

The OPEC Fund for International Development

ANNEX II to Decision No.10 (CLXXIX)

Rules of the OPEC Fund Administrative Tribunal

Content: Sets forth the rules and procedures of the OPEC Fund Administrative Tribunal (OFAT)

Applicable to: The OPEC Fund Administrative Tribunal and its activities

Sponsor: GCLSD

Cleared by and date:
Director-General
January 27, 2022

Approved by and date:
Governing Board
March 16, 2022

Next Review: 2 years from the approval date or as needed

Contact: OFAT@opecfund.org



AK

The OPEC Fund for International Development

ANNEX II to Decision No.10 (CLXXIX)

RULES OF THE OPEC FUND ADMINISTRATIVE TRIBUNAL

RULE 1: ESTABLISHMENT AND PURPOSE

1.1 These Rules of the OPEC Fund Administrative Tribunal (“Rules”) are established pursuant to Article VIII of the Statute of the OPEC Fund Administrative Tribunal (“Statute”).

1.2 The Rules set out the processes by which any of the following individuals may appeal a Final Administrative Decision:

- (a) a current Employee of OPEC Fund; or
- (b) a former Employee of OPEC Fund.

RULE 2: APPLICATION

2.1 The Rules shall apply to the Tribunal, its activities and all matters and persons related thereto.

RULE 3: DEFINITIONS

As used in these Rules or the Statute:

Appellant	means a current or former Employee submitting a Statement of Appeal to the Tribunal.
Appeal	means an appeal by an Employee or former Employee against a Final Administrative Decision submitted to the Tribunal in accordance with the procedures set forth in these Rules.
Appeal Documents	means all documents filed with the Tribunal in respect of an Appeal.
Appeal Panel	means a panel of three members of the Tribunal (including a chair) appointed by the President of the Tribunal to hear a case, pursuant to Rule 11.1.
Employee	means any person employed by the OPEC Fund under a Fixed-Term,

The **OPEC Fund** for International Development

ANNEX II to Decision No. 10 (CLXXIX)

Permanent, Open-ended or any other type of employment, as applicable.

Final Administrative Decision means a final decision by the OPEC Fund following the report submitted by the Staff Appeals Committee (SAC) in accordance with the SAC Rules.

Host Country means the Republic of Austria.

HR Rules means the OPEC Fund HR Rules and Procedures.

Judge means a member of the Tribunal appointed by the Governing Board on the recommendation of the Director-General after consultation with the Selection Committee.

Mediation means the process set out in Schedule 1 of the OPEC Fund Disciplinary Measures and Dispute Resolution Procedures.

Pleading means a formal written statement of a party's claims, or defenses to another party's claims, submitted to a court or tribunal. It could be in the form of a statement of claim, counterclaim, response, rejoinder, etc.

President means the President of the Tribunal, elected further to Article 4.8 of the Statute.

Report means the written report of the Staff Appeals Committee delivered in accordance with the SAC Rules.

Respondent means the OPEC Fund for International Development ("OPEC Fund").

Response means the document submitted by OPEC Fund in response to a Statement of Appeal.



The **OPEC Fund** for International Development

ANNEX II to Decision No. 10 (CLXXIX)

Rules	means the Rules of the OPEC Fund Administrative Tribunal, as may be amended from time to time.
Secretary	means the person appointed by the Director-General of OPEC Fund in accordance with Article 4.9 of the Statute.
Selection Committee	means, the committee, chaired by the OPEC Fund General Counsel and comprising of the HR Director and Director of Operational Risk, responsible for the selection of candidates as Judges of the Tribunal.
Statement of Appeal	means the document submitted by an Appellant to initiate an Appeal.
Terms and Conditions of Employment	include all regulations and rules identified in Article VII of the Statute.
Tribunal	means the OPEC Fund Administrative Tribunal of five members established under the Statute or, as the context may require, the Appeal Panel appointed by the President of the Tribunal to hear an Appeal.

RULE 4: MEMBERSHIP AND TERM

4.1 The Tribunal shall comprise of Judges appointed by the Governing Board, further to the criteria and procedure set forth in the Statute.

