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# UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL



Distr.  
LIMITED

E/CN.14/ADB/46  
11 June 1964

Original: ENGLISH



## DRAFT REPORT CONCERNING THE TERMS OF SERVICE OF GOVERNORS AND DIRECTORS OF THE AFRICAN DEVELOPMENT BANK AND THEIR ALTERNATES

(prepared by the Executive Secretary)

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ABBREVIATIONS

ADB Agreement	Agreement Establishing the African Development Bank.	
IBRD	International Bank for Reconstruction and Development	) as well as the constituent instruments establishing these institutions.
IFC	International Finance Corporation.	
IDA	International Development Association.	
IADB	Inter-American Development Bank.	
ADB/GR	Draft General Regulations of the ADB.	) doc. E/CN.14/ADB/45
ADB/GR/RP	Draft Rules of Procedure of the Board of Governors of the ADB.	
ADB/BD/RP	Draft Rules of Procedure of the Board of Directors of the ADB	
IBRD/BG/RP ) IBRD/BD/RP ) IADB/BG/RP ) IADB/BD/RP )	The symbols "BG", "BD", "RP" stand for "Board of Governors", "Board of Directors" and "Rules of Procedure", respectively.	
the Report	Draft Report concerning the Terms of Service of Governors and Directors of the African Development Bank and their Alternates.	

DRAFT REPORT CONCERNING THE TERMS OF SERVICE OF GOVERNORS AND  
DIRECTORS OF THE AFRICAN DEVELOPMENT BANK AND THEIR ALTERNATES

INTRODUCTORY NOTE

by the

Executive Secretary

1. The present document, submitted to the Committee of Nine for consideration, consists of two parts: The first represents a Draft Report on the subject in issue which, it is suggested, the Committee should request the Executive Secretary to transmit to the Board of Governors of the ADB at its first meeting. The second contains - in form of an Annex to that Report - annotated Draft Regulations of the ADB on the Terms of Service of Governors, Directors and their Alternates.

2. The Draft Report attempts to summarize certain passages set out in a discussion paper (doc. E/CN.14/ADB/37 Add. 4) which the Committee had before it at its third session (Tunis, 16 to 20 March 1964), the considerations which guided the Committee in discussing this paper, as well as their conclusions (cf. doc. E/CN.14/ADB/41/Rev.1, paras. 11 and 12).

3. The Draft Regulations are designed to give legal expression to these conclusions and to develop them as regards certain technical questions - such as the reimbursement of "designated services"; limitation of reimbursement in case of contemporaneous meetings etc; currency of reimbursement payments; Temporary Alternates, etc. Rules regarding such technical issues are tentatively suggested. They are commended to the special attention of the Committee.

DRAFT REPORT CONCERNING  
THE TERMS OF SERVICE OF  
GOVERNORS AND DIRECTORS OF THE AFRICAN DEVELOPMENT BANK AND  
THEIR ALTERNATES

(prepared by the Executive Secretary)

1. Under the terms of para. 1 (c) of resolution 3 on Preparatory Work for the Establishment of the African Development Bank, adopted by the Conference of Finance Ministers in Khartoum at its final plenary session on 4 August 1963, the Committee of Nine was requested to draft for the ADB, among others, the General By-Laws of the Bank as well as other legal instruments which may promote the effective commencement of its activities.
2. In compliance with this mandate the Committee of Nine has submitted to the ADB a Report on the General By-Laws annexed to which are annotated drafts of three basic instruments for the operation of the Bank: The Draft General Regulations of the ADB, the Draft Rules of Procedure of the Board of Governors of the ADB, the Draft Rules of Procedure of the Board of Directors of the ADB (doc. E/CN.14/ADB/45).
3. While preparing the drafts of these instruments, the Committee has carefully examined the prospective terms of service of Governors and Directors of the ADB and their Alternates. It has noted that such terms are included in the By-Laws of the IBRD, IFC, IDA and IADB and the Rules of Procedure of the Board of Executive Directors of the IADB. The Committee, however, does not think it advisable to follow this precedent. Neither private financial institutions nor most of the other inter-governmental organizations adopt this practice in their General Regulations or By-Laws. Accordingly, the Committee proposes that the relevant rules should form part of separate administrative Regulations of the Bank (cf. *ibidem*, paras. 6 and 7). In conformity with Art. 29(2)(d) of the ADB Agreement, these Regulations should be adopted by the Board of Governors of the Bank.
4. As to the substance of the terms of service, the Committee of Nine recalls that under the ADB Agreement each Member of the Bank must appoint one Governor and one Alternate Governor. They must be nationals of Member States and, as a rule, serve for five years. They serve without remuneration from the Bank, but the latter may pay them reasonable expenses incurred in attending meetings. As regards the latter, the ADB Agreement distinguishes between "annual" and "other" meetings of the Board of Governors (Arts. 30 and 31).

