

TERMS OF REFERENCE

OF THE ADMINISTRATIVE TRIBUNAL

Background and Overview

The Administrative Tribunal of the ADB was established by Resolution No. B/BD/97/11 of 16 July 1997 as an independent mechanism for the final resolution of disputes between the Bank and its staff, whose decisions would be final and binding, unlike the Appeals Committee which was established in 1989.

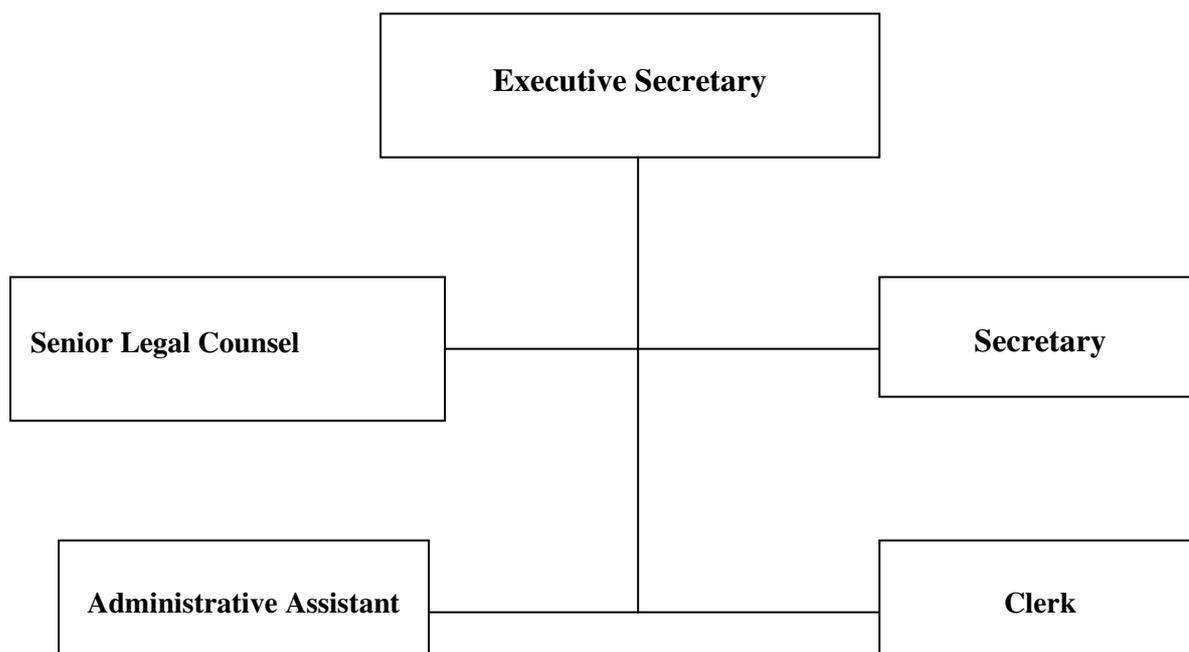
The Administrative Tribunal is directly attached to the Board of Directors (BDIR) Complex. For the administrative aspects of its work, the Tribunal comes under the control of the President's Office. Legally, it is a completely independent body which intervenes between the Bank and its employees. The decisions of the Tribunal are final, binding and without appeal.

Composition

The Executive Secretariat of the Administrative Tribunal is headed by an Executive Secretary who is in charge of the Unit. The President and Judges of the Tribunal are not employees of the Bank but are appointed as consultants on fixed-term contracts.

The Administrative Tribunal of the ADB comprises six (6) judges appointed by the Board of Directors on the proposal of the Bank President after appropriate consultation. They cannot be current or former members of staff or elected officers of the Bank, nor can they become staff members or consultants of the Bank within five years of the end of their service on the Tribunal. Judges are appointed for a three-year term and may be reappointed.

Organization of the Administrative Tribunal



Jurisdiction

The Tribunal is competent to hear and pass judgement upon any application by a member of staff contesting an administrative decision for non-observance of the contract of employment or the terms of appointment of such staff. The matter giving rise to the dispute must have taken place later than 1st January 1998. The Tribunal is also competent to rule on disputes related to payment of salaries, benefits and other allowances, promotion, performance evaluation, termination of service, disciplinary sanctions and harassment.

In accordance with its Statute and Rules of Procedure, the Tribunal's decisions are based on the rules and regulations of the Bank, the Agreement Establishing the Bank, including the President's instructions. In its interpretation of the Bank's internal legal texts, the Tribunal may draw on the jurisprudence of tribunals of other international organizations. It can also apply generally recognized principles of international administrative law and international civil service administrative law for the settlement of disputes over terms of employment for employees of international organizations.

Operations

The Tribunal issues an annual report each year which is submitted to the Board of Directors.

The instruments governing the Tribunal (Statute and Rules of Procedure) and its jurisprudence must be disseminated widely to enable all Bank staff to be better informed.

Procedure

When a staff member receives notification of an administrative act about which he is not satisfied, he may appeal to the Administrative Tribunal. The administrative act may be:

- a dismissal letter without notice by the President;
- a decision of the President or Vice-President following the Report and Recommendations of the Appeals Committee, Disciplinary Committee, Pension Appeals Committee, the Committee on harassment;
- expiry of the 60-day time limit within which the President must respond after receipt of the Report and Recommendations of the Appeals Committee.

Cases are referred to the Tribunal after having exhausted all other administrative remedies available in the Bank and respecting the time limits, or by agreement with the Bank to appeal directly to the Tribunal.

Exchange of Pleadings

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| Application by the staff (Applicant) |
| Transmission by the Executive Secretary to the Bank (Respondent) |
| Bank's Answer |
| Transmission by the Executive Secretary to the staff (Applicant) |
| Applicant's Reply |
| Transmission by the Executive Secretary to the Bank (Respondent) |
| Bank's Rejoinder |
| Transmission by the Executive Secretary to the staff (Applicant) |
| End of exchanges |

Hearings and Decisions

Proceedings before the Tribunal are public and open to all staff. The Tribunal questions both parties and their counsel. Witnesses summoned by the Tribunal on its own initiative or at the request of the parties are heard under oath.

All deliberations of the Tribunal are *in camera*. The judgments are pronounced publicly. They are enforceable and binding on both staff and Management. They are final and without appeal. However, pursuant to its Statute and its Rules of Procedure, the Tribunal may, at the request of one of the parties, revise or interpret its judgments.