



Rules of the Asian Development Bank Administrative Tribunal

RULES OF THE ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

SECTION I: Organization

Rule 1

Term of Office of Members

Subject to any contrary decision of the Board of Directors of the Asian Development Bank (hereinafter referred to as the "Bank"), the term of office of members of the Tribunal shall commence on the first day of October of the year of their appointment by the Board of Directors of the Bank.

Rule 2

President and Vice-President

1. The Tribunal shall elect a President and a Vice-President for terms of three years. The President and the Vice-President thus elected shall take up their duties immediately. They may be re-elected.
2. Upon the expiration of the term of office of the President, the Vice-President shall act as President until a successor is elected. Upon the expiration of the term of office of the Vice-President, the senior member of the Tribunal shall act as Vice-President until a successor is elected.
3. If the President or the Vice-President ceases to be a member of the Tribunal or ceases to hold office before the expiration of the normal term, the Tribunal shall elect a successor for the unexpired portion of the term.
4. The election of the President or the Vice-President shall be by vote or assent of a majority of the members of the Tribunal, at a plenary session or by correspondence.

Rule 3

Duties of President and Vice-President

1. The President shall direct the work of the Tribunal and of its Secretariat. The President shall represent the Tribunal in all administrative matters and shall preside at meetings of the Tribunal.
2. If the President is unable to act, the Vice-President shall act as President.

Rule 4

Executive Secretary and Staff

1. In addition to an Executive Secretary, the Tribunal shall have such other staff as it may deem necessary, who shall be placed at its disposal by the President of the Bank. The Executive Secretary, if unable to act, shall be replaced for the time being by an official appointed by the President of the Bank.

SECTION II: Sessions and Panels

Rule 5

Plenary Sessions

1. The Tribunal shall hold a plenary session once a year on a date fixed by the President for the purpose of hearing cases, forming panels, and any other matters affecting the administration or operation of the Tribunal including, if necessary, the election of the President and the Vice-President. When, however, there are no cases on the list referred to in Rule 11, paragraph 1, and no other business, which in the opinion of the President would justify the holding of a session for their consideration, the President may, after consulting the other members of the Tribunal, decide to hold the plenary session on a later date.

Special Plenary Sessions

2. A special plenary session may be convened by the President when, in his or her opinion, the number or urgency of cases require such a session or it is necessary to deal with a question affecting the operation of the Tribunal.

Notices of Sessions

3. Notice of the convening of a plenary session or a special plenary session shall be given to the members of the Tribunal at least thirty days in advance of the date of the opening of such a session.

Quorum

4. Three members of the Tribunal shall constitute a quorum for plenary sessions.

Rule 5A

Panels

1. The Tribunal, during a plenary session, and the President in consultation with the Vice-President, in between sessions, shall determine whether a case warrants consideration by a panel consisting of all its members, or by a panel of three members, and the composition of any panel of three members.

2. A party may make a written request, giving reasons therefore, that the case be heard by a panel consisting of all the members of the Tribunal. Such request shall be made, at the latest, by the applicant in the reply filed under Rule 8, and by the Bank in the rejoinder filed under Rule 19.

3. The President shall be the presiding member of any panel of which he or she is a member. If the President is not a member of a panel, the Vice-President shall be the presiding member of the panel if he or she is a member. If neither the President nor the Vice-President is a member of a panel, the President shall appoint one member to be the presiding member of that panel.

4. The presiding member of a panel shall exercise all the functions of the President of the Tribunal in relation to cases before that panel.

SECTION III: Proceedings

Rule 6

Applications

1. An application instituting proceedings shall be submitted to the Tribunal through the Executive Secretary. Such applications shall be divided into four sections, which shall be entitled, respectively:

- I. Information regarding the personal and official status of the applicant;
- II. Pleas;
- III. Explanatory statements; and
- IV. Annexes.

2. The information concerning the personal and official status of the applicant shall be presented in the form contained in Annex I of these rules.

