IMF Covid-19 crisis funding: an opportunity to fight corruption

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Unprecedented IMF leverage

A record number of over 90 countries have requested financial assistance from the International Monetary Fund (IMF) to cope with the Covid-19 pandemic and its colossal economic impact. In response, the IMF has pledged to place its US$1trn in lending capacity at the service of countries in need. It has also indicated that it is ready to assist countries through multiple financing schemes, including an emergency credit facility, augmenting existing lending programmes, grants for debt relief and new financing arrangements.[1] While it is critically important that safeguards are in place to ensure that funds, particularly those under the emergency credit facility, are not misappropriated or wasted, the historic demand for funding also presents a unique opportunity for the IMF to incentivise countries to bolster their domestic anti-corruption legal regimes. By conditioning financing on such reforms, the IMF also could help harmonise anti-corruption standards around the globe.

The IMF's general anti-corruption policy, analysed below, indicates that the organisation is likely to link at least some of its Covid-19 funding to recipient countries enacting anti-corruption reforms. The IMF has recently come under pressure from watchdog groups to require such measures, including a joint letter addressed to its Executive Board on 8 April 2020 by Transparency International, Human Rights Watch, and Global Witness. The letter emphasised the importance of closing 'gaps in anti-corruption and anti-money laundering frameworks' and called on the IMF to 'address both the general need to strengthen anti-corruption systems in member countries and to manage the risks specific to this crisis.'[2] On 4 May 2020, 99 civil society organisations from around the world reiterated, in a joint letter to the IMF's Managing Director, Kristalina Georgieva, the call to incorporate anti-corruption and transparency measures into Covid-19 loan programmes. This letter went so far as to urge the IMF to include reforming public freedom laws as part of the anti-corruption measures countries are expected to undertake: 'Numerous countries have laws that limit freedom of association and expression in ways that undermine the ability of civil society groups to safely operate or effectively monitor IMF funds... The Fund should require governments to commit to respecting the rights of civil society groups and repeal or amend laws that prevent groups from safely monitoring government spending.'[3] So far, the IMF's handling of two prominent Covid-19 aid requests involving Ukraine and Iran suggests that it has not delinked emergency financing from structural anti-corruption considerations. Notwithstanding the fact that Ukraine asked for an expansion of its aid package to cope with the Covid-19 crisis, the IMF held up US$5.5bn in financing because of the country's failure to meet anti-corruption measures required under its loan programme.[4] Furthermore, the United States, which holds considerable voting power and influence within the IMF, has signalled that it will block Iran's bid for a US$5bn Covid-19 IMF aid package, citing corruption and economic sanctions concerns.[5]

To the extent that IMF funding may come with strings attached, now is as good a time as ever for countries to enhance their anti-corruption legal frameworks to better position themselves to qualify for IMF financing. Anti-corruption reforms also could help countries stimulate their post-crisis recoveries by increasing their chances of attracting foreign investment and helping to create a more efficient, predictable, and fair business environment. In addition to the immediate interest in a quick recovery, implementing anti-corruption reforms could help countries ensure long-term sustainable and inclusive socio-economic development.

This article addresses the types of anti-corruption reforms that the IMF might aim to extract from recipient countries. Recognising the exigent circumstances presented by the Covid-19 epidemic, it also offers practical advice to countries with respect to which aspects of their anti-corruption strategy they should focus on first.

The IMF's anti-corruption policy

How the IMF is likely to assess an applicant country's anti-corruption bona fides is outlined in the organisation's 2018 landmark Framework for Enhanced Engagement on Governance (the 'Framework Policy').[6] The Framework Policy was designed to promote more systematic and effective engagement with countries 'regarding those governance vulnerabilities, including corruption, that are judged to be macro-critical.' (paragraph 1). Under this policy, the decision to allocate funds and institute monitoring mechanisms depends on the severity of corruption and other governmental weaknesses in each country. In addition, a detailed policy paper (the 'Staff Report') was submitted to the IMF Executive Board alongside the Framework Policy in support of its adoption.[7] The Staff Report further develops on principles set out in the Framework Policy and provides insight into the IMF's approach to anti-corruption.

