

**ADMINISTRATIVE TRIBUNAL  
OF THE  
INTERNATIONAL MONETARY FUND**

*Judgment No. 2023-2*

*January 31, 2023*

*Ms. C. Roehler, Applicant v. International Monetary Fund, Respondent*

**Office of the Registrar**

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# ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

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### Ms. C. Roehler, Applicant v. International Monetary Fund, Respondent

#### INTRODUCTION

1. The Administrative Tribunal of the International Monetary Fund (“Tribunal”), composed for this case, pursuant to Article VII, Section 4 of the Tribunal’s Statute, of Judge Nassib G. Ziadé, President, and Judges Andrew K.C. Nyirenda and Maria Vicien Milburn, has decided the Application brought against the International Monetary Fund (“Respondent” or “Fund”) by Ms. Christiane Roehler (“Applicant”), a staff member of the Fund. Applicant was represented by Mr. Ryan Griffin, James & Hoffman, P.C. Respondent was represented by Ms. Juliet Johnson, Senior Counsel in the Administrative Law Unit of the IMF Legal Department, and Mr. James Newland, Jr. and Ms. Kiran Seldon, Seyfarth Shaw LLP.

2. In her Application, Applicant contests the decision of the Human Resources Department (“HRD”) that, as a Grade A14 fungible macroeconomist, she was not eligible to be considered for an advertised vacancy, open to both economist and non-economist staff, at Grade B1-B3 in a Specialized Career Stream (“SCS”). Applicant challenges the Fund’s rules that formed the basis for the decision, as well as their application in her individual case. Those rules require candidates for Grade B1 positions to have participated in the Fund’s Management Development Center (“MDC”), which is an intensive three-day exercise designed to assess participants’ managerial competencies and provide them with detailed developmental feedback. Participation in the MDC, in turn, is limited to staff members who hold “titled” managerial positions and are nominated by their current departments. At the Fund, titled managerial positions begin at A15 for economists and A14 for SCS staff. Applicant contends that the MDC requirement and eligibility rules, as applied in the context of a Grade A14 economist seeking a Grade B1 SCS position open to both economist and SCS staff, represent an abuse of the Fund’s regulatory discretion.

3. Applicant seeks as relief: (i) an order directing the Fund to make Applicant eligible for participation in the MDC; (ii) an order directing the Fund to ensure that Applicant will be considered favorably for at least three A15 or B-level vacancies in which Applicant is interested and for which Applicant is deemed qualified by the hiring department; (iii) monetary compensation for intangible injuries suffered by Applicant after being unfairly declared ineligible for the position to which Applicant applied; (iv) costs including legal fees (which the Tribunal may award, in accordance with Article XIV, Section 4 of the Tribunal’s Statute, if it concludes that the Application is well-founded in whole or in part); and (v) “[a]ny other relief that the Tribunal deems just and proper.”

4. Respondent, for its part, asserts that the Fund’s design of the B-level promotion process, including its selection of MDC eligibility criteria, reflects the proper exercise of managerial

discretion. Contrary to Applicant's arguments that the Fund rules in question are arbitrary, unfair, and lacking in transparency, Respondent contends that the Fund rules are reasonable, fair, and clearly conveyed to staff through numerous channels. Respondent asks the Tribunal to deny Applicant's requests for relief because her challenges lack merit and because some of the relief that Applicant seeks, such as favorable consideration for several vacancies, is "unduly intrusive of the Fund's managerial authority and judgment."

## FACTUAL BACKGROUND

5. Applicant joined the Fund in 1998 through the Economist Program, starting as an Economist at Grade A11 in an area department. While serving next in a functional department, she was promoted to Grade A12 in 2000 and Grade A13 in 2002. In 2005, Applicant was promoted to her current position as Senior Economist at Grade A14.

6. Between 2010 and 2016, Applicant undertook external assignments in the Ministries of Finance of several member countries.

7. After returning to the Fund in 2016, Applicant led a number of Capacity Development ("CD") missions to various countries.

8. In 2020, the Fund advertised an "Advisor/Assistant Director" position to head an SCS unit (the "Unit Head" position). The vacancy was initially posted in February 2020. After the original selection process was canceled due to the COVID-19 pandemic, the vacancy was re-posted in August 2020.

9. The Unit Head position was an SCS posting at Grade B1-B3 "open to eligible economist and SCS staff." The vacancy announcement stated that "Progression [into the position] will be governed by the policies set out in Staff Bulletin No. 03/27, including endorsement by the [Review Committee] and [Senior Review Committee]." Duties would include: designing and implementing the Fund's strategy in the relevant area; coordinating and supporting initiatives across departments; overseeing the implementation of the portfolio of ongoing projects in that area; and taking responsibility for the day-to-day management, administration, and operations of the unit and its staff. The announcement referred candidates to "the Fund's Leadership Development Framework for the applicable competencies for the B1/B2/B3 grade band" and also listed specific traits and skills sought for the position.

10. Applicant applied for the Unit Head vacancy both times it was posted. She appended a "360-degree testimonial from Fund managers and staff" in support of her candidacy. Her application emphasized that Applicant had served from 2005-2006 in a department role relevant to the Unit Head position. In that role, she led a small team and instituted a program to strengthen work in the relevant area within her department.

11. Each time that Applicant applied for the position, HRD informed Applicant that her application would not be forwarded to the hiring department because she was not eligible for consideration. In substantially identical emails to Applicant on March 2 and September 25, 2020, HRD explained: "As this position is graded at the B-level, only those staff members . . . who have

completed the MDC can be considered.” HRD’s emails also advised: “For further explanation and clarification on this ruling, please refer to Staff Bulletin 03/27, Senior Promotions and Appointment[s] in the Fund.” HRD invited Applicant to revert with any questions.

12. Besides Applicant, one other A14 Senior Economist also applied for the Unit Head vacancy. HRD sent the same response to that individual, noting the individual’s ineligibility for consideration due to the MDC requirement.

13. Among the five candidates who were deemed eligible for the Unit Head vacancy, two held B2 positions, two held titled A15 managerial roles, and one held an A14 SCS position. Each of the five eligible candidates had previously participated in the MDC. The four candidates at B2 and A15 were shortlisted. Three of those four were economists. Ultimately, one of the B2 candidates was selected.

