



World Bank Administrative Tribunal

2018

Decision No. 582

**CR (No. 2),
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**CR (No. 2),
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Mónica Pinto (President), Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), Ahmed El-Kosheri, Abdul G. Koroma, and Marielle Cohen-Branche.

2. The Application was received on 30 May 2017. The Applicant was represented by Peter C. Hansen and J. Michael King of the Law Offices of Peter C. Hansen, LLC. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 4 May 2018.

3. The Applicant is contesting (i) the decision of the Human Resources Vice President (HRVP) to impose entry conditions upon him when seeking permission to access the Bank's premises and (ii) the HRVP's decision to require that the Applicant be escorted when he is on the Bank's premises.

4. The Bank has raised a preliminary objection to the admissibility of this Application. On 5 September 2017, the Tribunal decided to join the preliminary phase to the merits. This judgment addresses the preliminary objection and the merits.

FACTUAL BACKGROUND

5. The Applicant is a former staff member who retired from the Bank on 31 January 2014, at the age of 59. Prior to his retirement, the Applicant held the position of Senior Advisor, GI level.

6. Following an investigation by the Office of Ethics and Business Conduct (EBC), the Applicant was found to have committed misconduct as defined under Staff Rule 3.00, paragraphs 6.01 (a)–(c), and Staff Rule 3.01, paragraph 4.02, for having failed to resolve the conflict of interest which resulted from engaging in a sexual relationship with his direct subordinate.

7. In his decision of 30 May 2014, the HRVP imposed the following disciplinary sanctions:

- (i) Ineligibility for any future employment at the World Bank Group, as a staff member, contractor, or employee of a contractor;
- (ii) Access to any of the Bank Group’s buildings is restricted to entry for business needs relevant to the Bank Group, at the determination and discretion of the Vice President, HR or his delegate; and
- (iii) Misconduct letter to remain in your staff record for indefinite duration.

8. On 26 September 2014, the Applicant challenged the HRVP’s decision of 30 May 2014 before the Tribunal.

9. On 29 May 2015, the Tribunal rendered its judgment in *CR*, Decision No. 511 [2015], which is the Applicant’s first case before the Tribunal, dismissing all his claims. The Tribunal found that “the disciplinary measures imposed by the HRVP [were] not significantly disproportionate.”

THE APPLICANT’S FIRST REQUEST TO ENTER THE BANK’S PREMISES

10. On 26 September 2014, the Applicant requested provisional relief seeking to lift the restrictions to his access to the Bank’s premises, pending resolution of his first case before the Tribunal.

11. On 5 October 2014, the Applicant wrote to the HRVP requesting permission to enter the Bank’s premises from 21 to 23 October 2014 (First Request), stating that he had been invited to speak at a seminar on the New Climate Economy report produced by the Global Commission on Economy and Climate.

12. On 7 October 2014, the former Manager, HRDCO (Human Resources Corporate Case Management) denied the Applicant's request. He noted that he had reviewed the matter and "as [the HRVP]'s delegate, determined your entry onto the WBG's premises is not warranted by 'business needs relevant to the Bank Group.'"

13. On 8 October 2014, the Applicant's Counsel requested the former Manager, HRDCO to reconsider his decision. The former Manager, HRDCO did not respond to this request for reconsideration.

14. On 14 October 2014, the Applicant's Counsel informed the former Manager, HRDCO that the Applicant had declined the invitation to the seminar.

15. From 31 October to 25 November 2014, the parties filed submissions to the Tribunal in relation to the Applicant's request for provisional relief, including their views on the First Request. In its submission of 31 October 2014, the Bank explained that the Applicant's First Request "was premised on his one-sided assertion that he had received an invite to speak at a seminar." The Bank asserted that "it [was] not unreasonable for the HRVP or his delegate to independently verify Applicant's assertion in this case or to verify with the concerned business manager or organizers of such seminar to assess whether Applicant's attendance at such event was, in fact, warranted by 'business needs relevant to the Bank Group.'"

16. On 9 December 2014, the Tribunal denied the Applicant's request for provisional relief. The Tribunal observed that,

in the course of its submissions, the Respondent has provided guidance on the information it requires when the Applicant applies for access to Bank premises. In view of this, having considered the terms and purpose of Rule 13 and the arguments advanced by the parties in support of their respective positions, the President of the Tribunal has decided to deny the Applicant's request for provisional relief because the Applicant has failed to show that his request meets the terms and purpose of Rule 13.

The Tribunal emphasized that “this determination [was] based on a consideration of the grounds invoked with respect to the request for provisional relief and did not imply any evaluation of the plausibility or otherwise of the merits of the Applicant’s claims.”