4.2 Subject to Article 4.5 of the Statute, each Judge shall serve for a period of five years, effective from the appointment date and renewable once for the same duration.

4.3 If any Judge resigns, or is unable or unsuitable to act further to a unanimous vote of other Judges, the Governing Board may - based on the recommendation of the Director-General given after consultation with the Selection Committee - appoint a replacement Judge, who shall serve for the remainder of the predecessor's term.



The **OPEC Fund** for International Development

ANNEX II to Decision No. 10 (CLXXIX)

RULE 5: PRESIDENT AND VICE PRESIDENT

5.1 The Tribunal shall elect its President and Vice President from among the Judges. The President and Vice President of the Tribunal shall serve for a term of five years and may be re-appointed once for the same duration. If the President of the Tribunal is unable to act or resigns during the course of the term, the Vice President shall serve for the remainder of the term. If the President of the Tribunal and/or the Vice President is/are unable to act or resign(s) during the course of the term(s), the Judges shall promptly (and without waiting for the appointment of replacement Judges) elect a new President and a new Vice President of the Tribunal who shall serve for the remainder of the predecessor's term.

5.2 The election of the President and Vice President shall be by majority vote.

5.3 The President (or in the absence of the President, the Vice President) shall direct the work of the Tribunal and shall represent the Tribunal in all matters related thereto.

5.4 The President may, as may be required, make orders for the conduct of proceedings and deal with any necessary matter not expressly provided in these Rules, consistent with the provisions of the Statute.

RULE 6: SECRETARY

6.1 The OPEC Fund shall appoint a Secretary with legal expertise for the Tribunal to act for an initial period of one year. Subsequent appointments or renewal shall be made in accordance with the provisions of Section 4.9 of the Statute. The Secretary shall be under the authority of and report directly to the Tribunal, and shall enjoy all protections relevant to the independent discharge of his/her functions.

6.2 Under the authority of the President, the Secretary shall:

- (a) receive applications instituting an Appeal and related documentation for each case submitted to the Tribunal;
- (b) transmit all documents and make all notifications required in connection with Appeals before the Tribunal;
- (c) maintain for each case a record of all documents received and sent, and of all actions taken, in connection with the case,

The **OPEC Fund** for International Development

ANNEX II to Decision No. 10 (CLXXIX)

including the dates thereof and of their receipt by or dispatch from the Tribunal;

- (d) attend hearings and meetings of the Tribunal;
- (e) keep records and minutes of the hearings and meetings;
- (f) arrange for transcription of notes or recordings in case of oral hearings;
- (g) maintain the archives of the Tribunal;
- (h) assist the Tribunal in issuing practice directions relating to Pleadings and hearings;
- (i) assist the Tribunal in preparation of annual reports; and
- (j) expeditiously carry out the above tasks and others assigned by the President or the chair of an Appeal Panel.

6.3 In the Secretary's absence or if the Secretary resigns or is unable to act, the OPEC Fund shall, upon the recommendation of the President, appoint a replacement.

RULE 7: COMPETENCE

7.1 The Tribunal shall have the competence stipulated in Article III of the Statute.

RULE 8: APPEALS TO THE TRIBUNAL

8.1 Further to Article VI of the Statute, an Employee or former Employee may submit an Appeal directly to the Tribunal, in accordance with the procedure stipulated in these Rules.

RULE 9: PROCEEDINGS

9.1 The proceedings of the Tribunal shall be conducted in accordance with the provisions of Article IX of the Statute.



The **OPEC Fund** for International Development

ANNEX II to Decision No. 10 (CLXXIX)

9.2 The Tribunal may issue practice directions related to Pleadings and hearings and/or to guide other aspects of its proceedings or activities.

RULE 10: SUBMISSION OF APPEALS

10.1 Form of Appeal

- (a) The Appellant shall initiate an Appeal by submitting to the Tribunal a written Statement of Appeal using the form prescribed in Annex A of these Rules.
- (b) The Secretary shall promptly send a copy of the Statement of Appeal and accompanying documents to the President of the Tribunal, the General Counsel and the HR Director, and shall notify the Secretary of the Staff Appeals Committee (SAC).

