

**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT
ADMINISTRATIVE TRIBUNAL REPORT 2018**

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President of the Administrative Tribunal**

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PART I INTRODUCTION

1. Under section 9.04 of the Appeals Procedures and Rules of Procedures, the President of the Administrative Tribunal is required to submit an annual report addressed to the President of the Bank. The report is to be made available to the Board of Directors and staff of the Bank.

9.04 Annual Report

(a) The President of the Tribunal shall prepare an annual report indicating, in summary form, the Appeals brought before it in the past year, the decisions taken, and the actions of the Bank in implementing those decisions.

(b) Subject to Section 9.03, the report shall maintain the essential confidentiality of all parties involved in Appeals brought before the Tribunal.

The report shall be addressed to the President and shall be made available to the Board of Directors as well as to the staff.

PART II REPORT ON APPEALS SUBMITTED IN 2018 AND ACTIONS OF THE BANK IN IMPLEMENTING THE DECISIONS

4. In accordance with Rule 9.03 (a) all case decisions are published in full (anonymised at the request of the Appellant) on the Bank's website in line with the Bank's commitment to enhancing good governance, openness, transparency and accountability. The link for ease of reference is <http://www.ebrd.com/who-we-are/corporate-governance/administrative-tribunal.html>.

5. The following table presents a schematic overview of each case – the request of appeal, the decision and the action carried out by the Bank. A more detailed summary of each case follows the table.

OFFICIAL USE

Case Reference	Appellant	Request for Appeal by the Appellant against the EBRD (the Respondent)	Tribunal Decision	Action to be taken & confirmed by the Bank	Full summary in paras :
2018/AT/01+04	Anonymised	<p><u>First Appeal (2018/AT/01)</u> The claim concerned an Administrative Decision with regard to the level of Working Incapacity Insurance (WIC), the payment of medical expenses, and a claim for reimbursement of legal costs.</p> <p><u>Second Appeal (2018/AT/04)</u> The same as the First Appeal but submitted a second time as a regulatory challenge.</p> <p><u>Request for Joinder</u> The Appellant requested the joinder of the two appeals.</p>	<p>1) <u>Joinder</u> The Tribunal agreed to the joinder of the two appeals.</p> <p>2) <u>First Appeal and Second Appeal</u> The joined appeals, including all requests for remedy, were rejected for lack of jurisdiction.</p>	None	6-22
2018/AT/02	Andrew George	<p>The Appellant (non-staff member) requested that:</p> <p>1) The Administrative Decision on inadmissibility rendered by the President of the EBRD be quashed.</p> <p>2) The Tribunal declare that the Appellant was a Staff Member of the EBRD.</p> <p>3) The Tribunal order the Respondent to pay a severance payment as well as reimbursement of reasonable legal costs incurred in presenting this Appeal.</p>	<p>The Tribunal decided that:</p> <p>1) The Administrative Decision of the President of the Bank on inadmissibility be annulled.</p> <p>2) The President is required to refer the Appellant's Request for Review of the Respondent's decision to the Administrative Review Committee (ARC).</p> <p>3) The award of the Appellant's legal fees is reserved for future consideration by the Tribunal.</p>	<p>The President referred the request to the ARC. The ARC's report & recommendation was issued 14 March 2019. The President's decision was communicated on 11 April 2019.</p>	23-55
2018/AT/03	Anonymised	<p>The Appellant requested that Sections IV 3 c) and d) of the Directive on the Administrative Review Process be applied analogically so that the appeal be admitted even though the administrative review process had not been carried out.</p>	<p>The Appeal was deemed to be inadmissible as it has not satisfied the requirements of paragraphs (a) and (b) of Rule 4.01 of the Appeals Procedures.</p>	None	36-39

OFFICIAL USE

Case Reference	Appellant	Request for Appeal by the Appellant against the EBRD (the Respondent)	Tribunal Decision	Action to be taken & confirmed by the Bank	Full summary in paras :
2018/AT/05	Anonymised	The Appellant requested the PARD be quashed and compensation for breach of the rules on redundancy and termination.	<p>The Tribunal found that the reorganisation and the termination were lawful.</p> <p>The Tribunal found that the applicable law was violated by poor communication and prolonged processes.</p> <p>The Tribunal ordered the Bank to pay compensation for economic and non-economic losses, as well as one third of the legal costs.</p>	The Bank has implemented the AT decision.	40-52
2018/AT/06	Anonymised	<p>The Appellant challenged the decision to terminate their employment during the probationary period and requested:</p> <ol style="list-style-type: none"> 1) Suspension of the PARD dated 14 September until the RWP complaints had been finally determined. 2) Material and moral damages. 3) Reasonable legal costs. <p>The Appellant also requested an oral hearing and permission to submit additional documentation.</p>	<p>The Tribunal rejected the request for an oral hearing.</p> <p>The Tribunal rejected the request for additional submissions.</p> <p>The Tribunal dismissed the appeal, including all requests for remedy.</p>	None	53-65