## CHANNELS OF ADMINISTRATIVE REVIEW

### A. Applicant’s Request for Administrative Review and HRD Director’s Response

14. On September 28, 2020, Applicant submitted a Request for Administrative Review to the HRD Director, seeking review of HRD’s September 25, 2020 decision that Applicant was not eligible to be considered for the Unit Head vacancy. In her Request, Applicant noted her “high-mobility career” and qualifications. She cited her experience in “positions that can be considered titled positions”; her “specialized expertise” in relevant areas; and the “demonstrated support” from attestors in her testimonial. She stated that her application was not forwarded “on the grounds that I have not participated in the MDC,” while in her view “there does not seem to be a process by which I would have been able to participate in the MDC.” Her Request concluded: “In light of my versatility between SCS and economist assignments, [relevant specialist] expertise, and demonstrated support for my application to the [Unit Head] position, I request that you reconsider the earlier decision and forward my application to the selection panel.”

15. On November 10, 2020, the HRD Director responded to Applicant’s Request for Administrative Review. The HRD Director stated that the Fund’s “centralized process to assess readiness of internal candidates for B-level positions . . . requires proven experience in titled positions and assessment through the MDC.” According to the HRD Director, “the MDC requirement for eligibility to apply for B-level positions is applied consistently and no exceptions have been made.” In addition, “[e]ligibility for the MDC is, by design, limited to staff who have experience as titled managers, which in the case of an economist would initially be in an A15 Deputy Division Chief position.” The HRD Director observed that “[t]he consistent requirement of completion of the MDC is described in Staff Bulletin (SB) 03/27”; and that SB 03/27 was referenced in the Unit Head vacancy posting, posted on the Fund’s intranet (HR Web), and cited with a link in HRD’s emails to Applicant on March 2 and September 25, 2020. The HRD Director concluded that the challenged decision “conforms with consistently applied HRD practice and that you were notified of the MDC requirement for eligibility to apply not later than March 2, 2020.” Applicant was directed to the Grievance Committee for any further recourse.

B. Grievance Committee

16. Following the denial of her Request for Administrative Review, Applicant filed a Grievance with the Fund's Grievance Committee on January 28, 2021. In the Grievance, Applicant stated that she was "contesting the decision by HRD not to forward my application to the appointed selection panel" for the Unit Head position and "contending that the regulations HRD followed in making this decision – the mandatory requirement of the MDC in Staff Bulletin 03/27 in conjunction with the implementation regulations restricting access to the MDC (together, 'the MDC rules') – are invalid as written."

17. In her Grievance, Applicant raised the question of the Grievance Committee's jurisdiction over her challenge. She stated that she submitted the matter to the Grievance Committee "as directed by the HRD Memo." She also noted that "the grievance application hinges solely on the validity of the MDC rules, which I do not dispute were applied by HRD as written in my case." Accordingly, Applicant asked the Grievance Committee first to determine whether it had jurisdiction over her Grievance or whether the case should be submitted directly to the Tribunal. She also set out several requests for relief in the event that the Grievance Committee determined it had jurisdiction.

C. Agreement to submit dispute directly to the Tribunal

18. On February 11, 2021, Applicant and Respondent submitted a joint letter to the Tribunal. The letter stated that the parties "have conferred and recognized that [Applicant] has a claim against the Fund that challenges the illegality of a regulatory decision as applied to her individual case. Accordingly, the parties have agreed to submit the dispute directly to the Tribunal, pursuant to Article V, Section 4 of the Tribunal's Statute." Article V, Section 4 of the Statute provides: "For purposes of this Statute, all channels of administrative review shall be deemed to have been exhausted when the Managing Director and the applicant have agreed to submit the dispute directly to the Tribunal."

PROCEDURE BEFORE THE TRIBUNAL

19. Applicant filed the instant Application with the Tribunal on May 26, 2021, following an extension of time granted by the President of the Tribunal. The Application was supplemented, in accordance with Rule VII, para. 6, of the Tribunal's Rules of Procedure, on June 4, 2021 and transmitted to Respondent on June 7, 2021. On June 14, 2021, pursuant to Rule IV, para. (f), of the Tribunal's Rules of Procedure, the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.

20. Respondent filed its Answer to the Application on August 5, 2021, following the grant of an extension of time. Respondent supplemented the Answer, in accordance with Rule VIII, para. 4, of the Tribunal's Rules of Procedure, on August 9, 2021.

21. On September 24, 2021, following the grant of an extension of time, Applicant submitted her Reply.

22. On October 27, 2021, Respondent filed its Rejoinder.

23. On November 24, 2021 and January 3, 2022, Applicant submitted letters to the Tribunal with a request that these be accepted into the record as additional pleadings. Respondent opposed Applicant's request.

24. On October 28, 2022, the Tribunal notified the parties that the Tribunal President had decided to deny Applicant's request for leave to submit additional pleadings. In addition, the Tribunal notified the parties that it had decided not to hold oral proceedings and considered the record of the case to be complete. The reasons for these decisions are elaborated below.

A. Applicant's request for leave to submit additional pleadings

25. Rule XI, para. 1, of the Tribunal's Rules of Procedure provides: "In exceptional cases, the President may, on his own initiative, or at the request of a party, call upon the parties to submit additional written statements or additional documents within a period which he shall fix."

26. Applicant requested leave under Rule XI to correct "two closely related misstatements of material fact in Respondent's Rejoinder," concerning the specific timing and nature of Applicant's past work experience.

27. Respondent denied any misstatements of material fact. Respondent also asserted that some of Applicant's contentions in support of her Rule XI request amounted to "improper argument disguised as a factual correction."

28. In determining whether to grant Applicant's request, the Tribunal President considered Rule XI's limitation of additional submissions to "exceptional cases." In this instance, the points raised in Applicant's submissions were not material to the dispute. Applicant also had an earlier opportunity to raise one of these points in her Reply, as Respondent had characterized her work experience in the same way in the Answer as well as the Rejoinder.

29. In consultation with the other members of the Tribunal, the President concluded that Applicant had failed to demonstrate "exceptional" circumstances so as to warrant admission of additional submissions following the Rejoinder. *See Ms. "Y" (No. 2), Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2002-2 (March 5, 2002), para. 8* (where the Tribunal President was unpersuaded by the applicant's contention that the Fund's rejoinder had raised new legal and factual arguments meriting response, finding no exceptional circumstances and denying applicant's Rule XI motion).

B. Oral proceedings

30. Pursuant to Article XII of the Tribunal's Statute, "[t]he Tribunal shall decide in each case whether oral proceedings are warranted." Rule XIII, para. 1, of the Tribunal's Rules of Procedure states that such proceedings shall be held "if . . . the Tribunal deems such proceedings useful." In determining whether oral proceedings will be "useful" in a given case, the Tribunal "consistently has taken account of the sufficiency of the written record of the case." *Mr. "KK", Applicant v.*



*International Monetary Fund, Respondent*, IMFAT Judgment No. 2016-2 (September 21, 2016), para. 39 (quoting *Ms. “GG” (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2015-3 (December 29, 2015), para. 48). *See also “TT”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2022-1 (June 30, 2022), paras. 28-29 (considering whether oral proceedings may serve to clarify legal issues and provide an opportunity to probe disputes of fact or address evidentiary gaps).