EXCHANGES BETWEEN THE PARTIES REGARDING A PROTOCOL OF ENTRY INTO THE BANK’S
PREMISES

17. On 27 June 2015, the Applicant’s Counsel wrote to the Director, Institutional Administration, Legal Vice Presidency (LEGIA), noting that there was “no clear protocol for [the Applicant] to gain entry.” On 1 July 2015, a Senior Counsel from LEGIA responded on behalf of the former Manager, HRDCO stating that the Bank had already explained the basis for the denial of the First Request.

18. On 9 July 2015, in response to the Senior Counsel’s email, the Applicant’s Counsel proposed the following “simple protocol”: “(1) [the Applicant] receives a written invitation from a Bank staff member, specifying a date and time (or duration) to the degree of precision possible; (2) [the Applicant] forwards this to [the former Manager, HRDCO]; and (3) if the invitation is verified as coming from a staff member, an entry pass will be issued.”

19. On 24 August 2015, the Senior Counsel suggested a protocol of entry by which “[p]rior confirmation of the date, time and arrangements will need to be given by HRDCO before any visit” and “[i]n cases where access is given, [the Applicant] will be accompanied either by HRDCO or the receiving office (with the receiving officer’s assurance that he will be accompanied to his appointment and out of the premises at the end of the appointment) or by another party designated by HRDCO, depending on availability of resources.” Item No. 5 of the proposed entry protocol of 24 August 2015 stated:

[I]n exercising its discretion (as delegated by the Human Resource[s] Vice President) to determine if [the Applicant’s] in-person presence on Bank Group premises is required for business needs relevant to the Bank Group, HRDCO may contact the intended host(s). Communications with the intended host(s) may include verification of the purpose of the invite, checking that such visit is related to business needs relevant to the Bank Group, confirming whether [the

Applicant's] in-person attendance is required. Unless provided for under Staff Rule 2.01 (Confidentiality of Personnel Information), no information relating to [the Applicant's] Personnel Information (including information relating to his misconduct) will be shared with the intended host(s) during such communications. However, with respect to making a request to access Bank Group premises, [the Applicant] may wish to consider, that such verification in itself, however neutrally formulated, cannot exclude the intended host noting that this is different from the usual more liberal approach to access. That, of course, is inherent to the restriction of access itself.

20. On the same date, in response to the Bank's proposed entry protocol, the Applicant's Counsel observed that "[his] client is being treated as if he posed a threat of violence, with the restrictions appearing to be aimed at discouraging his entry through a threat of humiliation in front of his peers should he ever try to enter." The Applicant's Counsel stated that the proposed "protocol" is at bottom an invitation to arbitrary behavior by random officials" and noted that "[t]he problem is found in Item No. 5 which would have the HRDCO official *du jour* contact the inviting staff to ask intrusive questions." He submitted a counter proposal in which "[i]f the relevant Bank staff issue a formal written invitation to [the Applicant] addressing the relevant criteria such as the business need and accompaniment arrangements), this can readily be forwarded to HRDCO by [the Applicant] and could be judged on its face."

21. On 26 August 2015, the Senior Counsel emailed the Applicant's Counsel reiterating that the "access restrictions imposed on [the Applicant] are the result of a disciplinary sanction due to misconduct." The Senior Counsel stated that "[b]ased on this understanding, the HRDCO is prepared to consider any request received by [the Applicant] from Bank Group staff, on its face, provided that [he] submits all the information as set out in the protocol and which may be requested by the HRDCO so as to enable the HRDCO to, *prima facie*, ascertain if [the Applicant's] access to Bank Group's premises is for relevant business needs from the Bank Group's side." (Emphasis in original.) The Bank claims that this undertaking was not intended to conclusively preclude or restrict the Manager, HRDCO's right to undertake any further enquiry he determines is necessary to exercise the HRVP's discretion regarding the Applicant's access restrictions.

THE APPLICANT'S SECOND REQUEST TO ENTER THE BANK'S PREMISES

22. On 24 January 2017, the Applicant's Counsel wrote to the new Manager, HRDCO, on the Applicant's behalf, to request access to the Bank Group's premises (Second Request). In the email, the Applicant's Counsel indicated that the Applicant had received an invitation to speak at a Bank event from a Practice Manager from the Trade and Competitiveness Global Practice. The Applicant's Counsel added that the Applicant "is happy to accept the Bank's invitation but he will decline if his entry or participation leads to his being humiliated. He does not want those inviting him alerted to his restrictions, to be required to have a security escort, etc."

23. On 27 January 2017, the Senior Counsel responded on behalf of the new Manager, HRDCO, noting that the HRVP or his delegate, in exercising his discretion to determine whether access to the Bank's premises is for business needs relevant to the Bank Group, "will undertake the standard due diligence steps which may include contacting the staff member who has issued the invitation, including to verify the purpose of the invite, check that the visit is related to business needs relevant to the Bank Group, confirm that [the Applicant]'s in-person attendance is required etc." The Senior Counsel stressed that "it is unreasonable for us to conclusively undertake not to contact [the Practice Manager] regarding the invitation."