5. The Directors of the Bank are elected by the Board of Governors for a term of three years. And although each Director appoints his Alternate, they must be nationals of different Member States. The remuneration of both is determined by the Board of Governors (Arts. 29(2)(d) and 33).

6. The Committee feels that in view of the generality of the language of the relevant provisions of the ADB Agreement the Bank has a wide discretion in adopting terms of service for its Governors, Directors and their Alternates which should be particularly suitable to the requirements of an African institution, to its resources and to existing availabilities. Such terms will be different from those in operation for similar international financial agencies not only as regards the figures proposed but as regards the very principles on which the terms are based. It is in the light of this that the Committee examined the question as to whether the ADB should reimburse reasonable expenses incurred both by the Governors and their Alternates; the need for the Directors and their Alternates to take up residence at the location of the Principal Office of the Bank; the questions whether they should receive remuneration and on what basis they should be entitled to the reimbursement of expenses incurred in the performance of their duties on behalf of the ADB; etc.

7. Thus, the Committee does not recommend that the ADB should follow either the IBRD, IFC and IDA or the IADB as regards their practice of reimbursing expenses incurred by their Governors and their Alternates in attending their meetings. Instead, it proposes a solution particularly adapted to the early financial availabilities of the ADB.

8. Governors and Alternates of the IBRD, it will be recalled, serve as such "without compensation from the Bank", but the Bank must pay both of them reasonable expenses incurred in attending meetings (Art. V(2)(g)). The By-Laws stipulate that both of them are entitled to receive their "actual transport expenses to and from the place of meeting" and, furthermore, US \$50 for each night which attendance at meetings requires them to spend away from their place of residence, the amount being reduced to US \$10 where accommodation is included in the cost of transport (s.14(a)). In the IADB, on the other hand, though under its constituent instrument reasonable expenses incurred by its Governors and their Alternates in attending its meetings may be reimbursed, its By-Laws actually provide that such expenses "shall be paid by their respective countries" and not by the Bank (s.3(a)).

9. In arriving at its own recommendations, the foremost consideration of the Committee of Nine has been that, while the ADB may follow a more generous policy in later years, its limited revenue from its capital resources in the initial period makes it incumbent on it to adopt the most stringent rules at the beginning of its existence. The Committee favours therefore a regime under which

each Member Government should defray the cost of the attendance of its Governor and his Alternate at the annual meetings of the Board of Governors. The Bank should, however, reimburse reasonable expenses incurred by a Governor or, in his absence, by his Alternate in attending "other" meetings of that Board (see Art. 31, ADB Agreement; Rule 1, ADB/BG/RP). The reason is that the agenda for such meetings may be limited to issues that are prima facie concerned with some specific Member country but that it would be in the general interest of the Bank to ensure large representation of its Members at those meetings.

10. Again, as regards the Directors of the ADB and their Alternates, the Committee of Nine proposes a regime for the time being which differs from the rules applied in this respect by the IBRD, IFC and IDA or by the IADB and is dictated by the actual requirements of Africa. While the rules of the former three agencies on the one hand and of the IADB on the other differ in some important aspects, all of them are based on the principle that remuneration from the institution concerned is due to at least either the Executive Director or his Alternate. (In the IBRD, the periods of service of the Executive Director and his Alternate are, as a rule, mutually exclusive; in the IADB, remuneration for concurrent service is not ruled out). The Committee did not feel that the ADB should be guided by this principle.

