



**Practice Directions of the Administrative Tribunal
of the Asian Development Bank**

NOTE: Revised and Incorporated in Paragraph 9 (Time Limits for Filing an Application) under Rule 6, Section III of the Revised Rules of Procedure (as of 1 March 2021).

Practice Direction No. 1
(Issued by the Tribunal on 18 April 2000,
as revised on 25 January 2008)

1. *Article II.3 (b) of the Statute and Rule 6.8 of the Rules of Procedure.* An application will be deemed to have been duly filed with the Executive Secretary of the Tribunal:

- (a) on the day duly signed original and six copies of the application and the annexes thereto are delivered to the office of the Tribunal at the headquarters of the Bank at Manila; or
- (b) on the day a facsimile or electronic message from the Applicant is received at the office of the Tribunal at Manila, containing either the application in its entirety or an extract of the application setting out the "Information regarding the personal and official status of the Applicant's Pleas" (within the meaning of Rule 6); provided that the duly signed original and six copies of the application and the annexes thereto have been duly dispatched, by airmail or by air courier, on or before that date, and the facsimile or electronic message so states; and provided further that the Applicant shall furnish proof of such dispatch.

2. *Rule 8 of the Rules of Procedure.* The Applicant's written reply will be deemed to have been duly filed with the Executive Secretary of the Tribunal:

- (a) on the day the duly signed original and six copies of the reply and the annexes thereto are delivered to the office of the Tribunal at the headquarters of the Bank at Manila, or
- (b) on the day a facsimile or electronic message from the Applicant is received at the office of the Tribunal at Manila, containing the reply in its entirety (with or without the annexes);

provided that the duly signed original and six copies of the reply and the annexes thereto have been duly dispatched, by airmail or by air courier, on or before that date, and the facsimile or electronic message so states; and provided further that the Applicant shall furnish proof of such dispatch.

Practice Direction No. 2 (19 August 2005)

1. This Practice Direction is being issued, without prejudice to Rule 14 **[now Rule 11 of the Revised Rules of Procedure]**, to advise the parties of their right to request a hearing to present oral arguments.
2. Any party may file such a request at any stage of the proceedings provided that the request is made, at the latest, two months prior to the first day of the holding of the next session.
3. Each party shall be given one hour, the Applicant first.
4. Each party shall bear its own expenses. Such expenses are to be included in the costs that may be awarded to the winning party.
5. Nothing in this Practice Direction shall diminish the power of the Tribunal *motu proprio* to order the holding of oral proceedings or to determine the sequence of the proceedings.

NOTE: The provisions have been revised and incorporated in Paragraph 3 (Request for Anonymity) under Rule 6, Section III of the Revised Rules of Procedure (as of 1 March 2021).

Practice Direction No. 3
(19 August 2005)

The Applicant may request that his or her name, or the name of any of his or her witnesses or any person cited in the pleadings, be kept confidential.

The Respondent may request that the name of any of his or her witnesses or any person cited in the pleadings, be kept confidential.

The Tribunal shall decide, *motu proprio* or upon motion by the parties, all matters on confidentiality of names.

NO LONGER APPLICABLE

Practice Direction No. 4
Conduct of Oral Proceedings
(15 August 2008)

1. Opening Statements

Opening statements may be delivered by each side, with the Applicant going first. These statements are mere assertions of what each side intends to prove through witnesses. These statements, which are usually not interrupted, do not constitute proof or evidence.

2. Presentation of Witnesses

- a. *Testimony under Oath or Affirmation.* Witnesses shall take the oath or make an affirmation in accordance with paragraph 2, Rule 15 [now Rule 12 of the Revised] Rules of Procedure. They shall also affirm the truth of the contents of their statements. In the interest of efficiency, it is expected that only persons who have previously submitted their written statements in accordance with the deadlines set by the Tribunal shall be allowed to testify.
- b. *For the Applicant.* If the Applicant wishes to testify as a witness, his representative may examine or ask questions (the “direct examination”). The same will be true for any other witnesses the Applicant may provide. At the conclusion of the questioning of each witness, a representative of the Bank will be provided the opportunity to cross-examine, i.e., ask questions of the witness as well, on the topics of the direct testimony. Thereafter, the Applicant may ask further questions on the topics raised by the Bank and the latter will have an opportunity to re-cross. If the Applicant intends to present the case without representation, he will have the opportunity to make a statement as though he were a witness, and then the representative of the Bank will be provided the opportunity to cross-examine or question him under the same procedure.
- c. *For the Respondent.* Once the Applicant has presented his case through each of his witnesses and any testimony he may wish to offer, the Bank, as Respondent, will have the opportunity to go through the same process with the examination of its witnesses, with the Applicant or his representative being afforded a comparable opportunity to cross-examine each witness.

- d. *Second Opportunity.* The parties may be allowed a second opportunity to present their witnesses (additional “re-direct examination” and “re-cross examination”), if desired.
- e. *Admissibility of Questions.* The Tribunal will rule on the permissibility or appropriateness of any question asked of the witness.

3. Closing Statements

Each side, with the Respondent going first, will have an opportunity to sum up its position and argue what it believes the Tribunal should conclude and rule, based on the evidence presented. If the parties wish or the Tribunal decides to require the parties to submit written statements, arrangements will be made at the close of the hearing for simultaneous submission and exchange.

4. Other Matters

- a. *Written Statements in lieu of Direct Examination.* It is expected that the parties will submit to the Tribunal the written statements of all the persons they intend to present as witnesses, with copies furnished to the other party, within the deadlines set by the Tribunal.
- b. *Questions by the Tribunal.* The Tribunal will leave it to the parties to develop their positions and make their cases through examination, cross-examination, and written documentation. The Tribunal, however, reserves the right to ask questions and call any witness at any point in the proceedings.
- c. *Documentation.* The parties have submitted documents as part of the record of the case. Additional documents may be submitted only by mutual agreement. Any dispute on admissibility shall be decided by the Tribunal.
- d. *Procedural Rulings.* Any issue of procedure or process will be decided by the Tribunal after hearing the views of both parties.
- e. *Witnesses.* The parties have the obligation to ensure the attendance of their witnesses during the scheduled hearing(s).

Practice Direction No. 5
Procedure for Filing of Post-Hearing Memorandum of Each Party
(23 January 2009)

1. The Executive Secretary of the Tribunal shall immediately transmit to the parties copies of the initial draft of the transcript of the stenographic notes upon receipt of the same from the stenographer.
2. The parties may submit to the Executive Secretary separate written comments on the draft transcript within seven (7) days from receipt of the same, with copy furnished to the other party within the same period. The Executive Secretary shall promptly furnish the stenographer with copies of said comments. Thereafter, with or without said written comments, the stenographer shall immediately finalize the transcript.
3. Upon receiving the final transcript of the stenographic notes, the Executive Secretary shall immediately transmit a copy of the final transcript to each party.
4. The parties are given twenty (20) days from the date of receipt of copies of the final transcript to file with the Executive Secretary their respective post-hearing Memoranda (duly signed original and six copies). The original documents marked as exhibits, if any, during the oral proceedings should be attached to the party's original copy of the Memorandum.
5. Any departure from this procedure shall be at the discretion of the President or in his absence, the Executive Secretary.

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