Pleas

3. The pleas shall indicate all the measures and decisions which the applicant is requesting the Tribunal to order or take. They shall specify:

- (a) any preliminary or provisional measures, such as the production of additional documents or the hearing of witnesses, which the applicant is requesting the Tribunal to order before proceeding to consider the merits;
- (b) the decisions which the applicant is contesting and whose rescission is requested under Article X, paragraph 1 of the Statute;
- (c) the obligations which the applicant is invoking and the specific performance of which is requested under Article X, paragraph 1 of the Statute;

- (d) the amount of compensation claimed by the applicant in the event that the President of the Bank decides, in the interest of the Bank, to pay compensation for the injury sustained in accordance with the option given under Article X, paragraph 1 of the Statute; and
- (e) any other relief which the applicant may request in accordance with the Statute.

Explanatory Statement

4. The explanatory statement shall set out concisely and without prolixity the facts and the legal grounds on which the pleas are based. It shall specify, *inter alia*, the provisions of the contract of employment or of the terms of appointment the non-observance of which is alleged.

Annexes

5. The annexes shall contain the texts of all documents referred to in the application. They shall be presented by the applicant in accordance with the following rules and the form of application appended to these rules:

- (a) each document shall be annexed in the original or, failing that, in the form of a copy bearing the words "Certified true copy" and in the manner described in Annex I (II) of these rules;
- (b) documents shall be accompanied by any necessary translations the accuracy of which shall be certified to by the translator;
- (c) where only part of a document is relevant to the application, only such part shall be annexed; and
- (d) every endeavor shall be made to avoid annexing or otherwise presenting a document more than once.

Copies

5. The applicant shall prepare six copies of the application, including the annexes, in addition to the original.

Authentication

7. The applicant shall sign the last page of the original application. The applicant may instead, by means of a letter transmitted for that purpose to the Executive Secretary, authorize the representative designated under Rule 13, paragraph 1, to sign in his or her stead. In the event of the applicant's incapacity, the required signature shall be furnished by his or her duly authorized representative.

Filing

8. The applicant shall file the duly signed original and the six copies of the application with the Executive Secretary. If the President of the Bank and the applicant have agreed to

submit the application directly to the Tribunal in accordance with the option given to them under Article II, paragraph 3(a) of the Statute, the filing shall take place within ninety days of the date on which the President of the Bank notifies the applicant of agreement for direct submission. In all other cases, the filing shall take place within the time limits prescribed by Article II, paragraph 3(b) of the Statute and by Rule 20.

Corrections

9. If the formal requirements of this rule are not fulfilled, the Executive Secretary may call upon the applicant to make the necessary corrections in the application and the copies thereof within a period which the Executive Secretary shall prescribe. The Executive Secretary shall return the necessary papers to the applicant for this purpose. The Executive Secretary may also, with the approval of the President, make the necessary corrections when the defects in the application do not affect the substance.

Transmission

10. After ascertaining that the formal requirements of this rule have been complied with, the Executive Secretary shall transmit a copy of the application to the Bank.

Reservation of Application

11. If it appears that an application is clearly irreceivable or devoid of all merit, the President may instruct the Executive Secretary to take no further action thereon until the next session of the Tribunal. The Tribunal shall then consider the application and may either adjudge that it be summarily dismissed as clearly irreceivable or devoid of all merit, or order that it should be proceeded with in the ordinary way.

Rule 7

Answer

1. The Bank's answer shall be submitted to the Tribunal through the Executive Secretary. The answer shall include pleas, an explanatory statement and annexes. The annexes shall contain all documents referred to in the answer not already annexed to the application. They shall be presented in accordance with the rules established for the application in Rule 6, paragraphs 4 and 5 and Annex I(II).

Copies

2. The Bank shall prepare six copies of the answer, including the annexes, in addition to the original.

Authentication

3. The Bank's representative shall sign the last page of the original answer.

Filing

4. Within sixty days of the date on which the application is transmitted to the Bank by the Executive Secretary, the Bank shall file the duly signed original and the six copies of the answer with the Executive Secretary.

Transmission

5. After ascertaining that the formal requirements of this rule have been complied with, the Executive Secretary shall transmit a copy of the answer to the applicant.