EBRDAT 2018/AT/01 and EBRDAT 2018/AT04

First Appeal (EBRDAT 2018/AT/01)

6. The Appellant filed on 11 June 2018 a Statement of Appeal against the President's Decision dated 14 March 2018 on their first Request for an Administrative Review Decision (RARD). The RARD dated 24 November 2017 was referred to the Grievance Committee (GC), who issued its Report and Recommendations on 22 February 2018.

7. The Appellant's Appeal referred to two of the claims in the RARD, which were 1) a claim against the level of Working Incapacity Insurance (WIC) which had been reflected in their payslip dated 24 July 2017, and 2) a claim against the Bank's refusal to pay 100% of their medical expenses.

8. The Appellant requested anonymity.

Second Appeal

9. The Appellant filed on 5 September 2018 a Statement of Appeal against the President's Decision dated 13 June 2018 on the RARD (dated 27 February 2018). The President had deemed this RARD inadmissible as it asserted essentially the same facts and claims as in the first RARD, but on a different legal basis (as a regulatory challenge instead of as a challenge of an individual administrative decision).

10. To consider both Appeals, the President of the EBRDAT appointed a panel consisting of Professor Spyridon Flogaitis (chair), Michael Wolf and Professor Giuditta Cordero-Moss. The final decision was issued on 27 December 2018 after a period of six and half months taking into account the request for the joinder of the appeals.

Joinder of Appeals

11. On 10 September the Appellant requested that the two Appeals be joined. The Bank responded it had no objection to the proposed Joinder. On 12 November 2018 the Tribunal issued a Decision on the Joinder having observed that the Appeals arose out of the same facts, although they presented different legal issues.

12. The two Appeals regarded 1) the Appellant's request that 100% of their salary be paid while on sick leave, because the illness was service-incurred, and 2) the Appellant's

request that the Staff Handbook be amended to permit payment of 100% of salary when the illness is service incurred, and 3) a claim for costs and moral damages for the Bank's insistence on parallel procedures.

13. Following the Joinder Decision, the Respondent submitted its response requesting that both Appeals be dismissed for lack of jurisdiction. Regarding the First Appeal, the Respondent submitted that the Appellant failed to identify a challengeable administrative decision. Regarding the Second Appeal, the Respondent submitted that an appellant may not submit the same matter for review in more than one proceeding.

14. The Tribunal considered the admissibility of the issues raised in paragraph 12.

15. It was noted that the request for reimbursement of medical costs at 100% had been satisfied by the Bank's medical insurer, and consequently withdrawn.

16. In its evaluation of the first claim submitted under the first Appeal, the Tribunal observed that it concerned the Appellant's payslip of 24 August 2018, when their salary was reduced to 70%. The reduction of salary during illness did not violate the terms and conditions of the Appellant's employment and the Tribunal recognised that the Respondent had correctly applied the Staff Handbook. The Tribunal also noted that there is no principle in international administrative law that imposes 100% of salary be paid in case of service incurred illness.

17. The Decision reflected that the majority of the Tribunal is of the opinion that the Appellant had no protected legal interest in this claim.

18. In the evaluation of the second claim submitted under the first Appeal, the majority found that Section 2.01(b) of the Appeals Procedures excludes from the process of administrative review, terms of employment that already existed when an employee enters/red into a working relationship with the Bank. The Tribunal considered that Section 2.01(b) of the Appeals Procedures prevailed over the preamble of Chapter 14 of the Staff Handbook, which states that the review process shall be available for all Administrative Decisions. The Tribunal based this conclusion on the same preamble of

Chapter 14 of the Staff Handbook that says that the Appeals Procedures shall prevail in case of discrepancy.

19. The third claim submitted under the First Appeal requested damages arguing that the Second Appeal was filed as a consequence of the Bank's directions. The Tribunal did not agree and concluded there was no basis to order the Bank to pay costs or damages for having insisted on parallel procedures, as this had not been the case.

20. The Second Appeal was rejected as the Tribunal concluded that it is not admissible to submit a new appeal on an issue that has already been finally decided, not even if the issue is classified according to different parameters.