31. In the present case, neither party requested oral proceedings. The issues presented by Applicant’s challenges to both the regulatory and individual decisions are clearly defined. The written record before the Tribunal, which includes detailed affidavits from the Fund’s HRD Division Chief for Talent as well as relevant policy documents and data, is sufficient for the Tribunal’s consideration. The Tribunal therefore concluded that oral proceedings would not be useful in its determination of the matter.

### C. Applicant’s requests for production of documents

32. Pursuant to Rule XVII, para. 1, of the Tribunal’s Rules of Procedure, an applicant “may request the Tribunal to order the production of documents or other evidence which [the applicant] has requested and to which [the applicant] has been denied access by the Fund.”

33. In her Application, Applicant requested the production of seven types of documents, including documentation relating to MDC rules and policies, career guidance, B-level promotions, and the Unit Head selection process. In its Answer, Respondent addressed each of Applicant’s document requests and identified or attached responsive documents. On the two items for which Applicant had requested documentation of exceptions to the Fund’s B-level promotion requirements, Respondent stated that no responsive documents existed because (i) “[c]onsistent with the Fund’s eligibility criteria for advancement to B-level roles, no Grade A14 economist has been directly promoted to a B-level SCS position”; and (ii) “no . . . accommodations or adjustments were made” to the hiring process or timeline for the Unit Head position “to enable any candidates to complete attendance in the MDC or meet other minimum requirements for the position.” Applicant did not identify any outstanding or additional document requests in her Reply.

34. On the record presented, the Tribunal considered that there were no document requests outstanding and accordingly advised the parties on October 28, 2022 that the record was complete.

## SUMMARY OF PARTIES’ PRINCIPAL CONTENTIONS

### A. Applicant’s principal contentions

35. The principal arguments presented by Applicant in her Application and Reply may be summarized as follows:

1. The Fund’s B-level promotion rules requiring candidates to have participated in the MDC, combined with the MDC eligibility criteria limiting participation to staff already holding titled managerial positions, “constitute an abuse of regulatory discretion when applied in the particular circumstances of a highly

experienced and highly mobile Grade A14 economist seeking promotion across career streams to a Grade B1 level position open to both economist and non-economist staff.”

2. Applicant asserts “at least six reasons” why the challenged rules are invalid:
  - a. The rules arbitrarily differentiate between Grade A14 economists and Grade A14 SCS staff, as only the latter may hold titled managerial positions and thus be eligible for the MDC.
  - b. The requirement of a titled managerial position for MDC eligibility arbitrarily differentiates between staff with substantially similar amounts of actual managerial experience, including comparable mission chief experience.
  - c. The titled managerial position requirement for MDC eligibility “arbitrarily disregards the substantial actual managerial experience of candidates like [Applicant] more generally, including in external assignments, in favor of specific internal experiences in a selective, poorly defined and poorly communicated list of titled managerial positions.”
  - d. The Fund’s rules “unfairly penalize staff members who have moved among career tracks” to obtain diverse experiences, as the Fund encourages or even requires economists to do.
  - e. The Fund’s rules “arbitrarily require nomination [to the MDC] by a staff member’s current department even where an economist wishes to move into an SCS department.”
  - f. The rules “lack transparency regarding cross-stream eligibility for B-level positions.” The rules thus “contribute to an opaque promotion system that fails to afford meaningful guidance to staff members.”
3. Given the above deficiencies, “the Fund’s career stream-based and current department-driven promotions framework, while perhaps entirely reasonable when the economist and non-economist career tracks are considered separately, fails to achieve the goal of fairly advancing the most qualified candidates for consideration for the small subset of B-level positions open to both economist and non-economist staff.”
4. Applicant seeks the following relief:
  - a. an order directing the Fund to make Applicant eligible for participation in the MDC;
  - b. an order directing the Fund to ensure that Applicant will be considered favorably for at least three A15 or B-level vacancies in which Applicant is

- interested and for which Applicant is deemed qualified by the hiring department;
- c. monetary compensation for intangible injuries suffered by Applicant after being unfairly declared ineligible for the position to which Applicant applied;
  - d. costs including legal fees (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); and
  - e. “[a]ny other relief that the Tribunal deems just and proper.”
5. While Respondent disputes the Tribunal’s authority to order the Fund to provide certain relief, such as favorable consideration for several vacancies, “this Tribunal indisputably has broad authority to craft appropriate make-whole relief, including via specific performance remedies.”

B. Respondent’s principal contentions

36. The principal arguments presented by Respondent in its Answer and Rejoinder may be summarized as follows:

1. The Fund’s design of the B-level promotion process, including the MDC, reflects the proper exercise of the Fund’s policy-making authority, applied deliberately and after extended consideration. The Fund’s decision to implement the MDC followed a 1992 staff survey, which highlighted the need to strengthen managerial skills expectations and assessment; extensive Fund-wide consultations; and a year-long pilot program. The Tribunal should not “micro-manage the Fund with respect to how it operates MDC – a matter that goes to the heart of the Fund’s staff development decisions.”
2. “The Fund’s promotion and advancement rules are not arbitrary or irrational simply because [Applicant’s] particular work experiences have not yet led to her promotion.” She is not alone in contending with the “bulge” of A14 economists competing for advancement. Yet “she seeks to invalidate rules that go to the core of the Fund’s operations,” including its job grading criteria, determination of which positions should qualify as titled managerial roles, and the MDC nomination process.
3. Applicant’s six main arguments lack merit for the following reasons:
  - a. The Fund’s rules “rationally and reasonably differentiate” between A14 economists, who are individual contributors, and “titled” A14 SCS staff, who have greater managerial duties. Under the Fund’s well-established job architecture, there is no “one-to-one grade translation for MDC eligibility” between economists and SCS staff.