24. On the same date, the Applicant's Counsel insisted that the purpose of the Applicant's invitation was "obviously related to the Bank's functions" and requested that the Bank "accept the invitation on its face." Later that day, the Senior Counsel reiterated the Bank's position.

25. On 29 January 2017, the Applicant's Counsel wrote to the Senior Counsel noting that the Applicant did not consent to the Bank's proposed course of action and would therefore not attend the Bank's event.

26. The Applicant filed this Application on 30 May 2017. The Applicant seeks: (i) "[r]evision of entry restrictions to preserve [the] anonymity granted to the Applicant by the Tribunal in his first case"; (ii) compensation for moral and intangible damages in the amount of six months' salary; and (iii) legal fees and costs in the amount of \$16,547.66.

27. On 19 July 2017, the Bank raised a preliminary objection to the jurisdiction of the Tribunal. On 5 September 2017, the Tribunal decided to join the preliminary phase to the merits.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

PRELIMINARY OBJECTIONS

The Bank's Contentions

28. The Bank asserts that the Applicant's claims relate to events that occurred outside the time limits prescribed in Article II, paragraph 2(ii)(a) of the Tribunal's Statute. In the Bank's view, the event giving rise to this Application was triggered when the Applicant first contested the implementation of his restricted access in his request for provisional relief in his first case. In his request, the Applicant challenged the Manager, HRDCO's exercise of discretion to require independently verifiable information to assess whether the Applicant's access to the Bank's premises was warranted for "business needs relevant to the Bank Group." The Bank submits that any subsequent challenge to the Manager, HRDCO's exercise of discretion to determine the process by which the Applicant's restricted access is implemented should be viewed as a continuation of this event.

29. The Bank claims that the Applicant has been on notice of the Manager, HRDCO's position on the need for independent verification and an escort while on the Bank Group's premises since at least the date the Bank's proposed protocol of entry was communicated to him on 24 August 2015. The Bank denies the Applicant's allegation that it revoked the conditions of entry in the Senior Counsel's email of 26 August 2015 and notes that, even if the parties' exchanges regarding the formulation of a protocol of entry are considered by the Tribunal to be the event giving rise to this Application, the Application would still be time-barred.

30. The Bank contests the Applicant's claim that the email of 27 January 2017 constitutes the *dies a quo* for this Application. In the Bank's view, this email reiterates the same core principles regarding the Applicant's restricted access that the Manager, HRDCO has consistently applied since 2014. Were the Tribunal to consider, however, that the event giving rise to the Application

was the clarification provided by the Senior Counsel on 27 January 2017, the Bank maintains that the Application would still be untimely because it was filed on 30 May 2017 while the filing deadline was 27 May 2017.

31. The Bank further maintains that unrestricted access to the Bank's premises after the Applicant's separation from the Bank falls outside the Tribunal's jurisdiction because it "has never been part of Applicant's 'contract of employment or terms of appointment.'"

The Applicant's Contentions

32. The Applicant claims that the Bank's email of 27 January 2017 sets the *dies a quo* in this Application. The Applicant states that his Application is challenging the Bank's decision of 27 January 2017 to revoke the revised protocol of entry of 26 August 2015 and the Bank's imposition of new entry conditions for the review of the Applicant's Second Request.

33. The Applicant asserts that the Application was filed timely. He claims that the Bank has miscalculated the deadline for filing the Application and explains that 27 May 2017 was the Saturday of Memorial Day weekend and that the Tribunal was next open for business on Tuesday, 30 May 2017, the date on which the Application was filed.

MERITS

The Applicant's Contention No. 1

The Applicant does not challenge the disciplinary nature of his sanction but claims that the sanction only limits his access to the Bank's premises and does not entirely forbid it

34. The Applicant does not challenge the restricted access imposed on him for misconduct but asserts that he relies on his right under the sanction to petition for entry and to have such petitions reviewed in a reasonable manner. The Applicant claims that the sanction imposed on him is "quite moderate in tone and impact" for the following reasons: (i) the intended effect of the sanction is to limit the Applicant's access to the Bank's premises, not to forbid it; (ii) access

to the Bank's premises is allowed if justified for "business needs relevant to the Bank Group"; (iii) the HRVP did not narrow the set of activities qualifying as "business needs relevant to the Bank Group"; and (iv) the HRVP's "determination and discretion" in the sanction do not authorize him to reshape it by introducing new elements such as escorts or tests for required in-person appearance.