21. Actions of the Bank in implementing the decision:
No actions directed by the EBRDAT.

22. The Decision was taken by the majority of the Tribunal. The minority had a dissenting opinion, which was published as an annex to the Decision and concluded that the Tribunal should have been able to take jurisdiction over the case and permit the parties to submit briefs on the merits. The minority argued that Annex 14.1 and 14.2 give the Tribunal jurisdiction over all regulatory decisions and that there is no indication in Paragraph 3(d), Section IV or Annex 14.1 that its scope was to be limited by Section 2.01(b) of the Tribunal's rules. The minority also considered the ambiguity of the Bank's rules and the fact that a literal interpretation of Section 2.01(b) of the Tribunal's rule affected the rights of the Appellant to have access to a fair dispute resolution process.

EBRDAT 2018/AT/02

23. The Appellant submitted a Statement of Appeal to the Administrative Tribunal requesting the Tribunal to 1) quash the Administrative Decision rendered by the President of the EBRD, 2) declare that the Appellant was a Staff Member of the EBRD, and 3) order the Respondent to pay a severance payment as well as reimbursement of reasonable legal costs incurred in presenting the Appeal.

24. To consider the Appeal, the President of the EBRDAT appointed a Panel consisting of Boris Karabelnikov (chair), Professor Stanislaw Soltysinski and Professor Giuditta Cordero-Moss. The decision was finalised in three months and 12 days.

25. The Appellant alleged that the Bank improperly did not treat them as an employee and for that reason failed to pay the severance payment due in accordance with the level of the compensation and longevity of work for the Bank.

26. The matter was not previously considered in the course of the Administrative Review Procedures (ARPs), as decisions by the President of the Bank cannot be reviewed in the framework of the Administrative Review process. Those decisions may be appealed directly before the Tribunal, which was the case at hand.

27. The Appellant entered into a Consultancy Agreement on 14 December 2009, which was systematically renewed for a period of circa eight years, until in February 2018, when the Appellant was informed that his contract would not be further renewed. The Appellant was not provided with a formal notice period or a severance package.

28. On 10 April 2018 the Appellant filed a Request for Review of this alleged termination decision in which they requested the Bank to (a) overturn its decision to terminate employment, (b) grant fair treatment under the EBRD Staff Handbook, including payment of a severance.

29. This Request for Review was rejected by the President of the Bank in his Administrative Decision dated 1 May 2018 on the grounds that the Appellant could not be considered a Staff Member of the EBRD and therefore could not avail themselves of the rights set out for staff members. The Bank's response alleged that the Administrative Decision ruled only on the admissibility of the Appellant's Request for Review under the Administrative Review Process.

30. The Bank's response argued that the Appellant's request for remedies sought be rejected in its entirety on the grounds that they were rendering services pursuant to a Consultancy Agreement and could not be qualified as a Staff Member.

31. The Bank submitted that if the Tribunal deemed the Administrative Decision on admissibility unlawful, the legal consequence would be that President of the Bank would be required to refer the Appellant's Request for Review of the Bank's decision not to extend the consultancy contract to the ARC. A determination as to whether or not the Appellant was entitled to a severance package could only be within the scope of that review, and not within the scope of the present Appeal before the Tribunal.

32. The Respondent submitted that the President's Decision was both lawful and correct and invited the Tribunal to dismiss the Appeal in full.

33. In its evaluation of the Appeal, the Tribunal considered 1) the issue concerning the Tribunal's jurisdiction to consider the merits of the Appeal, 2) the Consultancy Agreement and the Consultancy Contract, 3) the Bank's argument that the matter be subject to administrative review, 4) the matters to be considered in the course of the future procedure of administrative review (i.e. whether the Appellant was a *de facto* employee of the Bank or an independent consultant), and 5) legal fees.

34. In its Decision dated 14 December 2018, the Tribunal concluded that 1) the Administrative Decision of the President of the Bank rendering the request by the Appellant inadmissible be annulled, 2) the President is required to refer the Appellant's Request for Review not to renew the consultancy contract and not to consider the Appellant to be a *de facto* employee of the Bank to the ARC, 3) the award of the Appellant's legal fees is reserved for future consideration by the Tribunal.

35. Actions of the Bank in implementing the decision:

The President referred the request for review of the decision not to renew the consultancy contract and not to consider the individual a *de facto* employee to the ARC as directed by the EBRDAT. The ARC reviewed the request and provided their Report & recommendation to the President on 14 March 2019. The President's Decision was issued on 11 April 2019.

