

BANK FOR INTERNATIONAL SETTLEMENTS

Administrative Tribunal

Translation

15th July 1987

**RULES OF PROCEDURE**

**SECTION I: GENERAL PROVISIONS**

Article 1

Applicable provisions

1. These rules (the Rules of Procedure) determine the procedure to be followed before the Administrative Tribunal of the Bank for International Settlements (the Tribunal) established pursuant to Article 4, paragraph 2, of the Agreement concluded on 10th February 1987 between the Swiss Federal Council and the Bank for International Settlements (the Bank) to determine the Bank's legal status in Switzerland (the Headquarters Agreement).

2. They shall be subject to the provisions of:

- (a) the Headquarters Agreement;
- (b) the Statute of the Administrative Tribunal established by the Board of Directors of the Bank (the Statute).

Article 2

Field of application

1. The Rules of Procedure shall be applicable in the event of any dispute between the Bank and its officials or former officials or persons claiming through them, with regard to:

- (a) employment relations, with the exception of appointments and promotions;
- (b) rights and obligations in respect of the Bank's pension scheme and other welfare arrangements provided by the Bank.

2. The Rules of Procedure shall also be applicable to advisory opinions which the Tribunal may be called upon to deliver in accordance with Article 13 of the Statute.

### Article 3

#### Plenary sessions

1. The Tribunal shall meet in plenary session (full Tribunal) at the Bank's offices for the purpose of:

- (a) establishing or amending the Rules of Procedure;
- (b) electing the President and the Vice-President of the Tribunal;
- (c) appointing or dismissing the Secretary of the Tribunal;
- (d) delivering advisory opinions;
- (e) agreeing to proposals made by any three-member panel of the Tribunal regarding changes in precedents set by earlier decisions of the Tribunal;
- (f) approving the annual report drawn up by the President.

2. The Tribunal in plenary session shall take its decisions in the presence of all the members of the Tribunal or, if all the members agree, a draft decision may be circulated to all members for their approval.

3. The Tribunal shall take its decisions by a majority vote.

### Article 4

#### President of the Tribunal

1. The President of the Tribunal shall:

- (a) preside over the plenary sessions;
- (b) conduct the proceedings of three-member panels of the Tribunal;
- (c) draw up an annual report on the activities of the Tribunal for the Chairman of the Board of Directors of the Bank;
- (d) perform, in addition, the functions entrusted to him by the Rules of Procedure.

2. If the President is disqualified from hearing a case or is unable to act the Vice-President of the Tribunal shall assume the functions of the President.

Article 5

Secretary of the Tribunal

1. Under the authority of the President, the Secretary of the Tribunal shall:

- (a) receive procedural documents submitted to the Tribunal and forward them to the President;
- (b) act as clerk of the Tribunal;
- (c) attend plenary sessions, meetings of a three-member panel of the Tribunal and preliminary hearings but shall not be entitled to speak or vote;
- (d) keep the minutes of these meetings;
- (e) perform, in addition, the functions entrusted to him by the Rules of Procedure and carry out tasks which the President may assign to him.

2. The Secretary of the Tribunal shall reside in Basle.

Article 6

Disqualification of and objections to members of the Tribunal

1. A member of the Tribunal must consider himself disqualified from hearing a case:

- (a) in matters in which the member himself, his spouse or any relative in the ascending or descending line is directly concerned;
- (b) in matters concerning which he has previously been called upon in another capacity, as adviser, representative, expert or witness on behalf of a party;
- (c) if there exist circumstances such as make the member appear biased with respect to one of the parties.

2. Any member who finds himself so disqualified shall immediately inform the President of the Tribunal.

3. Parties wishing to object to a member of the Tribunal shall address a reasoned written statement to the Secretary of the Tribunal; in the case referred to in clause 1(c) above, this statement must, if it is to be admissible, be sent within ten days of the grounds for objection coming to the knowledge of the parties concerned.

4. A draft decision, together with a summary of the reasons on which it is based, shall be circulated for approval by a panel of the Tribunal consisting, unless they are unable to exercise their functions, of the President, the Vice-President and the eldest of the other members.