10.2 Parties

The parties to the Appeal proceedings shall be the Employee or former Employee initiating the Appeal, as Appellant, and OPEC Fund, as Respondent.

10.3 Statement of Appeal and Time Limit

- (a) A Statement of Appeal must be submitted to the Tribunal within sixty (60) days after the date the Final Administrative Decision was received by the Appellant.
- (b) The Tribunal may allow an Appellant to submit a Statement of Appeal after the sixty-day period has elapsed only if the Tribunal is satisfied that there were justifiable grounds for the delay and that a refusal to consider the Appeal would cause substantial injustice to the Appellant; provided however, that such delay in submitting the Statement of Appeal shall not exceed one-hundred and twenty (120) days calculated from the date of the Final Administrative Decision.

10.4 Response

- (a) Within thirty (30) days following the receipt of the Appellant's Statement of Appeal, the Respondent shall submit to the Tribunal its Response to the Statement of Appeal in the form of Annex C



The **OPEC Fund** for International Development

ANNEX II to Decision No. 10 (CLXXIX)

of these Rules which responds to the Appellant's allegations and may provide such other information the Respondent believes the Tribunal may require to review and decide on the specific case.

- (b) The Tribunal may allow a Respondent to submit a Response after the thirty (30)-day period has elapsed only if the Tribunal is satisfied that there were justifiable grounds for the delay and that a refusal to approve the extension would not be in the best interest of the Respondent; provided however, that such delay in submitting a Response shall not exceed sixty (60) days calculated from the date of the Respondent's receipt of the Appellant's Statement of Appeal.

10.5 Suspension of Administrative Decision

The submission of the Statement of Appeal shall not, of itself, have the effect of suspending the Final Administrative Decision or any actions taken as a result of it. However, at the request of the Appellant, the Tribunal may decide to suspend the Final Administrative Decision on such conditions as the Tribunal considers appropriate pending conclusion of the Appeal.

RULE 11: CONSIDERATION OF APPEALS

11.1 Appeal Panel

- (a) *Appointment:* For each Appeal, the President shall select three Judges, which may include the President, to decide on the Appeal. In exceptional cases, such as complex cases or cases that raise novel questions, the Appeal Panel shall consist of all Judges of the Tribunal.
- (b) *Recusal:* Any Judge appointed to an Appeal Panel who has an interest that might prejudice, or appear to prejudice, his/her ability to make an impartial determination shall declare such interest and recuse himself/herself prior to considering the Appeal. When in doubt, the Judge shall consult the President, whose decision shall be final. If a recusal is effected, the President of the Tribunal shall appoint a replacement. In case of recusal during an Appeal, the President shall also appoint a replacement, except in cases where the Appeal Panel consists of all Judges.
- (c) *Chair:* For each Appeal, the President of the Tribunal shall nominate a Judge to act as chair for that Appeal. The President may chair in cases where he/she is part of the Appeal Panel.



The **OPEC Fund** for International Development

ANNEX II to Decision No. 10 (CLXXIX)

11.2 Assistance to the Appellant

- (a) The Appellant may be assisted by an Employee of the OPEC Fund (excluding an Employee in, or who previously worked in the Legal Services Department or HR Unit, who may also appear at the hearing, if an oral hearing is held.
- (b) The Appellant may also be assisted and/or represented by another person from outside the OPEC Fund, including a lawyer at the Appellant's expense.

11.3 Representation of and Assistance to the Respondent

- (a) The General Counsel shall act on behalf of and represent the Respondent. The General Counsel may either act in person or nominate another Employee of the OPEC Fund (including a lawyer in the Legal Services Department) to act on his/her behalf.
- (b) The Respondent may also be assisted and/or represented by another person, including an external lawyer.