The Bank's Response

The Applicant does not have an unfettered right to access the Bank Group's premises

35. The Bank submits that the Applicant as a former staff member has no automatic right to enter the Bank Group's premises unless a legitimate justification is provided. The Bank recalls that the Applicant's restricted access results from a disciplinary sanction for misconduct whose plain meaning dictates that it is up to the Manager, HRDCO, as the HRVP's delegate, to determine, on behalf of the institution, the Applicant's access and conditions of entry to the Bank's premises. The Bank objects to the interpretation argued for by the Applicant and insists that the written sanction shall be given its plain meaning.

The Applicant's Contention No. 2

The Bank has never had a pre-existing, universal policy of entry; the HRVP has gradually developed ad hoc entry standards for the Applicant

36. The Applicant objects to the Bank's assertion that it has entry policies that have been applied in a uniform manner to the Applicant and all similarly situated former staff members. The Applicant alleges that there was never a policy regulating his entry into the Bank's premises and that the Bank's alleged policies were gradually articulated during litigation. In the Applicant's views, the absence of a formal, pre-existing policy is revealed by the following "abruptly shifting standards" imposed by the Bank: (i) the HRVP rejected the First Request without providing any reason for such decision; (ii) the Bank recognized that it provided "first notice" of the HRVP's approach to entry only after the Applicant first requested provisional relief; (iii) while the HRVP provided more detailed guidance in the proposed protocol of entry of 24 August 2015, he revised these conditions on 26 August 2015 by agreeing to review the

written invitations “on [their] face”; and (iv) the HRVP subsequently reverted to its original protocol of entry of 24 August 2015 as soon as the Applicant submitted the Second Request.

The Bank’s Response

The Bank has consistently applied its policies regarding entry restrictions

37. The Bank denies the Applicant’s allegation that his entry restrictions are a product of litigation and submits that it has acted fairly and consistently with its established standard practices and entry protocols. The Bank claims that it has since 2014 provided the Applicant with “comprehensive written guidance” on what it requires for assessing the Applicant’s requests to enter the Bank’s premises. To this effect, the Bank notes that the protocol of entry of 24 August 2015 clearly states that the HRDCO would contact the intended host and verify the purpose of the visit, and, if access were granted, the Applicant would be required to have an escort while on the Bank’s premises. The Bank objects to the Applicant’s assertion that the email of 26 August 2015 changed these requirements and denies having agreed to restrain the HRVP’s discretion in this respect.

38. The Bank denies any inconsistency between its response to the Applicant’s entry requests and its established standard practices and its proposed protocol of entry, which it claims applies without distinction to all persons who are subject to restricted access to the Bank Group’s premises resulting from disciplinary sanctions.

The Applicant’s Contention No. 3

The HRVP’s new entry requirements are unreasonable and contrary to due process; the HRVP has abused his discretion in unlawfully recrafting the entry sanction

39. The Applicant claims that the HRVP has acted arbitrarily, and abused his discretion, by “dismissing the invitations” extended to the Applicant by different Bank units and by intending to contact their officials to verify the invitations, despite having been provided with sufficient information and supporting documentation. According to the Applicant, while the HRVP has final decision-making authority on the matter, it does not follow from the sanction that the

HRVP may freely overrule, or even second-guess, the Operations units' assessment of their own "business needs." The HRVP speaks on behalf of the Bank only to implement the written sanction and thus to facilitate other units' assessment of what constitutes their "business needs."

40. The Applicant submits that the HRVP has acted arbitrarily and capriciously by not explaining in clear terms what information is required by the Applicant to have his invitations confirmed. In the Applicant's view, the HRVP abused his powers when he deemed the Applicant's Second Request insufficient despite the invitation being "on its face properly sourced, purposed and detailed, and gave the HRVP no reasonable ground for doubting its contents or its sincerity as a business invitation." The Applicant also claims that the HRVP's actions of January 2017 were contrary to due process because, without identifying a single deficiency in the Applicant's Second Request, the HRVP "(i) set the invitation aside; (ii) gave the Applicant no chance to gather any further information needed; and (iii) insisted on confronting the host."

41. The Applicant asserts that the HRVP's role in restricting access to the Bank's premises is textually established in the sanction, under which he has not been granted "legislative mandate." The Applicant claims that the HRVP has "illicitly recrafted the sanction" and abused his discretion by imposing a novel requirement that the Applicant's physical presence be required for him to be granted access to the Bank's premises, which is not only contrary to the written text of the sanction but also improperly restricts the "business needs standard" of the sanction. The Applicant also claims that the HRVP, by imposing the requirement of an escort and the need to contact the organizers of the event for verification purposes, has also "substantially altered and intensified the written sanction."

The Bank's Response

The Bank has acted fairly and without improper motives in responding to the Applicant's requests for entry into the Bank Group's premises; the Applicant was accorded due process in both requests

42. The Bank submits that, in undertaking the “standard due diligence steps” of confirming the invitation extended to the Applicant with the intended host, the HRVP does not seek to embarrass or threaten the Applicant’s professional reputation, but only to exercise his discretion to ensure that the HRVP has at his disposal all the necessary information to effectively discharge his responsibility. The Bank denies that the HRVP’s actions have been improperly motivated and asserts that the HRVP has applied entry standard practices consistently and in a reasonable manner in response to the Applicant’s two requests for entry.