EBRDAT 2018/AT/03 - Inadmissible

36. A Statement of Appeal was received by the Administrative Tribunal Secretariat on 1 June 2018. Pursuant to paragraph (e) (iii) of Rule 4.01 of the Appeals Procedures, the

Appellant was notified on 3 July 2018 that the submission does not constitute a Statement of Appeal and cannot be accepted as filed.

37. The Appellant had not carried out the administrative review process, which is an assumption for admitting appeals pursuant to article 2.01(a) of the Appeals Procedures.

38. According to Sections IV 3 c) and d) of the Directive on the Administrative Review Process, decisions by the President and certain other decisions cannot be reviewed in the frame of the Administrative Review Process. These decisions may be appealed directly before the Tribunal. The Appellant's appeal was against a decision by the Chair of the Audit Committee, and was not covered by Sections IV 3 c) and d) of the Directive on the Administrative Review Process. However, the Appellant requested that Sections IV 3 c) and d) of the Directive on the Administrative Review Process be applied analogically. The President of the Tribunal, after having given both parties the possibility to comment, dismissed the Appeal as inadmissible pursuant to Rule 4.01 (e) of the Appeals Procedures. According to this provision, "[t]he President of the Tribunal shall promptly ascertain whether the Statement of Appeal satisfies the requirements of paragraphs (a) and (b)." In particular, paragraph (a) states that "[t]he Statement of Appeal shall be in the form attached as Annex A to these Rules." Annex A No 4 requires that an appeal include information regarding, "where applicable, the Administrative Review Decision being challenged, and the authority responsible for the decision."

39. The President of the Tribunal found that the Appeal did not satisfy the requirements contained in paragraphs (a) and (b) of Rule 4.01 of the Appeals Procedures. In particular, the appeal did not comply with Annex A No 4 to the Rules. In order to comply with this requirement, the Appellant should have sought and obtained an Administrative Review Decision, before filing the appeal. The President of the Tribunal found that, without a legal basis for applying them to cases that are not included in their scope of application, Sections IV paragraphs 3 (c) and (d) of the Directive on the Administrative Review Process may not be applied to decisions not listed therein.

EBRDAT 2018/AT/05

40. The Appellant submitted a Statement of Appeal on 4 December 2018.

41. To consider the Appeal, the President of the EBRDAT appointed a Panel consisting of Michael Wolf (Chair of the Panel), Professor Giuditta Cordero-Moss and Christopher de Cooker. The decision was rendered on 7 March 2019.

42. The Appellant commenced employment with the EBRD on 20 December 2011 and as from 15 April 2015 was located in Tbilisi, Georgia. Following a reorganisation plan of the SMEFD group, which was announced 12 January 2018, the Appellant was duly informed that the restructuring would involve a change in job description, a transfer of the Appellant's role to a different unit and that the Tbilisi office would be closed. The Appellant was informed that their application for the reassigned post had been prioritised but due to the responsibilities of the new position being substantially different, they would be interviewed to assess their suitability. Following an interview on 27 April 2017, the Appellant was provided with a written assessment on 7 July 2017 concluding non-suitability for the role. The Appellant provided additional information to support suitability, which was assessed but did not change the view of the assessment panel. This was only communicated to the Appellant on 29 September 2017, when the MDHR informed the Appellant that the conclusions of the accessibility report had been accepted and that they were being given advance notice of redundancy effective 31 December 2017. The Bank advised it would however make reasonable efforts to reassign the Appellant to another suitable position in the Bank.

43. In October and November 2017 following various interventions by the Appellant and HR, including *ex officio* desktop reviews by the HRBP, as well as the Appellant applying for other vacant positions, no suitable opening was found and HR informed the Appellant of the conditions of the mutually agreed separation on 23 November 2017.

44. The Appellant filed a RARD on 26 April 2018 challenging the Bank's redundancy and termination decisions, which was referred to the ARC by the President of the Bank. In the RARD the Appellant claimed loss of opportunities caused by guidance received with regard to the reassignment and delays in communicating the outcome of suitability for the

restructured role and sought monetary compensation for economic and non-economic losses, as well as reimbursement of reasonable legal costs.

45. The ARC issued its report on 14 August 2018, which recommended partial relief for the Appellant but denied the challenge to the Bank's redundancy and termination decisions.

46. The Bank's President issued his PARD on 13 September 2018 in which he accepted the ARC report and recommendation to a) uphold the Appellant's termination; b) award the Appellant an additional severance payment and repatriation allowance; c) award 50% of the Appellant's legal costs; and d) deny the Appellant's request for material and moral damages.

