ASOCIACIÓN DE JUBILADOS DEL
BANCO INTERAMERICANO DE DESARROLLO

ASSOCIATION OF RETIREES OF THE
INTER-AMERICAN DEVELOPMENT BANK

March 29, 2022

VIA EMAIL gonzaloaf@iadb.org
Mr. Gonzalo Afcha
Executive Secretary
IDB Retirement Plans
1300 New York Ave., N.W.
Washington, D.C. 20577

Dear Mr. Afcha,

I am writing on behalf of the Association of Retirees of the Inter-American Development Bank (the "AJ-BID" or the "Association"), with respect to the 2022 cost of living adjustment ("COLA") applicable to eligible pensioners under the IDB Staff Retirement Plan ("SRP"). As established in our by-laws, one of our main purposes is to "monitor the Bank activities and policies in order to promote the rights and interests of the members of the Association and other retirees of the Bank as a whole".

We refer to your email of December 22, 2021, informing retirees that a 5% COLA has been applied to eligible pensions under the SRP Document as of January 1, 2022.

We are concerned and have received multiple expressions of concern from our members, that the 5% COLA applied to pensions as of January 1, 2022 is not aligned with what is required by the terms of the SRP Document. In light of our mandate and as the retirees' representatives on the SRP Managing Committee have previously indicated, we saw the need to carry out a detailed review of the relevant articles of the SRP Document. We recently concluded this analysis; please see **Annex I** for a summary of our analysis. Our analysis was developed with the assistance of outside counsel, the Groom Law Group, a leading firm in the area of retirement plans. See **Annex II**.

Our review indicates that, per its Article 15, Cost-of-Living Increases in Pensions, the SRP Document requires that payment of a 6.8% COLA be applied for 2022, rather than the 5% COLA payment made so far. Accordingly, we respectfully request that payment of a 6.8% COLA be applied, effective January 1, 2022.

We are aware that this issue has not arisen since 1991. Although we appreciate that the Bank operates in a complex environment with evolving challenges and priorities, the SRP and its governance structure operate according to certain fundamental principles, including that the trustees must operate and administer the Plan "solely in the interest of the plan participants and their beneficiaries" and in accordance with the Plan's documents. In examining the COLA issue and particularly the application of Article 15, we trust these fundamental principles will be upheld and applied.

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Lastly, we believe a decision on this matter could be made by the Executive Secretary, following Article 15. However, we appreciate that you may wish to take this matter to the Managing Committee. We respectfully request that you include this matter for discussion at a forthcoming meeting of the Managing Committee.

We would be glad to provide additional information at any time. We look forward to your response and would welcome the opportunity to continue to discuss this matter with you.

Thank you very much for your consideration.

Very truly yours,

Isabel Larson
President
Association of Retirees of the Inter-American Development Bank

Encl.

Annex I – Summary of Analysis of the Cost-of-Living Provisions (4 pages)

Annex II – Groom Law Group Overview (1 page)

Cc: Mr. Gustavo De Rosa (Gderosa@iadb.org), Vice President of Finance and Administration

# ANNEX I

## SUMMARY ANALYSIS OF THE COST-OF LIVING PROVISIONS OF THE STAFF RETIREMENT PLAN (SRP) OF THE INTER-AMERICAN DEVELOPMENT

## I. SUMMARY OF KEY PLAN PROVISIONS

Article 15 of the Plan contains the provisions governing cost-of-living increases. A summary of the provisions that are relevant to this analysis is as follows.

- Section 15.2 specifies which Plan benefits are eligible for cost-of-living increases. The increases apply to substantially all annuity benefits paid under the terms of the Plan.

- Section 15.3 describes the dates on which pension benefits become eligible for cost-of-living increases. In general, benefits become eligible for increases upon participants' cessation of employment.

- Section 15.4 describes the calculation methodology for the cost-of-living adjustments.

    - As of January 1st, of each year, the Basic Pension is multiplied by the ratio of (a) the Cost-of-Living Index as of that date, to (b) the Basic Index applicable to a particular benefit.

    - The ratio cannot be less than 1, and also cannot be less than the ratio that applied to a particular pension benefit in any prior year.

- Section 15.1(c) provides that the "Cost-of-Living Index" as of each January 1st, to be used in the calculation described in Section 15.4, is the lesser of (a) the Consumer Price Index as of the prior November, or (b) "the figure of 203.3 increased at the rate of 5% per annum, <u>compounded on December 31st of each year commencing on December 31st, 1998.</u>" (emphasis added)

- Section 15.1(b) defines the "Consumer Price Index" as the "Consumer Price Index for All Urban Consumers, U.S. City Average, all items, with 1982-84 equaling 100, as published by the United States Department of Labor, Bureau of Labor Statistics".

- Section 15.1(d) defines the "Basic Index" as follows:

    - If a pension benefit becomes eligible for a cost-of-living increase as of January 1st of a year, the Basic Index for that benefit is the Cost-of-Living Index as of that date.