43. The Bank contests the Applicant’s assertion that it has arbitrarily imposed a “*de facto* absolute bar on entry” on the Applicant. The Bank specifically claims that the requirement to contact the intended host has the objective to ascertain that the Applicant’s presence is required for business needs. The Bank argues that it should not be “handcuffed” in its ability to make the necessary enquiries and states that it is crucial for the Manager, HRDCO to retain the “unfettered prerogative” to consult with staff members so long as he complies with the confidentiality obligations set out in the Staff Rules.

44. The Bank denies the Applicant’s assertion that he was not accorded due process in relation to both requests. The Bank submits that the Manager, HRDCO was on sick leave at the time of the First Request and therefore unable to provide reasons before the Applicant withdrew his request. The Bank further submits that the Applicant was accorded the same due process rights as any other former staff member subject to access restrictions. The Bank contends that the Applicant was given due and advance notification of the terms of the entry protocol and was also given the opportunity to provide his response through his Counsel.

The Applicant's Contention No. 4

The HRVP's requirement of an escort is not found in the written sanction; it constitutes an effort to humiliate the Applicant

45. The Applicant submits that the requirement that he be escorted through the Bank's premises is not part of the written sanction but is a new condition introduced in the proposed entry protocol of 24 August 2015. The Applicant argues that the Bank's requirement of an escort is "merely a way to publicize [the Applicant's] restricted status, and to degrade him in front of his peers," in contravention of Staff Rule 2.01, paragraph 5.01 of the Staff Rules regarding Confidentiality of Personnel Information. The Applicant claims that, because information related to disciplinary sanctions is of "limited access," the HRVP is prevented from calling attention to the Applicant's restricted status when granting him access to the Bank's premises, as such attention will inevitably raise questions about the origin of such restriction. While conceding that the HRVP may decide which information to disclose to other staff members when circumstances warrant, the Applicant argues that the HRVP is "not permitted to engineer such circumstances, or to define such circumstances broadly."

The Bank's Response

The Bank's requirement of an escort is not unreasonable

46. The Bank claims that it is neither unreasonable nor outside its prerogative to put in place appropriate security measures for the Applicant considering that his restricted access stems from disciplinary sanctions. The Bank objects to the characterization made by the Applicant that having an escort "reduces [him] to a prisoner" and carries "menacing threats of reputational damage" and notes that the Applicant's anonymity in relation to his misconduct will not be jeopardized by having an escort accompanying him to his appointment. The Bank clarifies that the Applicant will not be accompanied by uniformed security guards from the Bank Group's Corporate Security but, instead, by a member of HRDCO, another designated party, or a person from the receiving office. The Bank argues that the objective of an escort is not "borne from some nefarious motivation to 'humiliate' Applicant," but rather results from a reasonable

expectation and need to make sure that the Applicant's presence is for the intended purpose only and to know the Applicant's exact location while on the Bank's premises.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

PRELIMINARY OBJECTIONS

Whether the Applicant's claims relate to events that occurred outside the time limits provided in Article II, paragraph 2(ii)(a) of the Tribunal's Statute

47. Article II (2) of the Tribunal's Statute states:

No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

- (i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and
- (ii) the application is filed within one hundred and twenty days after the latest of the following:
 - (a) the occurrence of the event giving rise to the application;
 - (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or
 - (c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

48. The Tribunal has emphasized that the prescribed time limits are very "important for a smooth functioning of both the Bank and the Tribunal." *See Agerschou*, Decision No. 114 [1992], para. 42; *Tanner*, Decision No. 478 [2013], para. 45; *Alrayes*, Decision No. 520 [2015], para. 56.

49. Regarding the determination of the *dies a quo*, the Tribunal held in *Al-Muthaffar*, Decision No. 502 [2014], para. 40, that:

[W]hat is a timely manner is delimited by the time limit stipulated in the Staff Rules for the pursuit of internal remedies which, in this case, was triggered at the time at which the Bank's decision [...] was first notified to the Applicant. That is the *dies a quo* and it is not changed by assertion of a subsequent discovery of circumstances or allegedly false reasons given for the Bank's decision.

50. The Tribunal has held that "its jurisprudence, as articulated in *O*, Decision No. 323 [2004], *Malekpour*, Decision No. 320 [2004], and *Jalali*, Decision No. 148 [1996], does not allow an applicant to 'tack' numerous old and time-barred claims onto timely claims by means of a 'one ball of wax' theory or by alleging a 'pattern' of unfairness." See *L (No. 2)*, Decision No. 379 [2008], para. 22.

