrative Tribunal."

86. It is clear that the Tribunal's authority in relation to the Plan is an appellate one: "[T]he authority of the Administrative Tribunal to resolve the underlying dispute in this case must be predicated upon a finding of error in the contested decision of the Administration Committee." *Mr. "P" (No. 2)*, para. 122. Accordingly, it is not within the ambit of the Tribunal's competence to assess *in the first instance* whether any current or future court order may be in conflict or inconsistent with the District of Columbia divorce judgment that has been given effect by the Committee. That is the province of the Committee to undertake, in accordance with the Tribunal's jurisprudence.

87. Chief among the principles established by that jurisprudence is that, in deciding disputes arising under SRP Section 11.3, the Tribunal "does not apply the law of any nation but rather the internal law of the Fund." *Ms. "M" and Dr. "M" (No. 2)*, para. 39. *See Mr. "P" (No. 2)*, para. 156 ("Tribunal does not enforce the law of Maryland and decline to enforce the law of Egypt. Its decision rather responds to what may be termed the public policy of its forum, namely, the internal law of the Fund"); *Ms. "M" and Dr. "M"*, para. 155 ("Tribunal responds to the policy of its forum, namely, the internal law of the Fund, which favors enforcement of family support orders wherever they originate and however drafted."). *See also Aleem and Aleem*, para 57 ("The dispute must be resolved under the SRP applying the rules and policies contained therein. . . . [I]t follows that there is no need for the Tribunal to pronounce upon the validity of the Maryland and Pakistani divorce decrees or to assess their relative merits."). In applying the internal law of the Fund, it is of "cardinal importance" that the court order at issue "conform[ ] to the criteria of enforceability" set out in the Section 11.3 Rules. *Mr. "P" (No. 2)*, para. 155.

88. For the foregoing reasons, the Tribunal concludes that developments subsequent to the Committee's Decision on Review do not preclude the Tribunal from sustaining the Committee's decision, giving effect to the judgment of the District of Columbia Superior Court awarding Intervenor "one-half of the marital portion of [Applicant]'s IMF Defined Benefit Pension, including pre-retirement death benefits and survivor annuity benefits." The Tribunal has concluded that the Committee correctly interpreted and soundly applied the governing Rules and hence did not err in deciding that the District of Columbia judgment meets criteria (A) through (D) of the Section 11.3 Rules.

89. As provided by SRP Section 11.3 and the implementing Rules, Applicant may return to the Committee with a new court order if he believes that it is in conflict or inconsistent with the District of Columbia judgment. In such case, the Committee would render a decision and, following exhaustion of the review procedures of that Committee, Applicant, if he continued to be aggrieved, could return to this Tribunal to challenge a new decision of the Committee.

C. Applicant's failure to file a Reply

90. As noted above, Applicant failed to file a Reply, as envisioned by Rule IX of the Tribunal's Rules of Procedure, after the Fund's Answer and the Intervenor's Response were transmitted to him. Nor did Applicant, or either of the individuals he designated in his

Application as his "duly authorized representatives and counsels," respond to the Registrar's follow-up inquiry.[32]

91. By its terms, Rule IX (Reply) states that an applicant "may" file a Reply to the Answer. Rule X (Rejoinder) likewise provides that the Fund "may" file a Rejoinder to the Reply. These Rules differ from Rule VIII (Answer), which states that once an Application has been transmitted to the Fund, the Fund "*shall* answer the application within forty-give days of receipt . . . ." (Emphasis added.) The contrasting language suggests that while the Answer is a mandatory pleading, the second set of written pleadings may not be necessary to rendering a judgment. Accordingly, the fact that Applicant failed to file a Reply, despite being provided an opportunity to do so, does not preclude the Tribunal from deciding the Application.

CONCLUSIONS OF THE TRIBUNAL

92. For the reasons elaborated above, the Tribunal has concluded that the SRP Administration Committee correctly interpreted the provisions of SRP Section 11.3 and the implementing Rules, and soundly applied them to the facts of the case when it granted Intervenor's request to give effect to that portion of the District of Columbia Judgment of Absolute Divorce awarding her "one-half of the marital portion of [Applicant]'s IMF Defined Benefit Pension, including pre-retirement death benefits and survivor annuity benefits." Applicant has not established that any developments subsequent to the Committee's Decision on Review preclude the Tribunal from sustaining that decision. (As noted above, it remains available to Applicant to return to the Committee with any new court order that he believes is in conflict or inconsistent with that judgment.) Accordingly, the Application must be denied.

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[32] *See supra* PROCEDURE.

DECISION

FOR THESE REASONS

The Administrative Tribunal of the International Monetary Fund unanimously decides that:

The Application of Mr. “MM” is denied.

Catherine M. O’Regan, President

Jan Paulsson, Judge

Francisco Orrego Vicuña, Judge

/s/

Catherine M. O’Regan, President

/s/

Celia Goldman, Registrar

Washington, D.C.
November 15, 2017