- b. The Fund’s rules “rationally and reasonably differentiate” between A14 economists, who may lead CD missions but as a group lack broader managerial experience, and A15 Deputy Division Chiefs, who have greater mission chief duties and other managerial responsibilities.
  - c. The Fund’s classification of certain positions as “titled” managerial positions was well within the Fund’s discretion, based on intensive study by HRD and other stakeholders, and is clearly communicated to all staff. Applicant’s proposed substitution of an amorphous “functionally equivalent” standard would be wholly unworkable, inefficient, and less objective.
  - d. Applicant offers no support for her assumption that the Fund’s promotion rules penalized her for her diversity of work experiences. The fact that her career path has not yet led to exceptionally competitive A15 or B-level roles “does not mean the Fund’s process is broken” or that the Unit Head selection process was unfair.
  - e. “The Fund’s decision to assign MDC nominations to current departments is a reasonable exercise of managerial discretion,” as current departments are best placed to provide up-to-date evaluations of staff competency and readiness for B-level roles. Applicant’s proposed “individualized, case-by-case approach” would flood the process with testimonials and invite accusations of arbitrariness and favoritism.
  - f. Contrary to Applicant’s claims of opacity, the Fund “clearly conveyed the criteria for B-level promotions and MDC eligibility to staff through numerous channels,” such as Staff Bulletin No. 03/27 and the MDC page on HR Web. In addition, “the list of titled managerial roles eligible for MDC has remained the same since 1994.”
4. Applicant is not entitled to any relief, because her challenges lack merit. In addition, some of the relief that she seeks, such as favorable consideration for several vacancies, is “unduly intrusive of the Fund’s managerial authority and judgment.”

#### CONSIDERATION OF THE ISSUES

37. In challenging the legality of the Fund’s B-level promotion rules, as well as their application in Applicant’s individual case, the Application presents the following principal question for the Tribunal: whether Applicant has shown that the Fund’s Grade B1 SCS promotion criteria and MDC eligibility requirements constitute an abuse of the Fund’s managerial discretion as applied to a Grade A14 economist seeking a Grade B1 SCS position. The Tribunal has observed that when the content of an individual decision is to uphold the validity of a regulatory decision, the decisions are “essentially indistinguishable analytically” and both decisions shall be considered together. *Mr. “R”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2002-1 (March 5, 2002), para. 25 (challenging as discriminatory differing employment

benefits afforded overseas office directors and resident representatives in the unique circumstance that such officials are posted at the same overseas location).

A. Applicable standards of review

38. Pursuant to Article II of the Tribunal’s Statute, the Tribunal has jurisdiction to pass judgment on the legality of “any individual or regulatory decision taken in the administration of the staff of the Fund.” Article II defines “regulatory decision” as “any rule concerning the terms and conditions of staff employment, including the General Administrative Orders and the Staff Retirement Plan, but excluding any resolutions adopted by the Board of Governors of the Fund.” In the present case, Applicant’s challenge to the individual decision that she was ineligible to compete for a B1 SCS position rests on her challenge to the Fund’s regulatory decision to require MDC participation for B1 promotional consideration, while limiting MDC eligibility to titled managers nominated by their current departments.

39. The scope of the Tribunal’s review of regulatory decisions “is quite narrow.” Commentary on the Statute<sup>1</sup>, p. 19. “There are broad and well-recognized principles protecting the exercise of authority by the decision-making organs of an institution from interference by a judicial body.” *Id.* Accordingly, “although a tribunal may decide whether a discretionary act was lawful, it must respect the mandate of the legislative or executive organs to formulate employment policies appropriate to the needs and purposes of the organization.” *Id.*, p. 20. This Tribunal “has held that its deference to the Fund’s decision-making is ‘at its height when the Tribunal reviews regulatory decisions (as contrasted with individual decisions).” *Mr. E. Weisman, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2014-2 (February 26, 2014), para. 45 (quoting *Ms. “J”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2003-1 (September 30, 2003), para. 105).

40. “In identifying the constraints on the exercise of the Fund’s discretionary authority in adopting ‘regulatory decisions,’” *Ms. “GG” (No. 2)*, para. 362, this Tribunal has consistently applied the test articulated by the World Bank Administrative Tribunal (“WBAT”) in the seminal decision of *de Merode*, WBAT Decision No. 1 (1981), para. 47. In *de Merode*, the WBAT considered the following factors in respect of institutional changes to non-fundamental terms and conditions of employment:

The Bank would abuse its discretion if it were to adopt such changes for reasons alien to the proper functioning of the organization and to its duty to ensure that it has a staff possessing “the highest standards of efficiency and of technical competence.” Changes must be based on a proper consideration of relevant facts. They must be reasonably related to the objective which they are intended to achieve. They

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<sup>1</sup> The consolidated Commentary on the Statute comprises the Report of the Executive Board to the Board of Governors on the Establishment of an Administrative Tribunal for the International Monetary Fund (1992) and the Reports of the Executive Board to the Board of Governors on Amendments to the Statute of the Administrative Tribunal for the International Monetary Fund (2009 and 2020).

must be made in good faith and must not be prompted by improper motives. They must not discriminate in an unjustifiable manner between individuals or groups within the staff. Amendments must be made in a reasonable manner seeking to avoid excessive and unnecessary harm to the staff. In this respect, the care with which a reform has been studied and the conditions attached to a change are to be taken into account by the Tribunal.

*de Merode*, para. 47, as cited in, e.g., *Ms. “GG” (No. 2)*, para. 362; *Elkjaer et al., Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2021-4 (December 28, 2021), para. 109; *Weisman*, para. 47; *Ms. D. Pyne, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2011-2 (November 14, 2011), para. 114; *Daseking-Frank et al., Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-1 (January 24, 2007), para. 90; *Mr. “R”*, para. 31.

41. This Tribunal’s decision in *Ms. “GG” (No. 2)* illustrates the applicable standards of review for regulatory decisions in the context of a previous challenge to a B-level promotion policy that an applicant alleged to be arbitrary and to discriminate impermissibly against economist staff. See *Ms. “GG” (No. 2)*, para. 360 (challenging the Fund’s increased time-in-grade requirement for B1 economists to become eligible for promotion to B2). As the Tribunal there stated:

Changes to policy must be “based on a proper consideration of relevant facts” and must be “reasonably related to the objective which they are intended to achieve.” *de Merode*, para. 47. Additionally, they must not “discriminate in an unjustifiable manner between individuals or groups within the staff.” *Id.* In other words, they must not be arbitrary or discriminatory.

*Ms. “GG” (No. 2)*, para. 363.

42. On the issue of arbitrariness, the Tribunal in *Ms. “GG” (No. 2)* noted the relevance of the process by which the challenged policy was formulated, including the extent of consideration and consultation leading to the regulation. *Ms. “GG” (No. 2)*, para. 380. This does not mean that all recommendations received through the consultative process must be adopted. See, e.g., *Daseking-Frank et al.*, para. 100; *Mr. “R”*, para. 63. The Tribunal has recognized that “the outcome of a deliberative process may well reflect the compromises inherent in the weighing of competing interests.” *Ms. “GG” (No. 2)*, para. 383. “A balance has to be struck among various factors (equity, simplicity, cost) which sometimes contradict one another: rigorous exactness cannot be achieved save at the price of complications; a simple solution can only be achieved at the cost of approximation.” *Id.* (quoting *de Merode*, para. 76). Thus “[t]he Fund’s policy-making discretion unsurprisingly extends to making choices among reasonable alternatives.” *Ms. “GG” (No. 2)*, para. 385 (citing, *inter alia*, *Weisman*, para. 51; *Ms. “G”, Applicant and Mr. “H”, Intervenor v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2002-3 (December 18, 2002), para. 80).