51. In its Preliminary Objection, the Bank objects to the jurisdiction of the Tribunal, arguing that all the claims in the Application are untimely. The Bank's main assertion is that the event giving rise to the Application originated in October 2014 and that the Applicant's subsequent challenges in relation to the Manager, HRDCO's exercise of discretion in implementing the Applicant's restricted access represent a continuation of that event. The Bank claims that the Applicant has been on notice from October 2014 of the Manager, HRDCO's position on the need for independent verification in deciding on the Applicant's entry requests. For his part, the Applicant argues that the Bank's decision of 27 January 2017 sets the *dies a quo* in this Application because this is the date on which the Bank revoked the parties' understanding of 26 August 2015 and imposed new entry conditions for the review of the Applicant's Second Request.

52. The Tribunal observes that, regarding the Applicant's restricted access, the record shows that the former Manager, HRDCO denied the Applicant's First Request of 2014 to enter the Bank's premises without providing an explanation behind his decision. While the Bank subsequently provided an explanation in its submissions to the Applicant's request for provisional relief, its position was that the denial of the First Request was based on the fact that the Applicant had not supported his entry request with documentation. The record further shows that, after the Tribunal rendered its judgment on the Applicant's first case, the Applicant's Counsel approached LEGIA looking to establish a "clear protocol for gaining entry." Following a few exchanges between the parties in which they both suggested protocols of entry, the Bank's

final position, as evidenced in the email of 26 August 2015, appears to be that the Manager, HRDCO would “consider any request received by [the Applicant] from Bank Group staff, on its face, provided that [the Applicant] submits all the information as set out in the protocol.” There is no further communication between the parties on this matter up until the Applicant’s Second Request of January 2017.

53. In the Second Request, the Applicant sought permission to enter the Bank’s premises and enclosed in support of his request a detailed written invitation from a staff member. Despite the parties’ prior understanding that entry requests would be judged “on [their] face,” the Bank responded on 27 January 2017 informing the Applicant that it would contact the organizer of the event to verify the invitation. The Bank further informed the Applicant that he would be accompanied by an escort while on the Bank’s premises if access were to be granted.

54. In the Tribunal’s view, the Bank’s decision of 27 January 2017 sets the *dies a quo* in this Application. This decision revises the parties’ understanding that invitations would be judged “on [their] face” and reimposes both the need for contacting the organizer of the event to verify the invitation and the requirement of an escort as entry conditions necessary for the HRVP’s assessment of the Applicant’s access to the Bank’s premises on “business needs relevant to the Bank Group.” This also appears to be the Bank’s latest position where it states in its Answer that “the issues in this application should be construed narrowly and be limited only to the Applicant’s challenge of the Bank’s administrative decision in January 2017.” The Tribunal therefore considers that 27 January 2017 is the date on which the Applicant was put on notice of the Manager, HRDCO’s position regarding his Second Request for entry.

55. In the alternative, the Bank raised a further objection to the timeliness of the Application asserting that, if 27 January 2017 were to be considered the *dies a quo*, the 120-day deadline for the filing of the Application was 27 May 2017 and not 30 May 2017. Considering, however, that 27 May 2017 was the Saturday of Memorial Day Weekend and the Tribunal was next open for business on Tuesday 30 May 2017, the Tribunal finds that the Application was timely filed.

Whether the Applicant's restricted access to the Bank's premises after the termination of his employment falls outside the Tribunal's jurisdiction

56. The Bank claims that unrestricted access to the Bank Group's premises after the Applicant's separation from the Bank has never been part of the Applicant's "contract of employment or terms of appointment." The Tribunal observes that the claims in the Application concern the Bank's implementation of the restricted access imposed on the Applicant for misconduct on 30 May 2014. These types of claims are not beyond the Tribunal's review. The Tribunal has stated that it has jurisdiction in cases where access restrictions have been imposed as a result of a disciplinary measure. As held by the Tribunal in *Q*, Decision No. 370 [2007], para. 36:

[A] challenge to a flag placement must invoke the Tribunal's jurisdiction *ratione materiae* as well as *ratione personae*. For a present or former staff member to have standing to bring such a claim, the requested removal of the flag in question must relate significantly to the staff member's contract of employment or terms of appointment, for example with respect to the performance of the staff member's current duties, or to the staff member's enjoyment of the rights provided under the Principles of Staff Employment. (*Mwake*, Decision No. 318 [2004], paras. 33-35; *R*, Decision No. 368 [2007], paras. 24-26, citing *inter alia N*, Decision No. 356 [2006]. See also *Azhar*, Decision No. 104 [1991], para. 15.) Jurisdiction *ratione materiae* is found in cases where a flag has been entered as a disciplinary measure. (*Dambita*, Decision No. 243 [2001], paras. 18-27.) Consultation with the Bank's conflict-resolution bodies may also, under appropriate circumstances, constitute a justification for demanding access to the Bank. (*Mwake*, Decision No. 318 [2004], para. 35.)