RULE 12: INCIDENTAL MEASURES

12.1 Remand

If, in the Statement of Appeal, the Appellant includes a ground of Appeal or information which was not contained in the statement of appeal submitted to the Staff Appeals Committee and which in the Appeal's view, had it been included, might have materially altered the recommendation of the Staff Appeals Committee or the Final Administrative Decision, the Appeal Panel may, at the request of the Respondent, suspend the Appeal to allow the re-opening of the case by the Staff Appeals Committee or reconsideration of the Final Administrative Decision.

12.2 Jurisdictional Issues

- (a) If the Respondent wishes to challenge the jurisdiction of the Tribunal, he/she must do so within fifteen (15) days after receiving the Statement of Appeal, by submitting a written notice to the Tribunal giving reasons for the challenge.
- (b) The Appellant shall have fifteen (15) days following receipt of the Respondent's notice to submit a written reply.
- (c) Having considered the notice and, if submitted, the reply, the Tribunal shall make a finding on jurisdiction.

The **OPEC Fund** for International Development

ANNEX II to Decision No. 10 (CLXXIX)

- (d) Notwithstanding the terms of Paragraphs (a), (b) and (c) of this Rule, the Tribunal may of its own initiative determine that it would be appropriate to conduct a preliminary hearing on the issue of jurisdiction.

12.3 Production of Documents and Other Evidence

- (a) Within five (5) days following receipt of the notification specified in Rule 10.1(b), the Secretary of the Staff Appeals Committee shall provide the Secretary with a copy of the Staff Appeals Committee's Report and any supporting documents.
- (b) At any time during the proceedings, the Appeal Panel may require from the Appellant and/or Respondent additional evidence or Pleadings related to the Appeal.
- (c) Subject to Paragraphs (d) and (e) of this Rule, the Appeal Panel may require the Appellant and/or Respondent to provide any information which it considers critical to the case and whose probative value outweighs the costs and inconvenience associated with such information being provided.
- (d) The Respondent shall be under no obligation to produce any document containing information that is secret or confidential, or where its production would prejudice the operations of OPEC Fund or its relations with a Member Country, or would infringe on the rights of privacy or reputation of the other Employees of OPEC Fund. The General Counsel, after consultation with the Director-General, shall provide the Appeal Panel with a letter which shall constitute conclusive evidence to that effect.
- (e) The Respondent shall be under no obligation to disclose any written or oral evidence provided by or through the Office of the General Counsel in relation to the Final Administrative Decision under consideration.
- (f) If there has been a Mediation, nothing said by either party or any member of the Mediation Committee in the Mediation nor any document produced by either party or by the Mediation Committee specifically for the Mediation may be used in consideration of the Appeal and the members of the Mediation Committee may not give evidence in such Appeal.

RULE 13: DECISIONS AND OBSERVATIONS OF THE TRIBUNAL

13.1 Decisions



The **OPEC Fund** for International Development

ANNEX II to Decision No. 10 (CLXXIX)

- (a) The Appeal Panel shall decide on an Appeal within thirty (30) days of receipt of the Appeal Documents. The President may allow an extension of time only if there are justifiable grounds for the extension and/or a refusal to approve the extension would cause substantial injustice to a party; provided however, that such extension shall not exceed sixty (60) days calculated from the date of the receipt of the Appeal Documents.
- (b) The Appeal Panel shall take all its decisions by a majority. In the event of an equality of votes, the chair shall have the casting vote. The deliberations of the Appeal Panel shall be confidential and its decisions shall be final and binding.
- (c) The Appeal Panel's decision shall be incorporated into a written judgment which shall state the reasons for the decision, the remedies, if any, awarded to a successful Appellant and, where applicable, the Appeal Panel's decision on costs. Dissenting and concurring opinions, as well as clarifications, shall be set out in the judgment.
- (d) Certified copies of each judgment shall be provided to the parties and the Tribunal shall maintain the original in its archives.

13.2 Dismissal of Appeals

At any time during the Appeal, the Appeal Panel may summarily dismiss the Appeal if it concludes that the Appeal is frivolous or vexatious. The Appeal Panel's decision shall be incorporated into a written judgment, which shall state the reasons for the decision. Certified copies of each judgment shall be provided to the parties and the Tribunal shall maintain the original in its archives.