  - If a pension benefit becomes eligible for cost-of-living increase as of a date other than January 1st of a year, the Basic Index for that benefit is the Cost-of-Living Index prorated between the prior and succeeding January 1st values.

- Section 15.1(e) defines the "Basic Pension" as the benefit amount determined under the terms of the Plan without regard to any cost-of-living increases.

- Section 15.9 provides that if the increase in the Consumer Price Index exceeds 5%, the Pension Committee has the discretion to supplement the cost-of-living increase that would otherwise apply under the Plan.

## II. ANALYSIS

### A. THE FORMULA IN THE PLAN ENTAILS A CUMULATIVE CAP

In general, benefits payable under the Plan increase annually in accordance with changes in the Cost-of-Living Index, which is defined by reference to the standard measure of inflation published by the US Department of Labor. The Plan expresses the benefit payable to a participant at any point in time as:

Basic Pension X (Cost-of-Living Index as of most recent January 1st / Basic Index)

In this formula, the Basic Pension is the amount determined under the terms of the Plan without regard to any cost-of-living increases. That amount is then adjusted by the amount in the parentheses. Setting aside situations where the cost-of-living adjustment is prorated because of a start date other than January 1st, the pension benefit is adjusted by the Cost-of-Living Index as defined in Section 15.1(c). That section, in turn, states that the Cost-of-Living Index is the smaller of two numbers:

- The Consumer Price Index as published by the US Department of Labor for November of the preceding year, or

- The "figure of 203.3 increased at the rate of 5% per annum, compounded on December 31st of each year commencing on December 31st, 1998." In this respect, the Cost-of-Living Index does contain a 5% cap on the cost-of-living increases, but this cap is not simply applied to the increase that is calculated based on the Consumer Price Index each year. Rather, it is a *cumulative* cap that builds each year, beginning December 31st, 1998, by 5%. The cumulative nature of the cap is evident in the plain language of Section 15.1(c)(2), which cannot mean anything other than a cumulative cap on the increases.

The following table shows the cost-of-living increase calculations from 1997 through 2021.

| | (a)<br>Consumer Price Index<br>(published by BLS for November) | (b)<br>5% Cap (203.3, increased by 5% annually) | (c)<br>Cost of Living Index (lesser of (a) and (b)) | (d)<br>Increase ((c) divided by (c) for prior year) |
|---|---|---|---|---|
| 1997 | 161.5 | 203.3 | 161.5 | N/A |
| 1998 | 164.0 | 213.5 | 164.0 | 1.55% |
| 1999 | 168.3 | 224.1 | 168.3 | 2.62% |
| 2000 | 174.1 | 235.3 | 174.1 | 3.45% |
| 2001 | 177.4 | 247.1 | 177.4 | 1.90% |
| 2002 | 181.3 | 259.5 | 181.3 | 2.20% |
| 2003 | 184.5 | 272.4 | 184.5 | 1.77% |
| 2004 | 191.0 | 286.1 | 191.0 | 3.52% |
| 2005 | 197.6 | 300.4 | 197.6 | 3.46% |
| 2006 | 201.5 | 315.4 | 201.5 | 1.97% |
| 2007 | 210.2 | 331.2 | 210.2 | 4.31% |
| 2008 | 212.4 | 347.7 | 212.4 | 1.07% |
| 2009 | 216.3 | 365.1 | 216.3 | 1.84% |
| 2010 | 218.8 | 383.4 | 218.8 | 1.14% |
| 2011 | 226.2 | 402.5 | 226.2 | 3.39% |
| 2012 | 230.2 | 422.6 | 230.2 | 1.76% |
| 2013 | 233.1 | 443.8 | 233.1 | 1.24% |
| 2014 | 236.2 | 466.0 | 236.2 | 1.32% |
| 2015 | 237.3 | 489.3 | 237.3 | 0.50% |
| 2016 | 241.4 | 513.7 | 241.4 | 1.69% |
| 2017 | 246.7 | 539.4 | 246.7 | 2.20% |
| 2018 | 252.0 | 566.4 | 252.0 | 2.18% |
| 2019 | 257.2 | 594.7 | 257.2 | 2.05% |
| 2020 | 260.2 | 624.4 | 260.2 | 1.17% |
| 2021 | 277.9 | 655.7 | 277.9 | 6.81% |

Column (d) shows that since 1997 the growth in the Consumer Price Index has been under 5% each and every year until now. As a result, the 5% cap figure in column (b), which is equal to 203.3 increased by 5% annually starting in 1998, has consistently exceeded the actual Consumer Price Index in column (a). As of November 2021, the Consumer Price Index in column (a) is 277.9 and the 5% cap figure in column (b) is 655.7. For 2021, the result of the lesser-of comparison required by Section 15.1(c) of the Plan is a Cost-of-Living Index equal to 6.81%.