43. On the issue of discrimination, the Tribunal stated in *Ms. "GG" (No. 2)* that "[t]his Tribunal has long recognized as a 'well-established principle of international administrative law that the rule of nondiscrimination imposes a substantive limit on the exercise of discretionary authority in both the policy-making and administrative functions of an international organization.'" *Ms. "GG" (No. 2)*, para. 393 (quoting *Mr. "R"*, para. 30). *See also Mr. "R"*, para. 32 (emphasizing that a decision challenged as discriminatory shall be subject to review "whether the decision . . . is conceptualized as a regulatory decision or an individual decision").

44. The Tribunal has also recognized that different types of discrimination claims will merit different types of scrutiny. "The Tribunal draws a distinction between the degree of scrutiny it applies in reviewing contentions of discrimination based on a general principle of equality of treatment, such as those raised by Applicant's challenge to the promotion policy, and those implicating universally recognized principles of human rights which 'may be subject to particular scrutiny by the Tribunal.'" *Ms. "GG" (No. 2)*, para. 393 n.50 (citing *Mr. "F", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-1 (March 18, 2005), paras. 50, 81 (allegation of religious discrimination); *Ms. "M" and Dr. "M", Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-6 (November 29, 2006), paras. 117, 124 (discrimination against children born out of wedlock)).

45. For claims of discrimination based on the general principle of equality of treatment, as in *Ms. "GG" (No. 2)*, the Tribunal has applied a "rational nexus" test as first stated in *Mr. "R"*:

First, Respondent's proffered reasons for the distinction in benefits . . . must be supported by evidence. In other words, the Tribunal may ask whether the decision ". . . could . . . have been taken on the basis of facts accurately gathered and properly weighed." . . . . Second, the Tribunal must find a ". . . rational nexus between the classification of persons subject to the differential treatment and the objective of the classification." . . . . Thus, the Tribunal may consider the stated reasons for the different benefits and assess whether their allocation to the two categories of staff is rationally related to those purposes.

*Mr. "R"*, para. 47, as cited in, e.g., *Ms. "GG" (No. 2)*, para. 395; *Mr. A. Billmeier, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2010-3 (February 9, 2010), para. 81.

46. Importantly, as the Tribunal has repeatedly noted, the "rational nexus" standard "does not require that there be a perfect fit between the objectives of the policy and the classification scheme established, and indeed . . . the categories employed may rest upon generalizations." *Ms. "G"*, para. 79, as cited in, e.g., *Ms. "GG" (No. 2)*, para. 394; *Weisman*, para. 54; *Billmeier*, para. 86.

47. Applying the above standards as set out in *de Merode* and this Tribunal's jurisprudence, the Tribunal in *Ms. "GG" (No. 2)* observed that the Fund had "grappled with the issue of how best to accommodate perceived competing interests of economist vis-à-vis SCS staff and the interest in shaping a uniform policy for the organization. That the solution may have been one with which

people – including Applicant – may have disagreed does not make it arbitrary or discriminatory.” Ms. “GG” (No. 2), para. 405.

#### B. Promotion rules challenged by Applicant

48. The B-level promotion rules at issue in the present case are set out in a Staff Bulletin and on the Fund’s intranet.<sup>2</sup> First, the MDC requirement for candidates for B-level positions is found at Staff Bulletin No. 03/27, “Senior Promotions and Appointments in the Fund” (December 19, 2003), which governs the promotion of staff members to managerial positions in the Fund. Table 2 of the Staff Bulletin specifies selection criteria for Grade B1 SCS positions such as Division Chief and Advisor. The three key criteria are: (i) “Meet specific educational and experience requirements for the position as advertised”; (ii) “Proven technical skills”; and (iii) “Proven managerial skills (*MDC a requirement*).” (Emphasis added.) HRD is charged with “screen[ing] all applications to ensure candidates meet the position criteria” before forwarding applications to hiring departments for consideration.

49. Second, the MDC’s eligibility restrictions and other information about the MDC’s objectives and structure are set out on the “Management Development Center” page on the Fund’s intranet. The section titled “Who Should Attend?” specifies that “MDC attendance is by department nomination and strictly limited to staff in titled managerial roles at Grade A15 (Economist) and A14 (SCS). Examples of A15/A14 titled managerial roles include Deputy Division Chiefs, Assistant to Directors, Section Chiefs, and Unit Chiefs.” Further, HRD “strongly encourages departments to nominate only those staff members who have had at least six months of formal, direct managerial experience” and “also suggests that departments nominate to the MDC only those staff members whom the department would consider nominating to the Review Committee within approximately 18 months after MDC attendance.” (Emphases omitted.)

#### C. Merits of Applicant’s regulatory challenge

50. Applicant advances six main arguments as to why the above rules requiring MDC participation while limiting MDC eligibility allegedly constitute an abuse of the Fund’s regulatory discretion. The Tribunal addresses each of Applicant’s arguments in turn below.

##### (1) Are the rules arbitrary or discriminatory in differentiating between Grade A14 economists and Grade A14 SCS staff?

51. Applicant’s first main contention is that the rules arbitrarily differentiate between Grade A14 economists and Grade A14 SCS staff, because only the latter may qualify as titled managers eligible to participate in the MDC and subsequently compete for B1 positions. By contrast, A14 economists must first obtain a promotion to A15 within the economist stream before they may qualify as titled managers eligible for MDC participation and B1 consideration.

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<sup>2</sup> As the Fund’s internal law changes over time, the provisions referenced herein for the relevant time period of the case will not necessarily be those in force as of the time of this Judgment.



52. Respondent asserts that the Fund's rules "rationally and reasonably differentiate between A14 economists and 'titled' A14 SCS staff with respect to MDC eligibility." First, as SCS staff start two grades lower (A9) than economists (A11), "it makes perfect sense that there would be no one-to-one grade translation for MDC eligibility." SCS staff must also compete more frequently for vacancy-based promotions to progress to A14, in contrast to economists who may receive growth-based promotions up to A14. Moreover, under the Fund's well-established job architecture, "two positions may have the same job grade, but for different reasons," with different types and levels of responsibility. In this instance, the key distinction is that "A14 economists are individual contributors" who "supervise fewer people and have fewer managerial responsibilities, if any at all," than "titled" A14 SCS staff who assume supervisory and managerial duties earlier in their careers. When the Fund determined in 1994 which positions would be eligible for the MDC, it "rationally selected titled managerial staff" – starting at A14 for SCS staff and A15 for economists – "who already were performing the type of supervisory and managerial work needed for success at the B-level." The Fund also considered "administrative and financial constraints" in limiting eligibility for the MDC and has made no case-by-case exceptions.