13.3 Observations

The Tribunal may make observations to the Director-General with the objective of strengthening OPEC Fund's internal processes and lessons learned.

13.4 Award of Remedial Measures

- (a) If the Appeal Panel concludes that the Appeal is well founded, it may grant, in whole or in part, the remedies sought by the Appellant, including the measures to be taken by the Respondent to rectify the Final Administrative Decision appealed against and the adverse effects of that decision on the Appellant.
- (b) The measures may include payment of a sum of money not exceeding two times the Appellant's current (or if the



The **OPEC Fund** for International Development

ANNEX II to Decision No. 10 (CLXXIX)

employment has been terminated, then final) annual basic salary that the Appeal Panel finds is due to the Appellant and/or actions such as a pay increase, promotion, transfer or reinstatement of employment.

13.5 Compensation in Lieu of Remedial Measures

- (a) When awarding a remedial measure other than the payment of money, the Appeal Panel shall also fix an amount to be paid by the Respondent as compensation should the Respondent decide not to implement the measure on the basis that it is not in the OPEC Fund's best interest. The amount fixed by the Appeal Panel shall not exceed two times the then current (or if the employment has terminated, the final) annual basic salary of the Appellant.
- (b) If within one (1) month after receipt of the judgment, the Director-General decides that it is not in the interest of the Respondent to implement the remedial measures awarded by the Tribunal, the Respondent shall instead promptly pay to the appellant the amount of compensation fixed by the Tribunal.

13.6 Award of Cost against the Respondent

- (a) If it upholds an Appeal, in whole or in part, the Appeal Panel may order that the Respondent reimburse the Appellant for such reasonable expenses, including reasonable legal costs, the Appellant has incurred in presenting the Appeal. However, in any case, the maximum amount the Tribunal may order the Respondent to reimburse under this Rule 13.6 shall not exceed fifty per cent (50%) of the Appellant's current (or if the employment has been terminated, then final) annual basic salary.
- (b) The Appellant shall not be entitled to recover the expenses incurred by reason of being assisted by an OPEC Fund Employee.

RULE 14: REVIEW

14.1 A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Appeal Panel and which at the time the judgment was delivered was unknown both to the Appeal Panel and to that party, request the Appeal Panel, within a period of ninety (90) days after the judgment was delivered, to review the evidence and, if justified, reconsider the judgment.

14.2 The request shall contain the information necessary to show that the requirements set forth in Rule 14.1 have been complied with. It shall be accompanied by supporting documents.

The **OPEC Fund** for International Development

ANNEX II to Decision No. 10 (CLXXIX)

RULE 15: RECORDS

15.1 The Secretary shall maintain the original text of each judgment as well as all records of each case in the Tribunal's archives.

RULE 16: CONFIDENTIALITY AND PROTECTION OF PARTICIPANTS

16.1 Confidentiality of Proceedings

The proceedings of the Tribunal and all documents filed in those proceedings shall be confidential. Such documents shall be made available only to those persons who, by virtue of their duties as officers of OPEC Fund or their involvement in the Appeal, have a legitimate interest in the matter. The identity or any identifying information related to the Appellant or any witnesses involved in the case or persons assisting the Appellant shall however remain confidential, unless disclosure is permitted further to the Statement of Appeal filed. Requests for information and/or documentation shall be submitted for consideration to the Secretary and a decision shall be made by the President and shall be communicated in writing. A decision given in relation to such request shall not be considered an administrative decision within the purview of these Rules but may be admitted in evidence.

16.2 Protection of Participants

- (a) Employees appealing, serving as witnesses, or assisting an Appellant before the Tribunal shall not in any way be penalized or discriminated against by OPEC Fund in consequence of their involvement in the Appeal process, irrespective of the outcome of the Appeal.
- (b) If it is established that adverse action has been taken against an individual in retaliation for pursuit of or participation in an Appeal, this may be a ground for investigation of suspected misconduct and for disciplinary action against the individual or individuals who have taken the adverse action in accordance with the HR Rules.