6. Any objection by the Bank to the jurisdiction of the Tribunal upon which the Bank wishes to obtain a decision before filing its Answer shall be made in writing within the time limit fixed for the filing of the Answer. Upon the filing of such objection, the proceedings on the merits shall be suspended. The Applicant may present a written statement of his or her observations upon the objection within 30 days of receipt thereof. Within 15 days of receipt of such statement, the Bank may respond thereto. Within 15 days of receipt of the said response, the Applicant may answer the same. After considering the above-mentioned exchanges, the Tribunal shall either uphold the objection, reject it, or declare that it shall be joined to the merits of the case and shall, if appropriate, fix a date for the Bank to file its Answer.

Rule 8

Reply

1. The applicant may, within forty-five days of the date on which the answer is transmitted to him or her, file with the Executive Secretary a written reply to the answer. The Tribunal may direct the applicant to file a reply if it decides that such pleading is necessary. The reply must be concise and shall avoid prolixity.

2. Any document referred to in the reply which had not been previously submitted to the Tribunal shall be annexed to the reply in accordance with the rules established for the application in Rule 6, paragraph 5, and Annex I(II).

3. The applicant shall prepare six copies of the reply, including the annexes, in addition to the original. The original shall be signed in accordance with the rules established for the application in Rule 6, paragraph 7.

4. After ascertaining that the formal requirements of this rule have been complied with, the Executive Secretary shall transmit a copy of the reply to the Bank.

Rule 9

Rejoinder

1. The Bank may, within thirty days of the date on which the reply is transmitted to the Bank, file with the Executive Secretary a written rejoinder. The Tribunal may direct the Bank to file a rejoinder if it decides that such pleading is necessary. The rejoinder must be concise and shall avoid prolixity.

2. Any document referred to in the rejoinder which had not been previously submitted to the Tribunal shall be annexed to the rejoinder in accordance with the rules established for the application in Rule 6, paragraph 5, and Annex I(II).

3. The Bank shall prepare six copies of the rejoinder, including the annexes, in addition to the original. The Bank's representative shall sign the last page of the original rejoinder.
4. After ascertaining that the formal requirements of this rule have been complied with, the Executive Secretary shall transmit a copy of the rejoinder to the applicant.
5. Without prejudice to Rule 10, the written proceedings shall be closed after the rejoinder has been filed.

Rule 10
Additional Statements, Documents and Information

Additional Statements and Documents

1. In exceptional cases, the President may, on his or her own initiative, or at the request of either party, call upon the parties to submit additional written statements or additional documents within a period which he or she shall fix. The additional documents shall be furnished in the original or in properly authenticated form. The written statements and additional documents shall be accompanied by six copies. Any document shall be accompanied by any necessary translations.
2. Each written statement and additional documents shall be communicated by the Executive Secretary, on receipt, to the other parties, unless at the request of one of the parties, the Tribunal decides otherwise. The personnel files communicated to the Tribunal shall be made available to the applicant by the Executive Secretary in accordance with the instructions issued by the Tribunal.

Obtaining Information

3. In order to complete the documentation of the case prior to its being placed on the list, the President may obtain any necessary information from any party, witnesses or experts. The President may designate a member of the Tribunal or any other disinterested person to take oral statements. Any such statement shall be made under oath or declaration and provided to the parties in accordance with paragraph 2 above.

Rule 11

Listing of Case for Decision

1. When the President considers the documentation of a case to be sufficiently complete, he or she shall instruct the Executive Secretary to place the case on the list and the Executive Secretary shall inform the parties as soon as the case is listed. No additional statements or documents may be filed after the case has been included in the list, unless the Tribunal otherwise permits or requires.
2. As soon as the date of the opening of the session for which a case has been listed, the Executive Secretary shall notify the parties of the date.

3. Any application for the adjournment of a case shall be decided by the President or, when the Tribunal is in session, by the Tribunal.

Rule 12

Executive Secretary's Functions

1. The Executive Secretary shall be responsible for transmitting all documents and making all notifications required in connection with proceedings before the Tribunal. The Executive Secretary shall also be responsible for such other functions or duties as the Tribunal may require him or her to discharge.

2. The Executive Secretary shall make for each case a dossier which shall record all actions taken in connection with the preparation of the case for trial, the dates thereof, and the dates on which any document or notification forming part of the procedure is received in or dispatched from his office.