According to the Framework Policy, in addition to having a robust anti-corruption legal framework – that is, laws and regulations prohibiting acts of corruption and bribery – a country's overall anti-corruption strategy is enhanced by including 'broad-based regulatory and institutional reforms.' (paragraph 7). These reforms are aimed at reducing corruption opportunities and incentives by using different tools of governance, including fiscal policy (eg, curbing tax evasion), market regulation (eg, increasing regulatory independence and capabilities) and central bank operations (eg, ensuring adequacy of mandate and decision-making structure). While such systemic reforms undoubtedly would contribute to combating corruption, this article focuses on three enhancements that the IMF might expect countries to undertake in the first instance as a precondition to financing. First and foremost, a robust anti-corruption legal framework is a central and necessary pillar of any comprehensive anti-corruption strategy. In addition, two areas of governance, which the IMF identifies within the broader set of regulatory and institutional reforms, require special attention: strict anti-money laundering legislation to complement anti-corruption laws, and an independent judiciary and prosecutorial body to enforce them.

The three pillars

Bribery and transparency

The Framework Policy emphasises that the strict prohibition of bribery should be front and centre in the design and implementation of anti-corruption laws and regulations: 'In order to address corruption, it is imperative that members implement measures to prevent private actors from offering bribes.' (paragraph 8). Since the Staff Report explains that corruption is defined as 'the abuse of public office for private gain' (paragraph 9), countries should be especially conscious of proscribing the act of bribing public officials. The Framework Policy also makes clear that the IMF is concerned with preventing bribery in the transnational context. Therefore, apart from inward-facing features of a country's anti-corruption regime, the Framework Policy notes that it is important to criminalise and prosecute the bribery of 'foreign public officials' (paragraph 8). In addition to prohibiting bribery, the IMF's extensive engagement with both Mexico and Ukraine on reforming their respective anti-corruption legal framework highlights the importance the organisation places on transparency. For example, the Staff Report features the fact that, in Mexico, the IMF has supported measures to identify conflicts of interest, and, in Ukraine, the organisation has pushed for increased openness and accountability in government procurement.

Countries need not re-invent the wheel when it comes to enhancing domestic anti-corruption laws to meet the IMF's expectations. The United Nations Convention against Corruption (UNCAC), which the Staff Report discusses, entered into force in 2005 and has been ratified by the overwhelming majority of UN member states. Countries can turn to this treaty, along with the UN's accompanying Legislative Guide for the Implementation of the United Nations Convention against Corruption, to guide them in revising their anti-corruption legal framework.[8] In addition to mandatory articles proscribing the offering of a bribe to a national public official (article 15(a)), the acceptance of a bribe by a national public official (Article 15(b)) and the offering of a bribe to a foreign or international public official (Article 16), the convention includes both mandatory and optional articles addressing various other corrupt practices, including embezzlement (Article 17), trading in influence (Article 18), and illicit enrichment (Article 20). The Staff Report provides that the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and which became effective in 1999, is of particular relevance to assessing the adequacy of a country's framework for combating foreign bribery, especially in the case of countries that have signed this treaty. Countries may also find guidance in Model Laws, such as those produced by the Organization of Ameri-

can States, and international anti-corruption standards, including those documented in OECD reports, in upgrading their anti-corruption legal framework to meet the IMF's expectations.[9]

Money laundering

Since bribes are often paid through disguised channels and/or indirect means, the offence of bribery is often achieved through, or at least tightly interconnected with, the act of money laundering. For this reason, strict anti-money laundering laws directly contribute to fighting corruption as they provide an alternative legal basis to clamp down on the same activity. Here again, transparency is key. For example, the Staff Report highlights the importance of incorporating the following two reforms within any anti-money laundering framework: (i) limiting the use of non-transparent corporate vehicles, trusts, and other entities that can be used by public officials to siphon the proceeds of corrupt acts, including by mandating the disclosure of beneficial owners; and (ii) requiring private parties to perform due diligence on politically exposed persons (PEPs) as well as to report suspicious transactions related to proceeds of corruption. (paragraph 53) Furthermore, recognising that money laundering can implicate a jurisdiction 'irrespective of whether a member is experiencing severe corruption itself', as money laundering can involve transnational operations, the Framework Policy notes that anti-money laundering legislation also should 'prevent foreign officials from concealing the proceeds of corruption.' (paragraph 8).