The cumulative 5% cap will only restrict the actual cost-of-living adjustment when the Consumer Price Index for the year exceeds 203.3 increased by 5% annually since 1998 (i.e., when column (a) exceeds column (b) in the table above). In this situation, Plan participants would receive a cost-of-living adjustment that is less than the actual rate of inflation for the year.

## B. Section 15.9 Does Not Apply

Pursuant to Section 15.9, the Pension Committee has discretion to supplement pensions when the increase in the Consumer Price Index exceeds 5%, as occurred in 2021. However, because Sections 15.1 through 15.4 of the Plan unambiguously result in a cost-of-living increase of 6.81% for 2021, it is inappropriate to rely on the discretionary supplement in Section 15.9 to arrive at an increase of 6.81%.

Section 15.9 should not be applied as a 5% cap on the increase in the Cost-of-Living Index each year for the following reasons:

- The Cost-of-Living Index plainly equals the Consumer Price Index, unless the Consumer Price Index is greater than "the figure of 203.3 increased at the rate of 5% per annum, compounded on December 31st of each year commencing on December 31st, 1998." As demonstrated above, the 5% cap is applied on a cumulative basis each December 31st, starting December 31st, 1998. The Cost-of-Living Index for this year's payments therefore equals 6.81%.

- The Plan must meet applicable US tax law because it is a qualified plan under the Internal Revenue Code. Those laws require that the Plan must be operated in accordance with the written plan language, and that the assets of the Plan be used to pay the benefits described in the Plan document, including the Cost-of-Living Index as defined in Section 15.1. These requirements of US tax law are written into the Plan document itself, at Section 6.2(e).

- Section 15.9 does not say that it serves as a cap on the increase in the Cost-of-Living Index. There is no cross-reference or other language stating that it somehow supersedes the Cost-of-Living Index. Instead, it suggests that a discretionary supplemental increase might be granted in any year in which the increase in the Consumer Price Index exceeds 5%. Such an increase could be justified in an environment of sustained inflation, where the 5% cumulative cap has restricted the annual increases over a period of time.

## C. Conclusion

Based on the plain language of the Plan, a cost-of-living adjustment of 6.81% should apply to pension benefits payable from the Plan as of January 1, 2022.

# ANNEX II

## GROOM LAW GROUP OVERVIEW (PROVIDED BY GROOM LAW)

Groom was founded in the wake of a landmark regulatory development—the passage of the Employee Retirement Income Security Act (ERISA) of 1974. Ever since, rapid response to shifts in the retirement and health care policy paradigm has been our calling card. ***We have one of the largest ERISA and employee benefits practices in the United States with over 85 attorneys practicing in the field.*** Our client base is diverse and includes more than 40 Fortune 100 companies and nearly 100 plan sponsors and benefit service providers across the United States, including financial institutions, major universities, state and federal government entities, and non-profit foundations. Our broad range of clients is one of our strengths – it allows us to stay up to date on a variety of complicated and technical issues of interest, provide insights on industry trends and practices, and anticipate new developments that affect clients' businesses.

From our one office strategically located in Washington, DC, we maintain a national ERISA and employee benefits practice with a focus on practical problem-solving, as well as novel, cutting edge solutions for our clients. ***Being based in a single location means that we can quickly and efficiently provide access to attorneys who are among the most experienced in the nation in any particular aspect of benefits law.*** The fact that we focus exclusively on health, retirement and employee benefits issues means that we have one strategic mission as a firm – building the most complete firm in the country that can handle strategy, planning, compliance, litigation, and lobbying for all of these issues. All of our resources are committed to providing excellent, responsive benefits advice to our clients.

Being based in Washington, D.C. also enables us to recruit top talent from the agencies that make a direct impact on our issues. Many of our attorneys come from the Departments of Labor, Treasury, and Health and Human Services, the Internal Revenue Service, the Pension Benefit Guaranty Corporation, and Capitol Hill. ***By maintaining and building great relationships with agency and congressional contacts, we have developed unique insights into the regulatory and legislative landscape.***

Since 1975, we have built our success by developing wide-ranging and exhaustive command of the issues that dominate benefits and retirement. Nobody knows this area of the law like we do. ***Our exceptional level of service has earned us consistent top-tier rankings and many of our industry's highest awards.*** *Chambers USA* has consistently ranked Groom as a first-tier firm for Employee Benefits & Executive Compensation both nationally and in the District of Columbia and named Groom 2018 Law Firm of the Year for Employee Benefits & Executive Compensation. In their 2021 edition, *The Legal 500* once again ranked Groom as a first-tier firm for Employee benefits, executive compensation, and retirement plans: design. Numerous Groom attorneys have also been individually recognized by *Chambers USA*, *The Legal 500*, *Super Lawyers*, and *The Best Lawyers in America*.