Article 7

Official languages

1. In plenary sessions and at meetings of a three-member panel of the Tribunal each member of the Tribunal may express himself in any of the four official languages of the Bank.

2. For sessions of the three-member panel, procedural documents shall be drawn up in the official language in which the application has been drafted, but each party may express himself in the official language of his choice.

3. At the request of a member of the Tribunal or one of the parties, the Secretary shall have procedural documents translated into another official language.

SECTION II: GENERAL RULES OF PROCEDURE

Article 8

Representation of the parties

1. Each of the parties may at any time be assisted or represented before the Tribunal by a representative of his choice who is authorised to represent parties before a court of law in one of the countries whose central bank is represented at the General Meeting of the Bank.

2. The representative shall furnish as evidence of his authority a power of attorney which shall be deposited in the relevant case-file.

Article 9

Procedural documents

1. Six copies of the application, memoranda, requests and other documents for the attention of the Tribunal, or such number as may be determined by the Secretary, shall be sent to the Secretary of the Tribunal.

2. Decisions, rulings, judgments, advisory opinions and other documents for the attention of the parties to the case shall be sent by registered post to each of the parties or their representatives.

## Article 10

### Calculation of prescribed time limits

1. In the calculation of prescribed time limits the day on which the period in question begins shall not be counted; if the last day falls on a Saturday, Sunday or other public holiday the period in question shall expire on the next following business day.

2. The prescribed time limit shall be considered to have been respected if the action has been taken before the time limit is reached.

3. Written documents must reach the Secretary of the Tribunal or be postmarked no later than on the last day of the relevant period.

4. Prescribed time limits are suspended:

(a) from the seventh day before Easter to the seventh day after Easter inclusive,

(b) from 15th July to 15th August inclusive,

(c) from 18th December to 1st January inclusive.

## Article 11

### Extension of prescribed time limits

1. Other than as provided for in clauses 2 and 3 below, the time limits prescribed in the Rules of Procedure may not be extended.

2. An extension for non-compliance with a prescribed time limit or for non-appearance shall be granted on condition that the applicant shows reasonable grounds on which he and his representative were prevented through no fault of their own from taking action or appearing in time.

3. An application for extension must be made within ten days of the date on which the grounds for the delay ceased and the required action shall take place within the same ten-day period.

## Article 12

### Decisions

1. The decisions, rulings and judgments of the full Tribunal, of a three-member panel of the Tribunal, of the President or of a delegated judge as provided for in Article 18, clause 3, shall be final and without appeal.

2. Decisions, rulings and judgments shall take effect as soon as they have been made known to the parties concerned.

3. Clauses 1 and 2 above are subject to the provisions concerning the revision and interpretation of judgments.

Article 13

Revision

1. Either party may, within thirty days of receiving the considered judgment, apply for it to be revised:

- (a) if the provisions of the Rules of Procedure concerning the composition of the full Tribunal or of a three-member panel of the Tribunal (the panel) have not been observed;
- (b) if the panel has wrongfully granted one of the parties either more or something other than he had asked for, or less than the opposing party had acknowledged was due to him;
- (c) if the panel has not ruled on a submission;
- (d) if the panel has neglected to take account of important facts emerging from the case-file.

2. Furthermore, within six months of discovering the grounds for revision, either party may apply for a judgment to be revised if, after the judgment has been delivered by the Tribunal, new facts come to his knowledge which, had they been known at the time of the hearings, might have had a decisive influence on that judgment.

3. The application for revision shall be admissible only if it indicates the grounds for revision and states in what respect the judgment should be revised.

4. A draft decision whether or not to admit the application for revision shall be circulated for approval by the panel, such approval being given, in principle, without any hearings but on the basis of an exchange of written statements and documents. If the application is admitted the panel shall pass judgment on the matter at issue following the usual procedure.

Article 14

Interpretation

1. After hearing the parties the Tribunal shall be empowered to rectify any judgment which contains an obvious clerical or arithmetical error.

