

ESTABLISHMENT OF AN ADMINISTRATIVE TRIBUNAL

1. It may be recalled that, in the course of the seminars held with the Board on personnel policies and the Professional Staff Personnel Handbook, one of the important issues taken up was that the Bank's grievance procedures lacked recourse to an external, impartial appeal mechanism for the resolution of employment disputes between the Management and the Staff. As a result of discussions, the consensus of the Board was that it would be appropriate for the Bank to establish the appeal mechanism of a single External Arbiter to whom aggrieved staff members might have ultimate recourse after exhausting all internal means of redress of their grievance. It was part of the consensus that a single External Arbiter was the preferred alternative to the establishment of an Administrative Tribunal consisting of a panel of arbiters, such as in the IBRD and IADB.

2. The Board was informed that a review was being made of the framework for the establishment of a single External Arbiter, including the issue of the appropriate approving authority for it. This review has now been completed. It concluded that a panel of three arbiters - in other words, an Administrative Tribunal -- would be able to undertake a more thorough and balanced examination of a case and would, through a certain distribution of nationalities, be perceived to render a more impartial judgment than a single arbiter. Moreover, this constitution of the panel would be in line with the structure of tribunals already established in other international organizations. Since the Administrative Tribunal would be a body independent of the other organs of the Bank, it is considered appropriate to establish it by means of a "Statute" setting out its jurisdiction, composition, certain basic rules of procedure and other related matters. This follows the practice adopted by comparable international institutions. Pursuant to Article 34.5 of the Articles of Agreement Establishing the Asian Development Bank, the Board of Directors is empowered to approve and adopt the Statute.

3. A draft "Statute of the Administrative Tribunal of the Asian Development Bank" is attached. While it is self-explanatory, attention is drawn to the following major points:

a. The Administrative Tribunal would hear cases ("applications") brought by present or former members of the regular staff or the fixed-term staff with appointments of two years or more, or in the event of their death or incapacity, by their personal representatives or beneficiaries.

b. Individual staff members could bring cases to the Administrative Tribunal only in respect of an alleged breach of their own contractual rights (i.e. no third party, "class action" or hypothetical claims would be

admitted) and they could lodge an application only after all internal means of redress had been exhausted. Claims would need to be brought within 90 days of the occurrence or of the staff member's receipt of notification that the Bank had reviewed their appeal and rejected it.

c. The judgment of the Administrative Tribunal would be binding on the Bank and without appeal. However, the Bank would have the option to pay compensation (as determined by the Tribunal) in instances where it decided that it would be against the Bank's best interests to comply with a decision requesting specific performance (e.g. which required the Bank to reinstate a dismissed staff member whose position had already been filled by another or when it felt there had been a breakdown of trust between the Bank and the staff member).

d. Nothing in the proposed Statute should be construed to limit or modify the powers conferred on the Board of Governors or the Board of Directors under the Agreement Establishing the Asian Development Bank.

e. Decisions relating to Bank benefits, including the Staff Retirement Plan, would fall within the jurisdiction of the Tribunal. This may require an amendment to the regulations of the Plan.

4. In terms of composition, scope of judgments, and rules of procedure, the structure of the Administrative Tribunal system being proposed in this paper is in line with the practice of comparable organizations, such as the World Bank and the Inter-American Development Bank. In this way, the Bank's external appeal mechanism can draw on the experience gained by the Administrative Tribunals of these organizations.

5. It is estimated that the direct annual cost of the Administrative Tribunal, together with the part-time administrative support of one lawyer (the Executive Secretary) and the necessary secretarial support, would amount to US\$160,000. This assumes that the three Tribunal members would visit the Bank four times a year for about 10 days on each occasion and that the Tribunal's staff would devote three man-months of professional and support staff time to this work.

6. The draft Statute has been discussed with the Staff Council.

7. The President therefore recommends for the Board's approval that the attached **Statute of the Administrative Tribunal of the Asian Development Bank** be adopted and take effect on 1 April 1991.

Attachment

**Statute
of the Administrative Tribunal
of the Asian Development Bank**

ARTICLE I

There is hereby established an Administrative Tribunal (hereinafter referred to as the "Tribunal") for the Asian Development Bank (hereinafter referred to as the "Bank").

ARTICLE II

1. The Tribunal shall hear and pass judgment upon any application by which an individual member of the staff of the Bank alleges nonobservance of the contract of employment or terms of appointment of such staff member. The expressions "contract of employment" and "terms of appointment" include all pertinent regulations and rules in force at the time of alleged nonobservance including the provisions of the Staff Retirement Plan and the benefit plans provided by the Bank to the staff.

2. For the purpose of this statute, the expression "member of the staff" means any current or former member of the Bank staff who holds or has held a regular appointment or a fixed-term appointment of two years or more, any person who is entitled to claim upon a right of a member of the staff as a personal representative or by reason of the staff member's death, and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan or any staff benefit plan provided by the Bank.