57. The Bank's objection to the jurisdiction of the Tribunal in this respect has to be, therefore, rejected.

MERITS

SCOPE OF THE TRIBUNAL'S REVIEW

58. The Tribunal has acknowledged that decisions that restrict staff members' access to the Bank's premises are matters of managerial discretion. See *Venkataraman*, Decision No. 500 [2014], para. 82. In reviewing the Bank's imposition of access restrictions, the Tribunal has

observed that it “will not substitute its assessment of the situation for that of the Bank, nor overturn the exclusion decision absent an abuse of discretion, meaning where the decision is ‘arbitrary or unreasonable, or is in violation of the staff rules.’ (*Mwake*, Decision No. 318 [2004], para. 35.) In matters involving Bank security, this discretion is broad indeed.” *See Q*, para. 39; *Yoon* (Nos. 13, 14, 16, 17, and 18), Decision No. 447 [2011], para. 84.

59. The Tribunal has also recognized the Bank’s discretion in controlling and conditioning access to its premises. In *Q*, para. 37, the Tribunal observed that:

[C]ommon sense dictates that the Bank may take reasonable efforts to control or condition access to its premises, particularly by persons who are not currently members of the staff, and even where a ground may exist for the person’s entry. (*Id.*, paras. 35-36, citing *B*, Decision No. 247 [2001], para. 30.) Maintaining security is a fundamental duty of the Bank to its staff, and to the integrity of the institution, and access to Bank premises is necessarily influenced by security considerations. (*B*, para. 30, citing *Dambita*, Decision No. 243 [2001], para. 27; Principle 2.1(b) of Staff Employment.)

60. In matters involving the exercise of discretion by the Bank, the Tribunal observed in *de Raet*, Decision No. 85 [1989], para. 56, that:

[T]he Tribunal is not charged with the task of re-examining the substance of the Bank’s decision with a view to substituting the Tribunal’s decision for the Bank’s. The duty of the Tribunal is to assess the Bank’s decision – as to both its content and the manner in which it has been made – to determine whether it constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

61. The Tribunal stated in *Desthuis-Francis*, Decision No. 315 [2004], para. 26, that “lack of improper motivation does not by itself insulate a discretionary management act from being found arbitrary (*see Marshall*, Decision No. 226 [2000], para. 21) if done without an observable and reasonable basis.”

RESTRICTED ACCESS IMPOSED ON THE APPLICANT FOR MISCONDUCT

62. According to the HRVP's letter of 30 May 2014, the text of the restricted access imposed on the Applicant is that "[a]ccess to any of the Bank Group's buildings is restricted to entry for business needs relevant to the Bank Group, at the determination and discretion of the Vice President, HR or his delegate."

63. Both parties agree that the current dispute is not about the legitimacy of the restricted access imposed on the Applicant but concerns the HRVP's exercise of discretion in implementing it. The Applicant claims that the written sanction imposed on him is "quite moderate in tone and impact" and does not seek to forbid him from entering the Bank's premises nor does it authorize the HRVP to reshape it by introducing new elements thereto. In response, the Bank claims that the written sanction shall be given its plain meaning which dictates that it is up to the Manager, HRDCO, as the HRVP's delegate, to determine, on behalf of the institution, the Applicant's access and conditions of entry to the Bank's premises.

64. The Tribunal observes that the HRVP's letter of 30 May 2014 that imposed restricted access on the Applicant is quite clear in that the Applicant's access to the Bank's premises is limited for "business needs relevant to the Bank Group." The Applicant argues that it is for the operational unit which extends the invitation to the Applicant to determine what constitutes "business needs relevant to the Bank Group." The Tribunal disagrees with the Applicant's argument and observes that it follows from the text of the sanction that it is not for any Bank staff member or unit to make such determination, but that such prerogative exclusively falls upon the HRVP or his delegate. The HRVP's letter of 30 May 2014, that access to the Bank's premises is "at the determination and discretion of the Vice President, HR or his delegate," is unmistakable in this respect.

65. The Tribunal held in *V*, Decision No. 378 [2008], para. 35, that a former staff member is not presumed to have the same access rights as present staff, but must have a legitimate justification to enter the Bank's premises. In line with this decision, the Applicant argues that, once "business needs relevant to the Bank Group" are present, there is a legitimate justification

for him to enter the Bank's premises. In the Tribunal's view, however, whereas a former staff member must have a legitimate justification to access the Bank's premises, his or her access to the Bank's premises is not always guaranteed. The HRVP can still deny entry to the Bank's premises even when a legitimate basis has been shown. As held by the Tribunal in *Mwake*, para. 35, "the HRVP's discretion in Bank's security, including access to the Bank's premises, is broad."