2. Either party may, within thirty days of receiving the text of the considered judgment, apply for it to be interpreted or rectified:

- (a) if the terms of the judgment are obscure, incomplete or ambiguous;
- (b) if the terms of the judgment are contradictory in themselves;
- (c) if any of the terms of the judgment are clearly inconsistent with the reasons on which they are based;

(d) if the judgment contains obvious clerical or arithmetical errors.

3. The application shall be admissible only if it states in what respect the judgment should be interpreted or rectified.

4. A draft decision shall be circulated for approval by the panel, such approval being given, in principle, without any hearings but on the basis of an exchange of written statements and documents.

### SECTION III: CONTENTIOUS PROCEDURE

#### Article 15

##### Preliminary request

1. Before instituting proceedings before the Tribunal, the party concerned must, to render his application admissible, have first submitted a request regarding the subject matter of the dispute to the General Manager of the Bank, who shall have a maximum of ninety days in which to reply in writing.

2. The preliminary request shall not be necessary if, of his own accord, the General Manager has given a written decision regarding the subject matter of the dispute.

#### Article 16

##### Application instituting proceedings

1. The application instituting proceedings shall not be admissible, save in exceptional circumstances at the discretion of the Tribunal as provided for in Article 6, paragraph (2) of the Statute, unless it has been filed with the Secretary of the Tribunal within thirty days of receipt of the General Manager's decision or, in the absence of such a decision, within thirty days of the expiry of the ninety-day period referred to in Article 15, clause 1.

2. The application shall contain:

- (a) the name, address and functions of the applicant;
- (b) a description of the subject matter of the dispute;
- (c) the signature of the applicant or his representative.

A copy of the preliminary request and, where applicable, of the General Manager's decision, together with the power of attorney given to the representative, shall be appended to the application.

3. The President of the Tribunal shall set the time within which the applicant must produce his documents and complete his application with a signed memorandum containing the following:

- (a) the submissions of the application;
- (b) a clear statement of the facts supporting the submissions;
- (c) full details of the evidence offered for each fact alleged;
- (d) a numbered list of the documents produced;
- (e) a statement of the legal grounds for the application.

4. If the grounds for or submissions of the application are not sufficiently clear, without the application being obviously inadmissible, the President of the Tribunal shall set a new time within which the applicant must rectify the deficiency.

### Article 17

#### Provisional measures

1. The filing of an application shall not have the effect of suspending any execution of measures relating to the subject matter of the dispute.

2. However, the President of the Tribunal shall be empowered, either at the request of one of the parties or at his discretion, and after having received the application and, save in urgent cases, the observations of the other party, to require such provisional measures to be taken as are necessary to maintain the status quo or safeguard the interests in question.

### Article 18

#### Constitution of the panel

1. After having received the application and the documents and memorandum specified in Article 16, clause 3, the President of the Tribunal shall designate the other two members of the Tribunal who shall, together with him, constitute the panel responsible for judging the case.

2. The President of the Tribunal may request the Vice-President to act as chairman of the panel in his stead.

3. The President may designate one of the other two members of the panel as delegated judge responsible for conducting the preliminary hearings.

4. The parties shall be notified of the composition of the panel, and shall have ten days within which to lodge any objection concerning its composition.



## Article 19

### Summary proceedings

1. The panel may, without any hearings but on the basis of an exchange of written statements and documents and of a draft decision circulated for approval, decide by unanimous vote not to examine the substance of the application if it is manifestly inadmissible or manifestly devoid of all merit.

2. Summary reasons shall be given for the decision as to inadmissibility.

## Article 20

### Exchange of written statements and documents

1. Once the composition of the panel has been finally fixed, the President shall notify the defending party of the application, setting a time limit for him to respond in writing to it, to submit any counterclaim, and to produce documentary evidence.

2. If the application directly affects the interests of third parties themselves entitled to bring an action before the Tribunal, the President shall notify them, too, of the application and set a time limit for them to respond in writing to it and to make any submissions as intervening party.