3. No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless

(a) the applicant has exhausted all other remedies available within the Bank, except if the applicant and the President of the Bank have agreed to submit the application directly to the Tribunal; and

(b) the application is filed within ninety days after the latest of the following:

(i) the occurrence of the event giving rise to the application;

(ii) receipt of notice, after the applicant has exhausted all other remedies available within

the Bank, that the relief asked for or recommended will not be granted; or

- (iii) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

ARTICLE III

Any issue concerning the competence or jurisdiction of the Tribunal shall be settled by the Tribunal in accordance with this Statute.

ARTICLE IV

1. The Tribunal shall be composed of three members, all of whom shall be nationals of member countries of the Bank, but no two of whom shall be nationals of the same member country. The members of the Tribunal shall be persons of high moral character and must possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence. A Tribunal member shall not be a present or former staff member, President, Vice President, Director or Alternate Director of the Bank. It shall be a condition of the appointment of a Tribunal member that the person appointed shall not be eligible to become a staff member of the Bank for a period of five years after the expiry of such appointment.

2. The members of the Tribunal shall be appointed by the Board of Directors from a list of candidates to be drawn up by the President of the Bank after consultation with the Staff Council.

3. The members of the Tribunal shall be appointed for a period of three years; they may be reappointed. However, of the three members initially appointed, the term of one member shall expire at the end of two years. The name of this member shall be chosen by lot by the President of the Bank immediately after the first appointments have been completed.

4. A member appointed to replace a member whose term of office has not expired shall hold office for the remainder of the predecessor's term.

5. A member of the Tribunal may be removed from office by a majority decision of the Board of Directors upon the unanimous recommendation of the other members that he or she is unsuited for further service.

ARTICLE V

1. The members of the Tribunal shall elect a Chairman from among themselves.

2. The President of the Bank shall make the administrative arrangements necessary for the functioning of the Tribunal, including the appointment of a suitably qualified lawyer as Executive Secretary who, in the discharge of duties, shall be responsible only to the Tribunal.

3. The expenses of the Tribunal shall be borne by the Bank.

ARTICLE VI

1. Subject to the provisions of this Statute, the Tribunal shall establish and publish its rules of procedure.

2. The rules shall include provisions concerning

(a) election of the Chairman;

(b) presentation of applications and the procedure to be followed;

(c) intervention by persons to whom the Tribunal is open under paragraph 2 of Article II whose rights may be affected by the judgment;

(d) hearing, for purposes of information, of persons to whom the Tribunal is open under paragraph 2 of Article II; and

(e) other matters relating to the functioning of the Tribunal.

ARTICLE VII

The Tribunal shall hold sessions at dates and in places to be fixed in accordance with its procedural rules, taking into account the need for the efficient and cost-effective conduct of

the proceedings as well as for providing the opportunity for full and fair hearings.

ARTICLE VIII

The Tribunal shall decide in each case whether oral proceedings are warranted. Oral proceedings shall be held in public, unless the Tribunal decides that exceptional circumstances require that they be held in private.

ARTICLE IX

1. All decisions of the Tribunal shall be taken by majority vote and its judgments in each case shall be final and binding.
2. Each judgment shall state the reasons on which it is based.

ARTICLE X

1. If the Tribunal finds that the application is well-founded, it shall order the rescission of the decision contested or the specific performance of the obligation invoked. At the same time the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained should the President of the Bank, within thirty days of the notification of the judgement, decide, in the interest of the Bank, that the applicant shall be compensated without further action being taken in the case; provided that such compensation may not exceed the equivalent of three years' basic salary of the applicant. The Tribunal may, however, in exceptional circumstances, when it considers it justified, order the payment of a higher compensation. A statement of the specific reasons for such an order shall be made.
2. Should the Tribunal find that a procedure prescribed in the rules of the Bank has not been observed, it may, at the request of the President of the Bank and prior to the determination of the merits, order the case to be remanded for institution or correction of the required procedure.
3. In all applicable cases, compensation fixed by the Tribunal shall be paid by the Bank.

4. The filing of an application shall not have the effect of suspending execution of the decision contested.

ARTICLE XI

1. A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.

2. The request shall contain the information necessary to show that the conditions laid down in paragraph 1 of this Article have been complied with. It shall be accompanied by the original or a copy of all supporting documents.

ARTICLE XII

The original copy of each judgment shall be filed in the archives of the Bank. A copy of the judgment shall be delivered to each of the parties concerned. Copies shall also be made available on request to interested persons.

ARTICLE XIII

Nothing in this statute shall be deemed or construed to limit or modify the powers conferred on the Board of Governors or the Board of Directors under the Agreement Establishing the Asian Development Bank.

ARTICLE XIV

Notwithstanding Article II, paragraph 3 of this statute, the Tribunal shall be competent to hear any application concerning a cause of complaint which arose subsequent to 1 January 1991, provided, however, that the application is filed within ninety days after the entry into force of this statute.

ARTICLE XV

This statute may be amended by the Board of Directors of the Bank.

11