47. The Appellant filed a Statement of Appeal on 4 December 2018, which a) accepted those parts of the President's decision that were favourable, b) challenged the substance and procedures of the redundancy and termination decisions, and c) contested the denial of the damages. The Appellant also sought recompense for financial losses, loss of career opportunity and for the infliction of psychological trauma for the unfair and delayed handling of the termination of her unemployment.

48. The Appellant requested an oral hearing to present witness testimony. However the Tribunal concluded that was no reason to hold a hearing in this case in accordance with Article 7.01(b) of the APs.

49. In its consideration of the factual background of the case, the Tribunal took full account of the ARC's findings in its Report and Recommendations, but in accordance with Section Article 7.01(b) of the APs it noted it is not bound by the ARC's interpretations of the facts or conclusions drawn from the facts.

50. The Tribunal concluded that the reorganisation in SMEFD and the abolishment of the Appellant's position as part of the reorganisation were undertaken in good faith and for legitimate business reasons. The assessment panel's determination that the Appellant was not suitable was considered reasonable. However, poor communication together with the long process utilised to reach that decision were considered to be unreasonable.

Moreover, the delays impaired the Appellant's ability to seek other employment, which had concrete and material consequences.

51. Accordingly, the Tribunal concluded that the Appellant is entitled to receive three months' salary for the economic and non-economic losses. As the Appellant has partially prevailed in their claims, the Tribunal directed the Bank to reimburse one third of the final accounting by the Appellant's counsel.

52. Actions of the Bank in implementing the decision:
The Bank has implemented the Tribunal's decision.

EBRDAT 2018/AT/06

53. The Appellant submitted a Statement of Appeal on 7 December 2018 challenging the President's Decision rendered on 14 September 2018. The challenged President's Decision endorsed the ARC report and recommendations following the Appellant's RARD, which was in regard to the Respondent's decision to terminate the Appellant's employment during the probationary period. The Appellant requested anonymity.

54. To consider the Appeal, the President of the EBRDAT appointed a Panel consisting of Professor Giuditta Cordero-Moss (Chair of the Panel), Professor Spyridon Flogaitis and Maria Vicien Milbun. The decision was finalised in two months and 13 days.

55. The Appellant also submitted in the Statement of Appeal that the object of these proceedings is connected to another second review proceeding (ARC/35/2018) concerning two reports of improper behaviour, which had been decided upon by the MDHR under the Respectful Workplace Procedures. The Appellant subsequently submitted an RARD and the ARC report recommended the matter be referred to investigation under the Bank's Conduct and Disciplinary Rules and Procedures (RWPs), which was endorsed by the PARD dated 4 September 2018.

56. The Appellant requested relief for 1) Suspension of the PARD dated 14 September 2019 (ARC/33/2018) and associated time limits until the RWP complaints had been finally determined; 2) Material and moral damages appropriate for the procedural irregularities, breaches of contract, the loss of career opportunity, and the unfair and

injurious handling of the Appellant's termination by the Bank, and 3) reasonable legal costs. The Appellant also requested an oral hearing and permission to submit additional documentation.

57. The Respondent argued that the decision to terminate the Appellant's employment during the probationary period was a lawful and legitimate exercise of managerial discretion, based on the evidence that the Appellant was unable to perform at the required level expected of someone in that position, and requested that the Appeal be dismissed in its entirety.

58. The Tribunal evaluated the following in its deliberations: 1) the request in the Statement of Appeal for an oral hearing, which it rejected in its decision on 9 February 2019 and 2) the request on 16 January 2018 of additional submissions following the Bank's response, which it also rejected on 9 February 2019.

59. In its evaluation of the request for an oral hearing, the Tribunal noted that pursuant to Section 7.02(a) of the AP, an oral hearing may be held in exceptional cases, but it concluded that the Appellant did not provide an explanation or evidence of any exceptional circumstances.

60. The Tribunal considered the Appellant's request for additional submission, which was based on i.a. 1) the Appellant contesting the Bank's response on some points, and 2) that the Response allegedly raised new points. The Tribunal noted that Article 6.03(b) provides only for one exchange of submission and any additional exchange is limited to submission of new evidence. It subsequently concluded that the Appellant did not submit sufficient reasons to depart from the general rule that the Tribunal shall decide on the basis of one exchange of submissions.

61. The Tribunal relied on the findings of fact in the ARC Report pursuant to Article 7.01 (a) of the AP. It took due note of the Appellant's disagreement on the interpretation of the facts in the report, but the Tribunal was of the opinion that this was not a sufficient basis to depart from the general rule laid down in Article 7.01 (a) of the AP.