11. It examined, in the first place, whether from the point of view of the ADB Agreement or because of the actual requirements of the Bank it would be necessary for its Directors or Alternates to reside at the place of its Principal Office. The Agreement provides that the Board of Directors "shall function in continuous session" and "shall meet as often as the business of the Bank may require" (Art. 34 (1) ). The interpretation of this provision is not free from doubt, yet it should be recalled that Note 1 thereto in the Annotated ADB Agreement, on the basis of which the Conference of Finance Ministers in Khartoum approved this rule, explicitly stated: "It is suggested that, in the first years of the existence of the Bank, the Board of Directors may prefer to meet, say, at monthly or - throughout part of the year - even longer intervals and therefore not require that all Directors should reside at the place of the Principal Office of the Bank" (doc. E/CN.14/FMAB/4 Add.1). It may be also noted that the IBRD and IADB rules, which are similar on the subject in issue, do not require their Executive Directors and Alternates, not even one of them, to be resident at the seat of the respective institution. Finally, it should also be borne in mind that the practice of the IBRD, under which most Executive Directors reside at the place of its Principal Office, is influenced by both the facts that the seat of the International Monetary Fund and large-sized diplomatic missions are located at the same place and that the Executive Directors may be part of such missions or represent their Governments at the Fund. It cannot be doubted that these facts affect the place of residence of the Directors concerned.

12. It is, however, not legal considerations nor the practice of other international financial institutions that, in the view of the Committee should determine the issue but the prospective tasks of the Board of Directors and the stark exigencies of Africa. Thus, the Committee thinks that, in the early stages of the Bank at least, it will be unnecessary for its Directors or their Alternates to reside at the place of its Principal Office, though in the light of experience this policy might be changed. This conclusion is prompted by the fact that in its early days the Bank will be concerned mainly with its administration and organization rather than with banking operations, as well as by the fact that Governments will probably be reluctant to release their highly-qualified officials for permanent service outside their countries. And it should not be forgotten that "high competence in economic and financial matters" is required for the office of a Director (Art. 33(1), ADB Agreement).

13. If this solution - consistent with the provisions of the ADB Agreement (see also Rules 1 and 2 of ADB/BD/RP and the Notes thereto) - is adopted, the question of remuneration of the Directors or Alternates will not arise in the early stages since they may be expected to be in public employment. The Bank should, however, reimburse both the Directors and the Alternates reasonable expenses incurred in attending to its business. For it should not be forgotten that, in the ADB, the Directors and Alternates must be of different nationality and that, because of this, Alternates form part of the whole mechanism of the Board and may not only attend but take part in discussion at its meetings when their Directors are present (cf. Rule 6(3), ADB/BD/RP).

14. It is on the basis of these considerations that the rules concerning remuneration and reimbursement of expenses of the Governors and Directors of the ADB and their Alternates, contained in the Draft Regulations appended to this Report, have been drawn up. The Board of Governors may adopt them in their present form and review them after an initial period in order to see whether they have served their purpose and to what extent they require amendment.

15. The rules relating to the reimbursement of expenses are, in substance, similar for Governors (and their Alternates) and for Directors (and their Alternates) though - as stated before - they take into account the requirement that Directors and their Alternates must be of different nationality. These rules also provide for reimbursement of expenses incurred in the performance of special services for the Bank which fall outside the ordinary duties of Governors, Directors or their Alternates - e.g. the participation in some special body or representation of the Bank at the meeting of some other international organization. Such and similar services, it is proposed, should be performed by Governors (and their Alternates) at the request of the Board of

Governors and by Directors (and their Alternates) at the request of the Board of Directors or of the President. Following the general principles expounded in this Report, it is suggested that, for the time being at least, such special services should be performed without remuneration and should entitle him who performs them to reimbursement of expenses on the same basis as attendance at meetings of the Board in which he takes part.

16. Finally, the proposed Draft Regulations contain certain technical provisions concerning reimbursement payments (limitation of concurrent claims; currency; no entitlement of Temporary Alternates) and a provision concerning the provision of secretarial and other services for Directors and their Alternates.