RULE 17: ANNUAL REPORT

17.1 The President of the Tribunal shall prepare an annual report indicating, in summary form, the Appeals brought before it in the past year, the



The **OPEC Fund** for International Development

ANNEX II to Decision No. 10 (CLXXIX)

judgments made and the action of OPEC Fund in implementing those judgments.

17.2 Subject to Rule 16, the report shall maintain the essential confidentiality of all parties involved in Appeals brought before the Tribunal. The report shall be addressed to the Governing Board and shall be made available to the Director-General as well as to Employees.

RULE 18: ENTRY INTO FORCE

18.1 These Rules shall become effective as of the date the OPEC Fund notifies all Employees that the Judges have been appointed (“Administrative Tribunal Effective Date”).

18.2 Notwithstanding anything in the Statute or in these Rules to the contrary, the Tribunal shall be competent to hear any Appeal concerning a Final Administrative Decision made after the Effective Date of the Statute but before the Administrative Tribunal Effective Date, provided that the Appeal is filed within ninety (90) days after the Administrative Tribunal Effective Date. Where an Appellant appeals to the Tribunal following receipt of a Final Administrative Decision but the Judges have not yet been appointed, the Appeal shall be automatically stayed until the Administrative Tribunal Effective Date.

RULE 19: AMENDMENT

19.1 The Tribunal or the Director-General may, from time to time, and in consultation with each other, propose amendments to any provision of these Rules.

19.2 Amendments to these Rules shall be approved by the Governing Board.

19.3 Amendments to these Rules shall not be retroactive but shall take effect only upon approval. Such amendments shall not apply to any Appeal pending before the Tribunal on the date of its approval.



The **OPEC Fund** for International Development

ANNEX II to Decision No. 10 (CLXXIX)

ANNEX A

FORM FOR STATEMENT OF APPEAL

1. Name and official status of the Appellant;
2. Date of the Appeal;
3. Name and designation of the person(s) assisting and/or representing the Appellant in the form of Annex B;
4. Where applicable, the Final Administrative Decision being challenged.
5. The channels of administrative review, as applicable, that the Appellant has pursued and the results thereof;
6. The reasons why the Appellant believes the decision is unlawful;
7. Any request for suspension of the relevant Final Administrative Decision or any action taken as a result of it, and the reasons for such request;
8. Any request to present new evidence not available to the Appellant before the Staff Appeals Committee, consistent with the provisions of Rule 12.1;
9. Any request for oral proceedings as provided by Article 9.2 of the Statute;
10. Any request for production of documents as provided by Rule 12.3; and
11. Any request for anonymity further to Rule 16.



The OPEC Fund for International Development

ANNEX II to Decision No. 10 (CLXXIX)

ANNEX B

FORM FOR APPOINTMENT OF REPRESENTATIVE

I, the undersigned, do hereby designate

[Name]

[Address]

As my duly authorized representative in relation to my Appeal to the Administrative Tribunal. To this end, the above-named representative is authorized to sign pleadings, appear before the Tribunal and take all other necessary action in connection with the pursuance of the case on my behalf. This designation shall take effect immediately and shall remain in effect until revoked by me and the Tribunal has been so informed in writing.

.....
Date

.....
Name

.....
Signature



The OPEC Fund for International Development

ANNEX II to Decision No. 10 (CLXXIX)

ANNEX C

FORM FOR RESPONSE TO A STATEMENT OF APPEAL

1. Appropriate reference to the Statement of Appeal;
2. The date of the Response;
3. Name of the person(s) assisting and/or representing the Respondent;
4. Reasons why the Respondent believes the Appeal should be dismissed or denied;
5. If the matter has not been reviewed by the Staff Appeals Committee, a statement of the supporting facts;
6. Any request for oral proceedings as provided by Article 9.2 of the Statute;
8. Any request for production of documents as provided by Rule 12.3; and
9. Any request for anonymity further to Rule 16.