62. The Tribunal deliberated the procedural aspects of the decision to terminate the Appellant's employment during the probationary period and concluded that the applicable law (Staff Regulations, the Staff Handbook and general principles of international administrative law) had been applied, and that the decision taken by the Bank was the exercise of its discretionary rights and the procedure applied was taken in compliance with the applicable law. The Tribunal therefore found that the Appellant did not have a legitimate expectation to remain in employment until the expiry of the probationary period.

63. The Tribunal observed that the issues raised by the Appellant in relation to the Respondent's alleged misconduct were the subject of separate proceedings. On the basis of the description of the RWP reports made by the Appellant in the Statement of Appeal, the Tribunal concluded that the allegations concerned decisions that were made by an employer based on its own evaluations regarding organisation and other circumstances. The Appellant did not substantiate the allegations with regard to whether or not managerial discretion had been exercised in an abusive or discriminatory way and, on this basis, the Tribunal deemed that there was no basis to suspend the President's Decision pending the investigation regarding the Appellant's RWP reports.

64. The Tribunal dismissed all requests made by the Appellant. However, the Tribunal endorsed the recommendations made in the ARC Report. In particular, the Tribunal recommended that, where a recommendation is being made to the MDHR that a probationer's employment should be terminated, especially in circumstances where it is to be terminated early, the probationer should be given an opportunity to "*plead their cause*" prior to the MDHR taking a final decision. Furthermore, the Tribunal recommended that the Bank should decide whether the procedure set out at section 4.18.2 should apply to probationers or expressly exclude it from applying. Finally, the Tribunal recommended that all probationers are subject to regular formal review during the probationary period (without prejudice to the rights of the Bank to terminate a probationer's employment early in the probationary period for good reason), in order that they are clear whether their performance is acceptable and what they need to do in order to be confirmed in post

65. Actions of the Bank in implementing the decision:

The Bank has duly considered recommendations made by the EBRDAT in issuing its decision and included them in relevant guidance materials maintained by Human Resources and Organisational Development Department (HROD).

PART III INFORMATION REGARDING THE ADMINISTRATIVE TRIBUNAL, ITS COMPOSITION AND ITS ACTIVITY

66. On 23 March 2006, the Board of Directors approved the *Review of the Grievance and Appeals Procedures (BDS06-039 final)*, and on 25 July 2006 it approved the implementation of the Appeals Procedures (BDS06-132 and BDS06-132(rev1)). The Appeals Procedures became effective on 3 December 2007 upon the appointment of the judges of the Administrative Tribunal.

67. Section 2.02 of the Appeals Procedures provides as follows:

The Tribunal shall consist of five members, all of whom shall be nationals of different member states of the Bank.

The members shall be persons of high moral character and possess the qualifications required for appointment to high judicial office or be lawyers or arbitrators expert in the areas of employment relations, international civil service or the administration of international organisations

No member shall be a current or former staff member or officer or current or former member of the Board of Directors or Board of Governors.

The members of the Tribunal shall be appointed by the Board of Directors on recommendation of the President after consultation with the Vice President responsible for Human Resources, the General Counsel and the Staff Council. The President may also appoint a selection committee to assist him to identify the recommended appointees. The members of the Tribunal shall serve for a term of three years (except for the first five members whose terms will be staggered as follows: three for two years and two for three years) and may be re-appointed.

68. Appointments, re-appointments and resignations are submitted to the Board of Directors for approval – details of the documentation can be found in Annex 1
69. At the time of the President of the Administrative Tribunal’s last report dated 4 May 2018, the composition of the Administrative Tribunal was as follows:¹
- Professor Giuditta Cordero-Moss: appointed on 3 December 2007 with an end date of 2 December 2018
- Professor Stanislaw Soltysinski: appointed on 3 December 2007 with an end date of 2 December 2018.
- Boris Karabelnikov: appointed on 3 December 2007 with an end date of 2 December 2018
- Professor Spyridon Flogaitis: December 2016 - ongoing (current appointment end date is 2 December 2019)
- Michael Wolf: December 2016 - ongoing (current appointment end date is 2 December 2019)
70. On 2 December 2018 the Letters of Appointment for Professor Stanislaw and Mr Karabelnikov were not renewed. The Letter of Appointment for Professor Cordero-Moss was renewed until 2 December 2020 and she continues as President of the Administrative Tribunal.
71. On 3 December 2018, Christopher de Cooker and Maria Vicien Milburn were appointed until 2 December 2021.
72. The Administrative Tribunal did not convene in 2018.
73. The Administrative Tribunal is assisted in its work by the AT Secretariat, who is appointed by the President of the Bank. The function of the AT Secretariat is documented in the Appeals Procedures and Rules of Procedure.
74. There have been no amendments to the Appeals Procedures and Rules of Procedures during the period in question.

