National Interest Analysis [2012] ATNIA 19
with attachment on consultation

Loan Agreement between Australia and the International Monetary Fund
(Tokyo, 13 October 2012)

[2012] ATNIF 22

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

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Nature and timing of proposed treaty action

1. The proposed treaty action is to sign and bring into force the *Loan Agreement between Australia and the International Monetary Fund* ("the proposed Agreement").

2. Pursuant to its paragraph 16(b), the proposed Agreement will enter into force on the date the International Monetary Fund ("the IMF") acknowledges the receipt of a written communication from Australia notifying the IMF of the completion of Australia's domestic requirements for the entry into force of the proposed Agreement.

3. It is proposed that Australia will send the relevant notification to the IMF after the necessary legislative amendments are effected following consideration by the Joint Standing Committee on Treaties.

Overview and national interest summary

4. The purpose of the proposed Agreement is to enhance the resources available to the IMF for crisis prevention and resolution as part of a 2012 round of IMF borrowing agreements, with Australia to lend the IMF up to the equivalent of Special Drawing Rights (SDR) 4.61 billion[1] (around A$6.8 billion), on terms set out in the proposed Agreement. Drawings from Australia by the IMF under the proposed Agreement would be repayable in full and with interest.

5. Australia has an interest in ensuring that the IMF is adequately resourced to play its global role in promoting economic and financial stability and growth.

[1] Special Drawing Rights (SDRs) are the IMF unit of account.

Reasons for Australia to take the proposed treaty action

6. The IMF advances Australia's interests by supporting stability in the global economy through: promoting international monetary cooperation, exchange stability, and orderly exchange arrangements; fostering economic growth and employment; and providing temporary financial assistance to members, thereby helping to ease balance of payments adjustment.

7. The IMF is a central forum for multilateral consultation and cooperation on monetary and financial issues as well as promoting international financial and monetary stability. The global financial crisis and the ongoing crisis in the euro area highlight the importance of ensuring that the IMF is adequately resourced to fulfil its mandate. Reforms have been made in recent years to enhance the IMF's effectiveness, including: substantial permanent increases in the IMF's resources; enhancement of the IMF's lending instruments; strengthened surveillance; realigning the quota and voting shares of IMF members to better reflect changing weights in the global economy; and institutional governance reform. Australia, as a small, open economy, benefits from an effective IMF that has the resources available to fulfil its mandate for global economic and financial stability.

8. While the IMF's current resource base is sufficient to meet expected needs, in the event of a renewed global financial crisis, potential demands for IMF lending could exceed the IMF's existing lending capacity. Increasing the IMF's available resources is thus essential for ensuring confidence that the IMF is fully equipped for its crisis prevention and resolution role.

9. The proposed Agreement is Australia's contribution towards a broad round of global commitments, announced at the June 2012 G20 Leaders Summit in Los Cabos, Mexico, to temporarily increase the IMF's resources by more than US$450 billion during a period of heightened global financial risks. Other countries who have pledged commitments to date include the United Kingdom, China, France, Germany, Japan, Russia and Indonesia. The IMF is in the process of finalising borrowing agreements with all member countries that have agreed to participate.

Obligations

10. The terms of the proposed Agreement provide for Australia to lend to the IMF up to the equivalent of SDR 4.61 billion (paragraph 1). The proposed Agreement shall have a term of two years, extendable by the IMF for up to two additional one-year periods, for a maximum total term of four years (paragraph 2).

11. The IMF will provide its best estimates of the amounts it expects that it will draw under the proposed Agreement for every three-month period (paragraph 3). Drawings under the proposed Agreement will have a repayment maturity of three months from the drawing date, extendable at the discretion of the IMF in three-month increments up to a maximum of ten years. In exceptional circumstances the IMF, with Australia's agreement, may extend the maximum maturity of drawings by up to a further five years (paragraph 5). The rate of interest on drawings under the proposed Agreement will be the SDR interest rate (paragraph 6). The SDR interest rate is determined weekly, based on a weighted

average of representative short-term money market interest rates (currently the US dollar, Euro, pound sterling and Yen rates). This is in accordance with Article XX of the IMF's founding multilateral treaty, the *Articles of Agreement of the International Monetary Fund* ([1947] ATS 11).