3. In the event of a counterclaim being received or a submission from an intervening party, the President shall set a time limit for the applicant to respond to it.

4. If the application, the counterclaim or the intervention of a third party raises complex questions of fact or of law, the President may exceptionally call for a second exchange of written statements and documents.

## Article 21

### Preliminary hearings

1. After the exchange of written statements and documents, the President or the delegated judge shall summon the parties to attend the preliminary hearings, indicating which parts of the evidence will be dealt with; he shall request the General Manager of the Bank to transmit to him the personnel file relating to the official in question or the person claiming through that official.

2. The President or the delegated judge shall first discuss the subject of the dispute with the parties and invite them, if need be, to clarify, rectify, simplify or supplement their arguments.

3. The President or the delegated judge shall then proceed to hear the evidence in accordance with rules similar to those laid down in Articles 36 to 65 of the Swiss Federal Code of Civil Procedure.

4. Before bringing the preliminary hearings to a close, the President or the delegated judge shall be empowered, at his discretion or at the request of one of the parties, to call for a further exchange of written statements and documents.

5. The President or the delegated judge may at any time submit to the parties a proposal for a compromise settlement of the dispute.

#### Article 22

##### Main hearing

1. Once the preliminary hearings have been concluded, the President or the delegated judge shall draw up a written report for the members of the panel in the form of a draft considered judgment.

2. The President shall then summon the members of the panel and the parties to attend the main hearing.

3. When it deems it necessary, the panel may itself summon the parties or certain witnesses to attend further hearings; it may also hear fresh evidence.

4. Both parties shall then be invited to state their case.

#### Article 23

##### Decisions of the panel

1. Upon conclusion of the main hearing, the panel shall deliberate and vote in secret.

2. The panel shall take decisions by an absolute majority of its members on each of the terms of the judgment and, if need be, on the main grounds for the judgment.

3. Immediately after the vote, the parties shall be notified of the terms of the judgment.

#### Article 24

##### Delivery of the judgment

1. In accordance with the instructions of the President, the delegated judge or the Secretary shall draw up the full text of the judgment, including a statement of the facts, the submissions put forward by the parties, and the legal grounds for and the terms of the judgment.

2. The full text of the judgment shall then be circulated to the members of the panel for approval.

3. A copy of the final text of the judgment, signed by the President and the Secretary, shall be delivered to each of the parties.

4. The original of the judgment and the case-file shall be placed in the archives of the Bank.

SECTION IV: MISCELLANEOUS PROVISIONS

Article 25

Powers

1. The Tribunal (in plenary session or as a three-member panel) shall be empowered to examine the admissibility of each application and of all procedural documents.

2. It may not go beyond the submissions of the parties to their advantage or disadvantage; it shall not be bound by the reasons put forward by the parties.

3. It may deliver partial judgments.

4. It shall decide upon its own competence and give a ruling on the merits of the case, annulling or modifying, where appropriate, the decision contested.

Article 26

Applicable law

The Tribunal shall base its judgments on general principles of law and, in cases of doubt, the general principles of Swiss law. It shall take into account the customs and traditions of the Bank.

Article 27

Costs and expenses

1. The cost of all proceedings before the Tribunal shall be borne by the Bank.

2. When a party represented by a professional representative succeeds in his claim, an allowance in respect of expenses, to be charged to the Bank, shall be paid to him, which allowance shall reflect the scale applicable in the Swiss Federal Court.

Article 28

Advisory opinions

1. One or more officials, former officials or persons claiming through them, on the one hand, and the General Manager of the Bank, on the other, may at any time agree to ask the Tribunal for its opinion on questions of principle that may arise in an area falling within its competence.

2. The full Tribunal shall give a considered opinion, following, by analogy, the procedure to be followed before the panel.

Article 29

Entry into force

1. The present Rules of Procedure were adopted by the full Tribunal on 15th July 1987; they shall enter into force immediately.

2. Any officials, former officials or persons claiming through them may, at any time, ask for a copy of the Rules of Procedure.