¹. The résumés of judges can be found in Annex 2.

PART IV CONCLUSION

75. As was pointed out in the Administrative Tribunal's report for the years 2008-2017, it is important to ensure that the Administrative Tribunal's decisions are informed by a state-of-the-art understanding of all relevant elements, and that they are consistent. Consistency of the decisions is particularly important to ensure predictability and legal certainty.

76. The Administrative Tribunal recognises the importance of meeting periodically with the representatives of the Bank's Board and Management the Staff Council, the Ombudsman and the Administrative Review Committee. A visit to the Bank by the Tribunal will take place in May 2019.

77. In the course of the period in question, several issues were discussed within the Tribunal in plenum for the purpose of ensuring consistency of decisions in matters of general relevance. The discussion took place using means of electronic communication. Among the discussed issues are: (i) Whether an oral warning may be deemed to be an administrative decision, (ii) Whether decisions by the Chair of the Audit Committee may be subject to the same regime for administrative review as decisions by the President of the Bank, (iii) The Tribunal's jurisdiction on individual decisions that do not amend or violate the internal law, (iv) under what conditions an oral hearing may be organised, (v) under what conditions additional submissions shall be requested or allowed, and (vi) the advisability of requesting that the ARC transmit all documentation that were submitted to it during the Administrative Review Process.

78. On the basis of the foregoing, the President of the Administrative Tribunal confirms the advisability that the judges periodically meet representatives of all stakeholders in the administrative review process, and that they convene yearly to discuss procedural matters and other issues, with a view to ensure competent exchange and a consistent practice.

ANNEX 1 BOARD DOCUMENTATION DOCUMENTING APPOINTMENTS, RE-APPOINTMENTS AND RESIGNATIONS OF JUDGES SERVING ON THE ADMINISTRATIVE TRIBUNAL DURING 2018

09/11/2018 BDS18-212 [Appointment of three members of the Administrative Tribunal:](#)

Professor Cordero-Moss (3 December 2018 - 2 December 2020)

Christopher De Cooker and Maria Vicien-Milburn (3 December 2018 - 2 December 2021)

11/11/2016 BDS16-214 [Appointment of two members of the Administrative Tribunal:](#)

Michael Wolf and Professor Spyridon Flogaitis (3 December 2016 - 2 December 2019)

13/01/2016 BDS16-009 [Re-Appointment of three members of the Administrative Tribunal:](#)

Professor Giuditta Cordero-Moss, Professor Stanislaw Soltysinski, Boris Karabelnikov (3 December 2015 - 2 December 2018)

ANNEX 2 CURRICULA VITAE OF JUDGES SERVING ON THE ADMINISTRATIVE TRIBUNAL DURING 2018

Prof Giuditta Cordero Moss (Norwegian), President of the EBRDAT, Dr. juris (Oslo), PhD (Moscow), is professor of International Commercial Law, Private International Law and International Commercial Arbitration at the University of Oslo. An originally Italian lawyer, she practiced as a corporate lawyer and acts now as arbitrator in international commercial and investment disputes. In her academic work and as an arbitrator, she deals among other things with questions of labour law, including questions of applicability of rules protecting the employee. She is, among other things, Vice Chairman of the Board of the Financial Supervisory Authority of Norway (since 2014), member of the Norwegian Tariff Board (since 2015), delegate for Norway at the UNCITRAL Working Group on Arbitration (since 2007).

Mr Michael Wolf (American) has been an arbitrator and mediator since 1995, specializing in labour, employment and securities disputes. He currently serves as the Chair of the International Monetary Fund Grievance Committee and as Chair of the Board of Appeal for the Pan American Health Organization. He was previously Chair of the US Government Accountability Office Personnel Appeals Board and a member of the District of Columbia Employee Appeals Board. Prior to his service as an arbitrator, Mr. Wolf was in the private practice of law, specializing in labour, employment and securities litigation; he also served six years with the US Department of Justice supervising the prosecution of Nazi war criminals. He is the co-author of the book *Religion in the Workplace: A Comprehensive Guide to Legal Rights and Responsibilities*.