Rule 13 *Representation*

Presentation of Case

1. An applicant may present his or her case before the Tribunal in person, in either written or oral proceedings if allowed pursuant to Rule 14, paragraph 1. The applicant may designate any person to represent him or her before the Tribunal.

2. The Bank may designate any person to represent it before the Tribunal.

Rule 14

Oral Proceedings

1. Oral proceedings, including the presentation and examination of witnesses or experts, may be held only if the Tribunal so decides.

2. In sufficient time before the opening of the oral proceedings, each party shall inform the Executive Secretary and, through him or her, the other parties, of the names and description of witnesses and experts whom he or she desires to be heard, indicating the points to which the evidence is to refer.

3. The Tribunal shall decide on any application for the hearing of witnesses or experts and shall determine the sequence of oral proceedings. When appropriate, the Tribunal may decide that witnesses shall reply in writing to the question of the parties. The parties shall, however, retain the right to comment on any such written reply.

Rule 15 *Oral Evidence*

Intervention by Individuals

1. The Tribunal may examine the witnesses and experts. The parties or their representatives or lawyers may, under the control of the President, put questions to the witnesses and experts.

Oath or Declaration

1. Each witness shall make the following oath or declaration before giving evidence:

"I solemnly swear/declare upon my honor and conscience that I will speak the truth, the whole truth and nothing but the truth".

Each expert shall make the following oath or declaration before making a statement:

"I solemnly swear/declare upon my honor and conscience that my statement will be in accordance with my sincere belief."

Exclusion of Evidence

2. The Tribunal may exclude evidence which it considers irrelevant, frivolous, or lacking in probative value. The Tribunal may also limit the oral testimony if it considers the written documentation adequate.

Rule 16

Production of Documents and Inquiry

1. The Tribunal may at any stage of the proceedings call for the production of documents or of such other evidence as may be required. It may arrange for any measures of inquiry as may be necessary.

SECTION IV: Remand of a Case

Rule 17

Remand

1. If, in the course of the deliberations, the Tribunal finds that a procedure prescribed in the rules of the Bank has not been observed, it may notify the parties accordingly in order to permit the application of Article X, paragraph 2 of the Statute.
2. The Tribunal shall decide on the substance of the case if, on the expiry of the time limit of two working days reckoned from the date of the notification under paragraph 1 above, no request for a remand has been made by the President of the Bank.

SECTION V: Intervention

Rule 18

Intervention by Individuals

1. Any person to whom the Tribunal is open under Article II, paragraph 2 of the Statute may apply to intervene in a case at any stage thereof on the ground that he or she has a right which may be affected by the judgment to be given by the Tribunal. Such person shall for that purpose draw up and file an application in the form of Annex II for intervention in accordance with the conditions laid down in this rule.
2. The rules regarding the preparation and submission of applications specified in Rules 6 through 13 above shall apply *mutatis mutandis* to the application for intervention.
3. After ascertaining that the formal requirements of this rule have been complied with, the Executive Secretary shall transmit a copy of the application for intervention to the applicant and to the Bank. The President shall decide which documents, if any, relating to the proceedings are to be transmitted to the intervenor by the Executive Secretary.
4. The Tribunal shall rule on the admissibility of every application for intervention submitted under this rule.

Rule 19

Potential Intervenors

When it appears that a person may have an interest in intervening in a case under Rule 18, the President, or the Tribunal when in session, may instruct the Executive Secretary to transmit to such person a copy of the application submitted in the case. Moreover, the President of the Bank, or the Chairperson of the Pension Committee may, on giving previous notice to the President of the Tribunal, intervene at any stage, if such person considers that his or her respective administration may be affected by the judgment to be given by the Tribunal.

SECTION VI: Applications Concerning Decisions of the Pension Committee

Rule 20

Pension Cases

If an application is brought against a decision of the Pension Committee of the Bank, the time limits prescribed in Article II of the Statute are reckoned from the date of the communication of the contested decision to the party concerned.