53. The record reflects that the impetus for the creation of the MDC was a 1992 staff survey that highlighted the need to strengthen the Fund's "capacity to assess managerial potential and skills" and led to the conclusion that "a more consistent basis of information for identifying managerial potential is needed." The MDC was then introduced in 1994, following "extensive Fund-wide consultations" facilitated by an external firm specializing in executive development, to provide standardized assessments of participants' leadership capabilities and accelerate their readiness for B-level positions. The Fund tested the MDC's effectiveness in a year-long pilot program carried out jointly with the World Bank. From its inception, the MDC has been limited to titled managers at A15 in the economist stream and A14-A15 in other job streams.

54. The Tribunal accordingly concludes that the decision to limit MDC participation to titled managers was a reasonable exercise of managerial discretion by the Fund, after extensive consultation, consideration, and assessment of its effectiveness. The evidence supports that participation in the MDC is a practical step to identifying staff who are most ready to succeed in higher management. Applicant has not shown that the Fund acted arbitrarily in limiting MDC participation to staff holding titled managerial roles.

55. As to Applicant's assertion that the rules unfairly differentiate between A14 economists and titled A14 SCS staff, the Tribunal finds that the Fund's decision to limit MDC participation to titled managers has a "rational nexus" to its goal of assessing and enhancing existing managers' potential to progress to higher management. The record reflects that the Fund has applied this requirement consistently, without exception. Furthermore, A14 economists, whom the Fund has determined as a group to be "individual contributors" with limited if any supervisory duties, are not similarly situated, for purposes of managerial assessment and development, to the category of A14 SCS staff who hold titled managerial roles. Different treatment for differently situated groups does not amount to discrimination. *See, e.g., Mr. "R"*, para. 39 (in reviewing the principle of nondiscrimination as interpreted by international administrative tribunals, noting the view that "for there to be a breach of equal treatment there must be different treatment of staff members who are in the same position in fact and in law") (quoting *In re Vollerling*, ILOAT Judgment

No. 1194 (1992), para. 2); *Crevier v. IBRD*, WBAT Decision No. 205 (1999), para. 25 (in rejecting claim that pension regulations impermissibly discriminated between staff who are declared redundant versus those who leave voluntarily, noting that “staff members in different situations will normally be governed by different rules or provisions” and “discrimination takes place where staff who are in basically similar situations are treated differently”). Accordingly, the Tribunal finds no evidence of discrimination that would violate the general principle of equality of treatment.

(2) Are the rules arbitrary or discriminatory in differentiating between Grade A14 specialized economists and Grade A15 fungible economists?

56. Applicant’s second main contention is that the requirement of a titled managerial position for MDC eligibility “arbitrarily differentiates between staff with substantially similar amounts of actual managerial experience,” including comparable mission chief experience. For example, “Grade A14 staff members leading Capacity Development missions in a specialized economist position may have the same Mission Chief experience as fungible economists who lead missions from a Grade A15 Deputy Division Chief position, yet only the latter constitutes a ‘titled’ managerial position for purposes of MDC eligibility.”

57. Respondent contends that the Fund’s rules “rationally and reasonably differentiate between A14 economists and A15 Deputy Division Chiefs with respect to MDC eligibility.” A15 Deputy Division Chiefs are expected to carry out a range of managerial and supervisory duties, including more demanding Article IV mission chief responsibilities, that A14 economists do not. Respondent asserts that the Tribunal should not second-guess the Fund’s “eminently rational” distinction between A14 and A15 economists. Respondent further asserts that the Tribunal should not “micro-manage the Fund with respect to how it operates MDC – a matter that goes to the heart of the Fund’s staff development decisions.”

58. The Tribunal has concluded above that Applicant has not shown that the Fund acted arbitrarily in deciding, after extensive consultation, to limit MDC participation to titled managers. The Tribunal further concludes that Applicant has not demonstrated that this approach unfairly discriminates against A14 specialized economists because some may have CD mission chief experience that, in her view, is comparable to the mission chief experience of A15 Deputy Division Chiefs. The Tribunal recognizes the valuable contributions of Applicant and other A14 economists who may have significant CD mission chief experience. At the same time, the issue before the Tribunal is not whether Applicant can point to specific A14 economists who have accrued significant CD mission chief responsibility. Rather, as Respondent emphasizes, “[t]he issue is whether, as a matter of personnel policy, the Fund rationally and reasonably determined that, *as a group*, A14 economists in fungible and specialized roles do not have the requisite managerial and supervisory experience to be eligible for MDC.” As noted earlier, the Tribunal’s “rational nexus” test for alleged discrimination between groups of staff “does not require that there be a perfect fit between the objectives of the policy and the classification scheme established, and indeed . . . the categories employed may rest upon generalizations.” *Ms. “G”*, para. 79.

59. The record reflects that A15 economists eligible for the MDC are charged with a range of managerial and supervisory duties beyond the type of mission chief responsibility that Applicant

invokes. The Fund’s “Leadership Development Framework,” for example, defines the types of managerial leadership expected of A15 economists serving as Deputy Division Chiefs to include not only “Mission/Project Leadership” but also “People Management,” “Operational Leadership,” “Intellectual and Strategic Leadership,” and “Advocacy and External Relationships.” Respondent also provides examples of the more complex types of missions that economists would be expected to lead at Grade A15 versus Grade A14. The Tribunal accordingly finds that the grant of MDC eligibility to A15 fungible economists serving as Deputy Division Chiefs, but not to A14 economists, has a “rational nexus” to the Fund’s objective of assessing and developing the managerial skills of those most ready to progress to the B-level. Applicant has not shown that the rules are arbitrary or discriminatory in differentiating between Grade A14 specialized economists and Grade A15 fungible economists.

(3) Do the rules arbitrarily disregard the substantial managerial experience of candidates such as Applicant in favor of a poorly articulated list of titled managerial positions?

60. Applicant’s third main contention is that the titled manager requirement for MDC eligibility “arbitrarily disregards the substantial actual managerial experience of candidates like [Applicant] more generally, including in external assignments, in favor of specific internal experiences in a selective, poorly defined and poorly communicated list of titled managerial positions.” According to Applicant, the current MDC eligibility rules fail to make clear to staff which positions would qualify for MDC participation, either by giving a comprehensive list of titled managerial roles or by “fully defin[ing] the concept of titled managerial role, including through articulating what constitutes a functionally equivalent level of managerial experience.” Applicant proposes that the Fund develop clear standards and an objective process to identify “functionally equivalent” managerial experience for potential MDC candidates.