A N N E X

DRAFT REGULATIONS OF THE AFRICAN DEVELOPMENT BANK NO .....  
RELATING TO THE TERMS OF SERVICE OF GOVERNORS AND  
DIRECTORS AND THEIR ALTERNATES

I. GOVERNORS AND THEIR ALTERNATES

Article 1

Duties

- (1) The Board of Governors may request a Governor or an Alternate to perform, in addition to his ordinary duties, other services for the Bank.
- (2) The Governors and their Alternates shall perform their ordinary duties and such designated services without remuneration from the Bank.

Notes

1. See Art. 30(2), ADB Agreement; IBRD, Art. V (2)(g); IADB, Art. VIII (2)(h); IADB By-Laws, s.3(a) and (f); paras 4 and 15 of the Report.
2. Para. (1) of the Article provides the possibility for the Board of Governors of requesting Governors and their Alternates to perform "designated services" for the ADB in addition to their ordinary duties - e.g. attendance and participation at plenary meetings of the Board; service as officers of the Board or on its sub-committees etc. Such designated services may consist in a designation to serve on some standing body established by the Board; enquiries on behalf of the Bank; the preparation of special reports for the Bank; representation of the Bank at meetings of other international organizations etc. (cf. para.15 of the Report).

3. Designated services, it is suggested, form part of the general duties of Governors and Alternates - and, for that matter, of Directors and their Alternates - in the wider sense of the term "duties". They are apt to ensure an active and close participation of the Member Governments in the activities of the ADB, which is "a financial institution common to all African countries" and designed to strengthen their solidarity. Proceeding from these considerations, para. (2) of the Article includes designated services in the operation of the principle that Governors and their Alternates shall serve "as such" without remuneration (Art. 30 (2) ).

Article 2

Reimbursement of Expenses

(1) Expenses incurred by Governors and their Alternates in attending annual meetings of the Board of Governors shall be paid by their respective Governments.

(2) A Governor or, in his absence, his Alternate shall be entitled, subject to the provisions of Article 6:

(a) to the reimbursement of the actual cost of his transport to and from the place of any meeting of the Board of Governors, other than an annual meeting, or to and from the place at which he has to perform other services for the Bank designated by that Board; and

(b) as reimbursement for his other expenses, to an amount equivalent to .... units of account in respect of each night which attendance at such meetings or the performance of such designated services requires him to spend away from his normal place of residence, such amount being reduced to the equivalent of ... units of account for each night when accommodation is included in the cost of transport.

Notes

1. See Arts. 30 (2) and 31 (1), ADB Agreement, IBRD By-Laws, s.14(a); Rule 1, ADB/BG/RP; paras. 7 to 9 and 15 of the Report.

2. The ADB Agreement lays down that the Bank "may" pay Governors and their Alternates "reasonable expenses" incurred in attending meetings and, on the other hand, distinguishes between "annual" and "other" meetings of the Board of Governors. Under the present Article, the ADB does not reimburse expenses in connexion with "annual" meetings (para. (1)), while para. (2) lays down rules for reimbursement of expenses by the ADB incurred by Governors and their Alternates in attending "other" meetings or performing designated services for the Bank (as to the nature of the services, see Notes 2 and 3 to Art. 1 and para. 15 of the Report).
3. Claims for reimbursement by a Governor and his Alternate are mutually exclusive. The latter may only claim if his Governor has been absent from the meeting.
4. Compensation for transport expenses under Art. 2(a) takes the form of reimbursement of the actual cost incurred; all other expenses are covered by the daily allowance provided in Art. 2 (b). The unit of account is defined in Art. 10; the currency in which the payments may be effected, in Art. 7. Art. 6 limits claims for reimbursement in respect of meetings held or services performed at or about the same time as other meetings or services. As to Temporary Alternate Governors, see Art. 8.
5. Since Governors and their Alternates do not receive remuneration from the ADB but are solely entitled to the reimbursement of certain expenses, it is not anticipated that payments received in respect thereof are subject to taxation (cf., however, IBRD By-Laws, s.14 (b) ).