12. Australia's commitment to meet drawings under the proposed Agreement shall be terminated if Australia's balance of payments and reserve position does not justify further drawings (paragraph 8). Australia may also obtain early repayment of all or a portion of the drawings outstanding under the proposed Agreement if there is a need for early repayment in light of Australia's balance of payments and reserve position (paragraph 9).

13. Australia shall have the right to transfer all or part of any claim on the IMF resulting from outstanding drawings under the proposed Agreement to any member of the IMF, subject to limitations set out in the proposed Agreement (paragraph 10).

14. The proposed Agreement will not affect Australia's existing rights and obligations under international law in relation to the IMF.

Implementation

15. Amendment will be required to the *International Monetary Agreements Act 1947* to provide the authority for the Australian Government to enter into a bilateral lending agreement with the IMF.

16. No action is required by the States or Territories to implement the proposed Agreement.

Costs

17. The proposed Agreement was included in the 2012-13 Budget as a Quantifiable Contingent Liability. The maximum amount available to be drawn under the proposed Agreement is the equivalent of SDR 4.61 billion (around A$6.8 billion). The IMF would make drawings under the proposed Agreement only if needed to support its lending to borrowing member countries. The proposed Agreement is not expected to be drawn upon over the forward estimates period as the IMF's currently available resources are sufficient to cover its projected lending activities.

18. Any drawings would be financing transactions with no direct impact on the Australian Government's underlying cash balance or fiscal balance. They would have no impact on the Australian Government's net debt but would add to its borrowing requirement.

19. These indicative costs (of no impact on budget balance or net debt) for the loan proposal have been prepared by Treasury and agreed with the Department of Finance and Deregulation.

Regulation Impact Statement

20. The Office of Best Practice Regulation, Department of Finance and Deregulation, has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

21. The proposed Agreement does not make express provision for amendments. In the absence of specific provisions on amendment, the proposed Agreement can be amended by agreement between the Parties at any time pursuant to Article 39 of the *Vienna Convention on the Law of Treaties* (VCLT, [1974] ATS 2). Any future amendments to the proposed Agreement would be subject to Australia's domestic treaty process.

22. The IMF may extend the proposed Agreement for up to two additional one-year periods, in accordance with its paragraph 2(d). The first one-year extension would be made only after consultation with Australia, while the second one-year extension would be made only with the consent of Australia. This provision has been agreed to balance the need to protect the IMF from potential liquidity risks with the wish of some countries to retain control over the extension of their respective loan agreement beyond the first extension.

23. The proposed Agreement does not provide for the negotiation of any future legally binding instruments.

Withdrawal or denunciation

24. While paragraph 8 of the proposed Agreement permits Australia to terminate its commitment to meet drawings under the proposed Agreement in certain circumstances, the proposed Agreement does not contain a specific right of termination for either Party. In the absence of specific provisions on termination, the proposed Agreement may be terminated at any time with the consent of both Parties pursuant to Article 54 of the VCLT. The proposed Agreement will expire two years after it enters into force (paragraph 2(a)), unless it is extended in accordance with paragraph 2(d) or unless the Parties agree to terminate it earlier.

Contact details

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ATTACHMENT ON CONSULTATION

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CONSULTATION

25. On 20 April 2012, Australia's IMF Governor, the Deputy Prime Minister and Treasurer Wayne Swan MP, announced via a joint statement with Singapore, the Republic of Korea and the United Kingdom that Australia would make a contribution by way of a contingent loan or note purchase agreement to the IMF as part of a broad global effort.

26. A formal domestic consultation process was not undertaken as the proposed Agreement will not have an impact on the States or Territories and will not directly affect Australians.