Fortunately, countries once again need not redraft their laws from scratch. The UNCAC requires the enactment of specific offences in connection with the laundering of the proceeds of crime (article 23). Furthermore, the Staff Report reveals that the IMF adheres to the standards promulgated by the Financial Action Task Force (FATF) in assessing and monitoring the adequacy of national anti-money laundering measures.[10]

Enforcement

Without judicial and prosecutorial independence, even the best anti-corruption and anti-money laundering laws would ring hollow. Judicial and prosecutorial independence is always essential to ensuring the fair, impartial and effective enforcement of laws in general, but it takes on special significance within the anti-corruption and anti-money laundering context. Because these laws criminalise certain activities performed by public officials, it is paramount to prevent undue influence and meddling by public officials in

their application (including by officials in the executive, legislative, and administrative branches of government). Moreover, the Staff Report expressly recognises the importance of 'strengthening the rule of law – including an effective threat of prosecution' (paragraph 42). The recognition of the importance of enforcement procedures is also evidenced by the Staff Report's emphasis on criminalising the obstruction of justice in connection with an anti-corruption investigation or prosecution, which is also a safeguard envisioned by the UNCAC (Article 25). Finally, the Staff Report highlights that the IMF has supported a new law on the judiciary and the establishment of an independent anticorruption investigative agency in Ukraine, as well as the creation of a subject-matter specific court for anti-corruption issues in Mexico.

Conclusion

To some, tying Covid-19 aid funding to anti-corruption reforms might seem an ethically questionable gambit: is it right to condition desperately needed assistance on an applicant's ability to enact institutional reforms? The IMF does not seem to be seeking a trade-off. On the contrary, the reforms would inure to the benefit of the recipient country and its citizenry. And for a country that both makes necessary enhancements *and* receives crisis funding, it has landed the elusive 'win-win'. Nor can the reforms be considered out-of-reach, since countries have access to international treaties, conventions, model laws, and other readily accessible resources, in addition to the IMF's own guidance and engagement. Furthermore, while the positive effects would be long-lasting, enacting such reforms need not be a lengthy process and is primarily contingent on political will. A practical approach might be to condition funding on a country pledging to enact a package of anti-corruption reforms, without requiring the reforms to be completed prior to disbursement. Similarly, attaching disbursements to verifiable reform milestones would allow for rapid funding to meet immediate needs while providing a reasonable timeframe for structural changes.

It does not seem unreasonable, then, for the IMF to attach some strings to Covid-19 funding, even in the middle of a global crisis. But setting the bar too high may result in a 'lose-lose' scenario where countries neither receive funding nor enhance their anti-corruption regimes. Therefore, prioritising the three pillars discussed above – robust laws against bribery, complementary anti-money laundering regulations, and effective enforcement – over broader institutional and policy reforms would seem wise.

Notes

[1] K Georgieva, 'Confronting the Crisis: Priorities for the Global Economy', speech by IMF Managing Director, 9 April 2020.

[2] Joint letter to IMF Executive Board Re: 'Urgent Need for Anti-Corruption Measures in IMF Response to COVID-19 Crisis', Transparency International, Human Rights Watch, and Global Witness, 8 April 2020.

[3] Joint letter to IMF Managing Director Re: 'Anti-Corruption and the Role of Civil Society in Monitoring IMF Emergency Funding', 99 civil society organisations, 4 May 2020.

[4] A Kramer, 'Desperate for Aid, Ukraine First Has to Fight Corruption', *New York Times*, 27 March 2020.

[5] K Atwood, 'US ready to block Iran's requests for coronavirus aid from the IMF, officials say', *CNN*, 9 April 2020.

[6] 'Addressing Governance Vulnerabilities: A Framework for Enhanced Fund Engagement', International Monetary Fund, 22 April 2018.

[7] Policy Paper: Review of 1997 Guidance Note on Governance: A Proposed Framework for Enhanced Fund Engagement,International Monetary Fund, April 2018.

[8] Legislative Guide for the Implementation of the United Nations Convention against Corruption, United Nations Office on Drugs and Crime, 2012.

[9] See Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions, Organization of American States, 22 March 2013; Corruption: A Glossary of International Standards in Criminal Law,OECD, 2008.

[10] The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, Financial Action Task Force, 2019.

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