## II. DIRECTORS AND THEIR ALTERNATES

### Article 3

#### Duties

(1) Each Director and his Alternate shall devote to the business of the Bank such time and attention as its business may require; one or the other shall be available, upon the notice provided in the Rules of Procedure of the Board of Directors of the Bank, to attend meetings of that Board. The Board of Directors or the President may request a Director or his Alternate to perform, in addition to his ordinary duties, other services for the Bank.

(2) Directors and their Alternates shall perform their duties and such designated services without remuneration from the Bank.

#### Notes

1. See Art. 34 (1), ADB Agreement; Rules 1 and 2, ADB/BD/RP; IADB By-Laws, s.3(c); paras. 5 and 10 to 15 of the Report.
2. Para. (1) of the Article provides a general definition of the ordinary duties of the Directors and their Alternates. Such duties are by no means confined to the participation in meetings of the Board of Directors or attendance at meetings of the Board of Governors. In this connexion the Article expressly emphasizes the duty of either the Director or his Alternate to be available, upon appropriate notice (see Rule 2, ADB/BD/RP), to travel to and to attend meetings of the Board of Directors. This is in conformity with the ADB Agreement under which that Board functions in "continuous session" and must meet "as often as the business of the Bank may require" (Art. 34 (1); see also para. 11 of the Report). As to Temporary Alternate Directors, see Art. 8 and the Notes thereto.

3. In addition, para. (1) makes it clear that, in a wider sense, the general duties of the Directors and their Alternates may include the performance of designated services for the Bank - as to their nature, see Notes 2 and 3 to Art. 1 and para. 15 of the Report. Such services may be undertaken at the request, not only of the Board of Directors, but of the President. The concept is particularly important in the case of Directors and their Alternates who form an essential part of the permanent internal mechanism of the Bank.
  
4. For reasons explained in Note 3 to Art. 1 and para. 13 of the Report, it is proposed in para. (2) of the Article that, for the time being, Directors and their Alternates should receive no remuneration.

#### Article 4

##### Reimbursement of Expenses

A Director and his Alternate shall each be entitled, subject to the provisions of Article 6:

(a) to the reimbursement of the actual cost of his transport to and from the place of any meeting of the Board of Directors or to and from the place at which he has to perform other services for the Bank designated by that Board or the President; and

(b) as reimbursement for his other expenses, to an amount equivalent to .... units of account in respect of each night which attendance at such meetings or the performance of such services requires him to spend away from his normal place of residence, such amount being reduced to the equivalent of .... units of account for each night when accommodation is included in the cost of transport.

##### Notes

1. See Arts. 33 (2), ADB Agreement para. 15 of the Report.
2. A Director and his Alternate must be of different nationality. Because of this, an Alternate Director has a wider right of participation in the work of the Board of Directors than an Alternate Governor (cf. Rule 6 (2), ADB/BG/RP, and Rule 6 (3), ADB/BD/RP). In conformity with this, Art. 4 provides that both the Director and his Alternate are entitled to the reimbursement of expenses incurred in attending meetings of the Board of Directors. (In the case of Governors and Alternates the claims are mutually exclusive.)

3. The rules of the Article provide for the reimbursement of expenses in connexion with "designated services" for the Bank (as to their nature, see Notes 2 and 3 to Art. 1, Note 3 to Art. 3, and para. 15 of the Report).
4. Compensation for transport expenses under Art. 4 (a) takes the form of reimbursement of the actual cost incurred; all other expenses are covered by the daily allowance provided in Art. 4 (b). The unit of account is defined in Art. 10; the currency in which the payments may be effected, in Art. 7. Art. 6 limits claims for reimbursement in respect of meetings held or services performed at or about the same time as other meetings or services. As to Temporary Alternate Directors, see Art. 8.
5. Since Directors and their Alternates, under the Article, are entitled solely to the reimbursement of other expenses, it is not anticipated that payments received thereunder are subject to taxation. Moreover, all "emoluments" received by them are exempt from taxation under Art. 57 (2) of the ADB Agreement (see also Art. 14 (4) of the ADB Draft Headquarters Agreement).



Article 5

Technical Facilities

In accordance with regulations adopted by the Board of Directors, the Bank shall provide offices and such secretarial and other technical facilities as may be required by the Directors and their Alternates while they are performing their duties at the Principal Office of the Bank.

