Statute of the Administrative Tribunal of the Asian Development Bank
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 upon 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 five 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 in relevant fields such as employment relations, international civil service and international organization administration. 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 appropriate consultation. For that purpose, the President shall appoint an advisory committee ("Committee on Administrative Tribunal Matters" or "Committee") composed of at least five members, including the General Counsel, The Secretary, the Chair of the Staff Council, and such other members as may be appointed by the President. The Committee may include members who do not have any affiliation with ADB. The General Counsel shall act as Chair of the Committee.

3. The members of the Tribunal shall be appointed for a period of three years; they may be reappointed by the Board of Directors, upon the recommendation of the President, for a maximum of two further terms of three years each. 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.

4. Any member who has an actual or potential conflict of interest in a case shall recuse himself or herself.
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.

6. In rendering their judgments, the members of the Tribunal shall be completely independent and shall not receive any instructions from any person or entity or be subject to any constraint in connection therewith.

ARTICLE V

1. The members of the Tribunal shall elect a President and a Vice-President 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.

4. The Tribunal shall form panels, each consisting of three of its members, for dealing with all cases except for the instances provided in paragraph 5 of this Article. The decisions of such panels shall be deemed to be taken by the Tribunal. If a member of a panel has recused himself or herself, has been removed from office, or for any reason is unable to hear a case, another member shall be appointed to the panel.

5. The Tribunal shall form a panel consisting of all of its members when dealing with (1) certain cases which, in the determination of the Tribunal, warrant a hearing by such a panel; and (2) any cases where any party to such a case makes a written request and gives reasons for the request that the case be heard by such a panel, and where such request is agreed to by the Tribunal.

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 President and the Vice-President;
(b) constitution of the panels provided for in paragraph 4 of Article V;
(c) presentation of applications and the procedure to be followed;
(d) intervention by persons to whom the Tribunal is open under paragraph 2 of Article II whose rights may be affected by the judgment;
(e) hearing, for purposes of information, of persons to whom the Tribunal is open under paragraph 2 of Article II; and
(f) 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. The vote of one or more panel members dissenting from the majority vote, or dissenting as to the grounds upon which the judgment was based or any of its conclusions, shall, together with the reasons for dissent, be separately attached to the judgment itself.

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 judgment, 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. If the Tribunal concludes that an application is well-founded in whole or in part, it may order that the reasonable costs incurred by the applicant in the case, including the cost of applicant’s counsel, be totally or partially borne by the Bank, taking into account the nature and complexity of the case, the nature and quality of the work performed, and the amount of the fees in relation to prevailing rates.

3. 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.

4. In all applicable cases, compensation and reasonable costs fixed by the Tribunal pursuant to paragraphs 1 and 2 of this Article shall be paid by the Bank.

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

6. The Tribunal may order that reasonable compensation be made by the applicant to the Bank for all or part of the cost of defending the case, if it finds that:

   (a) the application was manifestly without foundation either in fact or under existing law, unless the applicant demonstrates that the application was based on a good faith argument for an extension, modification, or reversal or existing law; or

   (b) the applicant intended to delay the resolution of the case or to harass the Bank or any of its officers or employees.

The amount awarded by the Tribunal shall be collected by way of deductions from payments owed by the Bank to the applicant or otherwise, as determined by the President of the Bank. For the purpose of this paragraph, payments due to the applicant under the Staff Retirement Plan shall not be deemed to be payments owed by the Bank to the applicant.
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.

—oOo—