SECTION VII: Miscellaneous Provisions

Rule 21

Persons Furnishing Information

1. The Tribunal may, for purposes of information, permit persons to whom the Tribunal is open under Article II, paragraph 2 of the Statute, whenever such persons may be expected to

furnish information pertinent to the case, to submit written or oral observations as may be appropriate.

Amicus Curiae

2. The Tribunal may permit any person or entity with a substantial interest in the outcome of a case to participate as a friend-of-the-court. It may also permit the duly authorized representatives of the Staff Association of the Bank so to participate.

Rule 22

Publication of Decisions

1. The Executive Secretary shall arrange for the publication of the decisions of the Tribunal.

Rule 23

Modification and Supplementation of Rules

The Tribunal or, when the Tribunal is not in session, the President, with the approval of the members of the Tribunal, may:

- (i) in exceptional cases modify the application of these rules, including any time limits thereunder; and
- (ii) deal with any matter not expressly provided for in the present rules.

Rule 24

Entry into Force

The present rules shall apply to all applications submitted after January 1, 1992 and may apply to applications before that date if both the applicant and the Bank so inform the Tribunal.

ANNEX I

I. FORM OF FIRST SECTION OF APPLICATION DRAWN UP IN ACCORDANCE WITH RULE 6 OF THE RULES OF PROCEDURE

Information concerning the personal and official status of the applicant.

1. Applicant:
 - (a) name and first names;
 - (b) date and place of birth;
 - (c) marital status;
 - (d) nationality; and
 - (e) address for purposes of the proceedings.
2. Name and address of person representing the applicant before the Tribunal.
3. Official status of applicant:
 - (a) office/department of which the applicant was a staff member at the time of the decision contested;
 - (b) date of employment;
 - (c) title and level at time of decision contested; and
 - (d) type of applicant's appointment.
4. If the applicant was not a staff member at the time of the contested decision, state:
 - (a) the name, first names, nationality and official status of the staff member whose rights are relied on; and
 - (b) the relation of the applicant to the said staff member who entitles the former to come before the Tribunal.
5. Date of the decision contested.
6. Description of remedies exhausted within the Bank.

II. REQUIREMENTS REGARDING ANNEXES

1. Each document^{1/} shall constitute a separate annex and shall be numbered with an Arabic numeral. The word "ANNEX", followed by the number of the document, shall appear at the top of the first page;
2. The annexed documents shall be preceded by a table of contents indicating the number, title, nature, date and, where appropriate, symbol of each annex;
3. The words "see annex", followed by the appropriate number shall appear in parentheses after each reference to an annexed document in the other sections of the application; and
4. Whenever possible, annexes should be attached in chronological order.

1/ In the event that the original of the document is not submitted to the Tribunal, a copy bearing the words, "Certified true copy" may be submitted, subject to the following requirements:

- (i) The applicant or the representative of the applicant shall certify each document submitted by the applicant by placing his or her signature after the words "Certified true copy";
- (ii) The representative of the Bank shall certify each document submitted by the Bank by placing his or her signature after the words "Certified true copy"; and
- (iii) The originals of these signatures need appear only on the set of documents attached to the original copy of the application but copies of such signatures must appear in the other copies of the document filed with the Tribunal in accordance with Rule 6, paragraph 6.

ANNEX II

FORM OF FIRST SECTION OF APPLICATION FOR INTERVENTION DRAWN UP IN ACCORDANCE WITH ARTICLE VI OF THE STATUTE

Information concerning the personal and official status of the intervenor.

1. Case in which intervention is sought.
2. Intervenor:
 - (a) name and first names;
 - (b) date and place of birth;
 - (c) marital status;
 - (d) nationality; and
 - (e) address for purposes of the proceedings.
3. Name and address of person representing the intervenor before the Tribunal.
4. Official status of intervenor:
 - (a) office/department of which the intervenor is a staff member;
 - (b) date of employment;
 - (c) title and level; and
 - (d) type of intervenor's appointment.
5. If the intervenor was not a staff member at the time of the contested decision, state:
 - (a) the name, first names, nationality and official status of the staff member whose rights are relied on; and
 - (b) the title under which the intervenor claims he or she is entitled to the rights of the said staff member.