Prof Spyridon Flogaitis (Greek) is Professor of Administrative Law at the Faculty of Law, University of Athens, Director of the European Public Law Organization, Athens, Greece and Visiting Fellow at Wolfson College, University of Cambridge. He currently is Vice-President of the European Space Agency's Appeals Board, a member of the European Organisation for the Exploitation of Meteorological Satellites' Appeals Board as well as a member of the European Centre for Medium-Range Weather Forecasts' Appeals Board. He is a former President of the United National Administrative Tribunal. Also, Prof. Flogaitis is Attorney at Law at the High Court and the Council of State, Greece and Academic Bencher of the Inner Temple, London. He has served three times as

Minister of Interior or Alternate Minister of Foreign Affairs in electoral periods in his country.

Mr Chris De Cooker (Dutch) has more than forty years of direct experience in international administrative law. He was an academic for 9 years at the University of Leiden, where he developed a special course on international administration. Between 1984 and 2011 (when he retired), Mr. De Cooker worked at the European Space Agency in a number of posts, including Head of Staff Regulations and Central Support Division and Head of International Relations Department. Since 2010, he has been a judge at a number of international arbitration and administrative tribunals, namely the President of the NATO Administrative Tribunal since 2013 and a judge at the Asian Development Bank Administrative Tribunal as well as Chair of the Appeal Board of the Global Fund and Mediator in ITER to name but a few. He has been advising many international organisations on their respective internal justice systems

Ms Maria Vicien-Milburn (Spanish and Argentinian) is an independent international arbitrator, specialist in public international law with extensive dispute resolution experience in arbitration, conciliation and negotiation. She has over 30 years' experience as a senior international civil servant at the United Nations. She was the General Counsel of the United Nations Economic, Social and Cultural Organisation (UNESCO) between 2009 and 2014, when she retired. Prior to that, she was the Director of the General Legal Division, Office of the Legal Advisor of the United Nations and Deputy Director of the same division, and had served for 14 years as the Registrar of the United Nations Administrative Tribunal. She has recently been appointed to the Internal Advisory Oversight Board of the World Intellectual Property Organisation. She has also been engaged by the International Criminal Court on a short term assignment as a dispute resolution expert.

Mr Boris Karabelnikov, independent practitioner, specializing in litigation of civil, corporate and labour law cases before Russian arbitration courts and courts of common jurisdiction and international arbitration. From 2007 to 2017 Professor of Law at the Moscow School of Social and Economic Sciences. From May 2008 till May 2013 he was a member of the Court of LCIA; since 2012 till 2014 he was a member of the drafting subcommittee of the 2014 LCIA Rules. Advised leading Western Law firms on various

matters of Russian law, including labour law disputes with highly ranked officials of banks and collective bargaining; was appointed as an arbitrator in over 50 arbitration cases in Russia, France, England and Sweden; appeared as expert witness before courts of Bermuda, England, Sweden, Germany, the Netherlands and USA and various arbitral tribunals. He authored the first ever Russian language commentary to the 1958 New York Convention, On Recognition and Enforcement of Foreign Arbitral Awards, and textbook for law students on international commercial arbitration, as well as several books on Russian labour law.

Professor Stanisław Soltysiński as practiced arbitration as an arbitrator and a party counsel in more than a hundred arbitration cases administered, inter alia, by arbitration courts in Warsaw, London, Vienna, Paris and Budapest. He specializes in the field of commercial law, intellectual property, company law and antitrust law. He authored 15 books and more than 300 papers published in Polish, English, German, French and Korean. He retired from A. Mickiewicz University (Poznań). He was teaching as a visiting professor at Pennsylvania University, College of Europe (Brugge) and Goethe University (Frankfurt am Main). He was a member of UNIDROIT Governing Council. At present, he practices law in his Polish law firm and among other things serves as a member of the European Model Company Act Group (EMCA), European Company Law Experts (ECLE) and the Supervisory Board of the Citi Handlowy Bank.

ANNEX 3 GLOSSARY OF TERMS

Appeal	Statement of Appeal
APs	Appeals Procedures
ARC	Administrative Review Committee
EBRD	European Bank for Reconstruction and Development
EBRDAT	EBRD Administrative Tribunal
HRBP	Human Resources Business Partner
ILOAT	Administrative Tribunal of the International Labour Organisation
IMF	International Monetary Fund
LM	Line Manager
MDHR	Managing Director Human Resources
OCCO	Office of the Chief Compliance Officer
PARD	President's Administrative Review Decision
RRAD	Request for review of an Administrative Decision
ROPs	Rules of Procedure
RWPs	Harassment Free and Respectful Workplace Procedures
Tribunal	EBRD Administrative Tribunal
VPHR	Vice President responsible for Human Resources
WBAT	World Bank Administrative Tribunal