61. Respondent asserts that “the Fund’s job classifications and titles are the product of continual, intensive study by HRD and other stakeholders” since the 1980s; and that the Fund acted “well within its discretion in selecting which positions to classify as ‘titled.’” Further, “for many years Fund staff have been given ample notice of which positions are ‘titled’ and thus eligible for MDC and B-level advancement,” with such information available on HR Web as well as in the Staff Handbook, the MDC eligibility rules, Staff Bulletin No. 03/27, and individual job descriptions. It was “logical and reasonable for the Fund to base MDC eligibility on the pre-existing, well-established titled managerial roles that the Fund already had determined are best-situated for advancement to B-level roles.” Replacing this clear standard with an “amorphous ‘functionally equivalent’ standard,” as Applicant proposes, would be “wholly unworkable,” inefficient, and less objective.

62. The Tribunal notes Respondent’s concern that a “functional equivalence” approach would pose greater administrative challenges and give candidates less certainty than the current “titled manager” rule. In any event, it is not for the Tribunal to substitute its judgment as to which approach may better serve the Fund’s management needs. Consistent with its conclusions above, the Tribunal is persuaded that the Fund’s decision to restrict MDC participation to those serving as titled managers was a reasonable exercise of administrative discretion, made after appropriate consideration, to focus resources on those already recognized as holding substantial managerial responsibilities. The possibility that an individual such as Applicant may have accrued valuable

managerial experience outside the Fund, without holding a titled managerial role within the Fund, does not invalidate the Fund's choice to rely generally on its staff categories and titles as developed over time with HR expertise. *See, e.g., Ms. "G"*, para. 79 (emphasizing that "a perfect fit" is not required and "the categories employed may rest upon generalizations").

63. The Tribunal observes that the sources that Respondent cites as providing "ample notice" to staff of which positions are "titled" do not establish an exhaustive list of such roles. Rather, they give various examples. The MDC eligibility rules state that "[e]xamples of A15/A14 titled managerial roles include Deputy Division Chiefs, Assistant to Directors, Section Chiefs, and Unit Chiefs." The Fund's intranet page titled "Selection and Appointments (Res Reps & Grades A14-B5)" includes the same roles as examples of "Managerial positions" or "titled supervisory positions," but also adds "Deputy Unit Chief." Staff Bulletin 03/27, on the other hand, omits Unit Chiefs and Deputy Unit Chiefs but includes A15 Resident Representatives in the same category as Assistants to the Director and Deputy Division Chiefs. For avoidance of doubt, Fund Management may wish to consider how to communicate a more consistent and comprehensive list of titled managerial positions. Nevertheless, it is clear that an economist must have reached Grade A15 to qualify as a titled manager eligible for MDC nomination. Applicant has not shown arbitrariness as would constitute an abuse of discretion in this respect.

(4) Do the rules unfairly penalize staff members who have moved among career tracks?

64. Applicant's fourth main contention is that the Fund's rules "unfairly penalize staff members who have moved among career tracks relative to those who narrowly focus on climbing a single career ladder." Applicant asserts that the Fund "goes to great lengths to encourage or even require economists like [Applicant] to obtain such diversity of experiences during their Fund careers." Yet rather than ensure that candidates who achieve such qualifications are selected for management-level positions, the MDC eligibility rules and B1 SCS promotion criteria "effectively penalize" staff such as Applicant "and thus constitute an abuse of discretion."

65. Respondent counters that Applicant does not "offer any evidence to support her assumption that her external assignments specifically 'hurt' her B-level chances." "Nor was there anything arbitrary," Respondent asserts, "about how the selection process played out for the [Unit Head] role, a B1-B3 position." Applicant and another A14 economist with experience in the relevant area "were screened out pursuant to consistently-applied criteria." Of the shortlisted candidates for this SCS position, the majority were economists, "which demonstrates that there was no issue reaching cross-stream candidates." The shortlisted candidates had broad experience across departments, including external assignments, "undercutting [Applicant's] suggestion that diversity of experiences hinders advancement." Finally, according to Respondent, "the person selected for the role (already at B2 grade) was well-qualified, having had extensive managerial, [relevant area], and other leadership experience."

66. The record reflects that the Fund encourages its staff members, specifically A11-A14 fungible macroeconomists such as Applicant, to pursue diverse work experiences across multiple dimensions, including across career streams as well as on external assignments, and that Applicant has pursued such opportunities. As laudable as this diverse work experience is, however, such

experience does not automatically guarantee advancement to A15 or, beyond that, consideration for a B1 position.

67. In this instance, Applicant, like another A14 economist candidate, was deemed ineligible to compete for the Unit Head position due to failure to meet the stated prerequisite of MDC participation. Applicant has not presented any evidence to suggest that her diverse work history led to her ineligibility. The record reveals that the pool of shortlisted candidates included several economists with a variety of work experiences across departments and on external assignments. The Tribunal finds that Applicant has not shown that the Fund's promotion rules unfairly penalize staff who have diverse work experiences across career streams.

- (5) By requiring that MDC nominations be made by staff members' current departments, do the rules arbitrarily disadvantage hiring departments or potential candidates with diverse work experience?

68. Applicant's fifth main contention is that the Fund has acted "arbitrarily" in "requir[ing] nomination by a staff member's current department even where an economist wishes to move into an SCS department." For staff pursuing "one of the standard career paths, . . . clearly the staff member's current department is best positioned to assess whether he or she is ready to move up to the next rung on the ladder." For "versatile and mobile candidates seeking a cross-stream promotion," however, the current department "has little obvious interest in using one of its nominations on a staff member who is seeking to immediately leave the department." Thus the rules assigning exclusive MDC nominating rights to the current department "arbitrarily disadvantage both diverse candidates like [Applicant] and departments in need of such candidates."

69. Respondent asserts that the Fund's decision to assign MDC nominations to current departments "is a reasonable exercise of managerial discretion." It rests on the Fund's determination that "current departments are in the best position to provide up-to-date evaluations of staff member competency and readiness for B-level advancement." With respect to Applicant's concern about conflicting management incentives where a department's potential nominee is pursuing an imminent transfer out of the department, Respondent asserts that this is based on an unlikely hypothetical. The MDC's schedule of yearly nominations and thrice-yearly sessions is not linked to specific vacancies, which arise year-round. In reality, "there is simply no evidence in the record that the current process makes it 'impossible' for hiring departments to connect to qualified candidates." By contrast, if the Fund were to adopt Applicant's proposal to "replace its current MDC nominating rule with an individualized, case-by-case approach," this would "flood the process with 'testimonials from numerous colleagues,'" be more time-consuming, and potentially "expose the Fund to accusations of arbitrariness and favoritism."