Notes

1. See IBRD By-Laws, s.14 (i); IADB By-Laws, s.3 (i).
2. Under the Article, it is left to the Board of Directors to determine, in the light of budgetary considerations as well as their actual requirements, what office space, secretarial and other facilities should be provided at the Principal Office of the Bank for Directors and their Alternates.

### III. COMMON RULES

#### Article 6

##### Limitation of Reimbursement

- (1) Governors, Directors and their Alternates shall be reimbursed by the Bank only for additional expenses incurred in attending meetings of the Bank or performing other services on its behalf whenever they are entitled to compensation for expenses in connexion with any meeting of another institution held, or services performed for another institution, at or about the same time.
- (2) A person claiming from the Bank reimbursement in respect of expenses incurred by him, shall include in his claim a statement that he has neither received, nor is entitled to receive, nor will claim reimbursement or compensation in respect of those expenses from any other source.

##### Notes

1. This Article is designed in the first place, to confirm the principle that no double reimbursement or compensation may be claimed in respect of contemporaneous meetings or services; see, for instance, IBRD By-Laws, s.14 (g) and (h); IFC By-Laws, s.12 (a), (f) and (h); IDA By-Laws, s.4 (a) and (c); IADB By-Laws, s.2 (g) and (h).
2. The purpose of the Article is, moreover, to husband the resources of the ADB. Thus, in the case of contemporaneous meetings and/or services, the Bank is not liable whenever reimbursement or compensation is payable (not only: paid) from another source - except for reimbursement for additional expenses caused by the activities of the ADB.

Article 7

Currency of Payment

Payments due by virtue of the provisions of Articles 2 and 4 of these Regulations shall be made by the Bank either in the currency in which the relevant expenses were actually incurred or, at the request of the claimant, in the currency of the country in which he is normally resident.

Note

This article is designed to husband the currency resources of the ADB. It should be considered in conjunction with the provisions of the ADB Agreement concerning the currency regime of the Bank (Arts. 27 and 54) and, in particular, of the ADB Draft Headquarters Agreement on that subject (Art. 12).

## Article 8

### Temporary Alternates

Temporary Alternate Governors and Temporary Alternate Directors shall receive no remuneration or reimbursement in respect of their services.

### Notes

1. ADB/BG/RP, Rules 6 (3) and 9 (3); ADB/BD/RP, Rule 6 (4) ; IBRD By-Laws, s.14 (d); IADB By-Laws, s.3 (●).
2. Temporary Alternate Governors do not seem to be entitled to reimbursement or compensation in respect of expenses in other international financial institutions. In the IBRD, Temporary Alternate Executive Directors appear to be entitled to reimbursement in respect of expenses; in the IADB, this is not the case.
3. In order to ensure the most entire and close participation of its Governors, Directors and Alternates in the activities of the ADB, its rules and regulations deprecate the practice of appointing Temporary Alternates; in the case of Alternate Directors, it is expressly restricted to "exceptional circumstances" (Rule 6 (4), ADB/BD/RP). As a rule, Temporary Alternates may be expected to be appointed ad hoc from experts locally available (e.g. members of diplomatic missions). It is therefore proposed that they should not be entitled to remuneration or reimbursement.

#### IV. FINAL PROVISIONS

##### Article 9

##### The Inaugural Meeting

For the purpose of Article 2 of these Regulations, the inaugural meeting of the Board of Governors shall be deemed to be the first annual meeting of that Board.

##### Note

Under Article 2 expenses of Governors and their Alternates incurred in attending "annual" meetings of the Board of Governors are borne by their respective Governments, while expenses incurred either by a Governor or his Alternate at the occasion of other meetings of that Board, are reimbursed by the ADB. The sole purpose of Article 9 is to provide that there should be no reimbursement by the ADB of expenses in connexion with the first meeting of the Board.

Article 10

Definitions

For the purpose of these Rules:

- "Bank" shall mean the African Development Bank;
- "President" shall mean the President of the Bank; and
- "unit of account" shall mean a unit of account as defined in paragraph (1) (b) of Article 5 of the Agreement Establishing the African Development Bank.