70. Applicant does not present any evidence to support her assertions that the current nominating system harms staff seeking cross-stream opportunities or that it prevents hiring departments from finding candidates with diverse work experience. The shortlist for the Unit Head position in this case included economists with diverse work experience, all of whom had been nominated for and completed the MDC in previous years. The record contains no indication that the hiring unit was dissatisfied with its slate of candidates or that it would have preferred to

circumvent the MDC rules to broaden its options. The Tribunal finds that the Fund's choice of nominating system is based on an appropriate consideration of relevant facts and reasonably related to the objective of focusing MDC resources on the staff most readily identified as candidates for B-level advancement, whether economists or SCS staff. The Tribunal accordingly concludes that Applicant has not shown any abuse of discretion in the Fund's MDC nominations rule.<sup>3</sup>

(6) Do the challenged rules lack transparency and contribute to an opaque promotion system so as to constitute an abuse of discretion?

71. Applicant's last main contention is that the Fund has failed its "fundamental obligation to 'clearly convey' the rules governing B-level promotions to staff members." In particular, Applicant asserts, the current rules suffer from a "fatal lack of transparency" regarding the "elevated role of certain titled managerial positions"; the exclusive nominating power of current departments for the MDC; and the types of career paths most conducive to a B-level position. The rules thus "contribute to an opaque promotion system that fails to afford meaningful guidance to staff members hoping to one day attain a B-level promotion as they make decisions earlier in their careers about taking on the types of cross-stream roles or external assignments that are supposedly highly valued by the Fund."

72. Respondent asserts that the Fund "clearly conveyed the criteria for B-level promotions and MDC eligibility to staff through numerous channels." The B-level promotion criteria are published "in numerous places, including the Staff Handbook, Staff Bulletin No. 3/27, and on HR Web." "Every B-level vacancy, as in this case, directs interested staff to Staff Bulletin No. 3/27, which references the MDC requirement and other eligibility criteria." In addition, "the list of titled managerial roles eligible for MDC has remained the same since 1994" and "is listed in numerous places, including Staff Bulletin No. 3/27, and the MDC page on HR Web." Finally, "the MDC page on HR [W]eb clearly explains the nominating process and the current department's role in it."

73. The Tribunal's review of the record confirms that the Fund's key rules regarding B-level promotions and the MDC are set out in documents available to all staff. For example, Staff Bulletin 03/27, as referenced in the Unit Head vacancy, specifies "MDC a requirement" in its list of B1 promotion criteria. In turn, the eligibility requirements and nomination process for the MDC, along with examples of titled managerial roles, are set out on the "Management Development Center" page on the Fund's intranet. As noted *supra* at Paragraph 63, Fund Management may consider clarifying the full roster of titled managerial roles eligible for MDC participation.

74. For purposes of the present case, the Fund has made sufficiently clear that only staff in titled managerial roles, which start at A15 for economists, are eligible for MDC nomination by

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<sup>3</sup> Having addressed the parties' arguments on the merits and dismissed Applicant's contention on this point, the Tribunal need not address Respondent's brief suggestion in a footnote to its Answer that Applicant may lack standing to challenge the MDC nominating system because she was never eligible for nomination.

their departments and thereafter for B1 promotional consideration. Applicant's own correspondence from March 2020, when she first applied for the Unit Head position, is illustrative. The correspondence reflects that she knew that the B1 Unit Head position required MDC participation; and that she had learned from the MDC web page that "being in a titled position is a pre-requisite for even being nominated to the MDC," which "for staff in the economist stream . . . imposes effectively a requirement of having reached the A15 grade, because this is the first titled position in the economist career stream." The Tribunal therefore finds that Applicant fails to support her claim of a "fatal lack of transparency" constituting an abuse of discretion.

(7) The Tribunal's conclusions on Applicant's regulatory challenge

75. Having considered Applicant's six main contentions as set out above, the Tribunal concludes that Applicant has not shown arbitrariness, discrimination, or other abuse of regulatory discretion in the Fund's MDC eligibility rules or requirements for B1 promotional consideration. The record reflects that the challenged rules were based on appropriate consultation and consideration of relevant facts; and were rationally related to the Fund's goals of strengthening managerial assessment and promoting B-level readiness among proven managers. In such circumstances, it is not for the Tribunal to substitute its own judgment for that of Fund Management. *See Ms. "GG" (No. 2)*, para. 404 (observing that "[i]t is not for the Tribunal to substitute its judgment" where the Tribunal concluded that the challenged promotion policy "was based on an appropriate consideration of relevant facts and was reasonably related to the objectives it sought to achieve").

D. Merits of Applicant's individual challenge

76. The Tribunal observes, and Applicant does not dispute, that HRD's decision that Applicant was ineligible for the Unit Head position was based on a correct reading of the Fund's MDC requirements as written. As noted earlier, Staff Bulletin No. 03/27 specifies three key selection criteria for Grade B1 SCS positions such as the Unit Head role. Candidates must demonstrate that they (i) meet "specific educational and experience requirements for the position as advertised"; (ii) have "[p]roven technical skills"; and (iii) have "[p]roven managerial skills (MDC a requirement)." The Staff Bulletin charges HRD with "screen[ing] all applications to ensure candidates meet the position criteria" before forwarding applications to the hiring department for consideration. In this instance, once HRD determined that Applicant had not participated in the MDC so as to qualify for B1 promotional consideration, HRD acted in accordance with the screening process set out in the Staff Bulletin in not forwarding her application for consideration.

77. The Tribunal having determined that the Fund's MDC requirements do not constitute an abuse of the Fund's regulatory discretion and further considering that HRD correctly applied the Fund's MDC requirements in respect of Applicant, Applicant's challenge to the individual decision is not sustainable.

**CONCLUSIONS OF THE TRIBUNAL**

78. The record shows that Applicant has had a successful career within the Fund, complemented by valuable experience on external assignments. Her arguments are well presented.

For the reasons elaborated above, however, the Tribunal concludes that Applicant has not shown that the Fund's regulatory decision to require MDC participation for B1 promotional consideration, while limiting MDC eligibility to titled managers nominated by their current departments, constitutes an abuse of discretion when applied in the context of a Grade A14 economist's application to a Grade B1 SCS position open to both economist and SCS staff. Applicant thus fails to sustain her regulatory challenge to the Fund rules in question or her individual challenge to their application in her case.