66. In light of the above, the Tribunal is satisfied that, according to the terms of the restricted access imposed on the Applicant on 30 May 2014, it is the exclusive responsibility of the Manager, HRDCO, as the HRVP's delegate, to determine, on behalf of the institution, the Applicant's access and conditions of entry to the Bank's premises.

WHETHER THE MANAGER, HRDCO HAS ABUSED HIS DISCRETION IN IMPLEMENTING THE
APPLICANT'S RESTRICTED ACCESS

67. In contention before the Tribunal is the Manager, HRDCO's exercise of discretion in implementing the restricted access imposed on the Applicant for misconduct. More specifically, whether the Manager, HRDCO, as the HRVP's delegate, has acted arbitrarily, acted with improper motives, and abused his discretion by requiring in his decision of 27 January 2017 a verification of the invitation by contacting the organizers of the event and that an escort accompany the Applicant. The Tribunal will address these issues in turn.

The Manager, HRDCO's verification process

68. Principle 2.1(b) of the Principles of Staff Employment provides that "the Bank has the obligation to make all reasonable efforts to ensure appropriate protection and safety for staff members in the performance of their duties." The Tribunal has stated that "[m]aintaining security is a fundamental duty of the Bank to its staff, and to the integrity of the institution, and access to Bank premises is necessarily influenced by security considerations." *See Q*, para. 37.

69. Furthermore, in *B*, Decision No. 247 [2001], para. 30, the Tribunal held that:

[I]t would be a reasonable security measure in certain circumstances to deny or restrict access of a staff member to the Bank's buildings or to a specific office, or to condition the access to the availability of an escort. The Tribunal has held that access to the Bank's buildings is an issue connected with Bank security. (*Dambita*, Decision No. 243 [2001], para. 27.) The decision by the Acting Vice President of Human Resources in this case is not objectionable [...].

70. The Bank has entrusted the HRVP with the responsibility to control access to the Bank's premises. In so doing, the HRVP possesses broad discretion in denying or restricting access or even conditioning entry on the availability of an escort. The Tribunal stated in *Q*, para. 37, that "a current staff member has no absolute right of access to the Bank's premises, and a former staff member is not presumed to enjoy even this limited level of access." The HRVP's discretion is not, however, beyond the Tribunal's review. As stated in *Mwake*, para. 35, the Tribunal "will overturn the Bank's exercise of discretion if found to be arbitrary or unreasonable, or is a violation of the staff rules."

71. The HRVP's exercise of discretion in the present case has been clearly delineated in the HRVP's letter of 30 May 2014, which empowers the HRVP to authorize entry for "business needs relevant to the Bank Group at [his] determination and discretion."

72. The Applicant argues that the HRVP has acted arbitrarily and abused his discretion by "dismissing the invitations" extended by different Bank units to the Applicant or confronting their officials to verify the invitations, despite having been provided with sufficient information and supporting documentation. For its part, the Bank insists that the HRVP's actions constitute "standard due diligence steps" to ensure that he has, at his disposal, all the necessary information to effectively discharge his responsibility to make an informed and well-reasoned decision on whether the Applicant's access to the Bank's premises is warranted by "business needs that outweigh Applicant's access restrictions."

73. The record shows that the Bank first justified the need to verify the invitation with the organizers of the event in its submission of 31 October 2014 in relation to the request for

provisional relief in the Applicant's first case. In its submission, the Bank asserted that "it [was] not unreasonable for the HRVP or his delegate to independently verify Applicant's assertion in this case or to verify with the concerned business manager or organizers of such seminar to assess whether Applicant's attendance at such event was, in fact, warranted by 'business needs relevant to the Bank Group.'" The Bank did not initiate any verification at the time given that the Applicant withdrew his request. The Bank's requirement for verification was reiterated in the protocol of entry suggested to the Applicant on 24 August 2015 in which the Senior Counsel, on behalf of the Manager, HRDCO stated that, in exercising his discretion, "HRDCO may contact the intended host(s). Communications with the intended host(s) may include verification of the purpose of the invite, checking that such visit is related to business needs relevant to the Bank Group, confirming whether [the Applicant's] in-person attendance is required."

74. The record also shows that, further to the Applicant's protest against this condition of entry, two days later, in its response of 26 August 2015, the Bank informed the Applicant that "the HRDCO is prepared to consider any request received by [the Applicant] from Bank Group staff, on its face, provided that [he] submits all the information as set out in the protocol." The Applicant's assertion is that the Bank's response of 26 August 2015 attests to the parties' agreement that, were the Applicant's request to contain detailed information and be supported by relevant documentation, including a copy of the written invitation, the HRVP would be able to decide on his request with no further need for verification. The Tribunal observes that the Bank's statement of 26 August 2015, that it will consider any request "on its face," cannot be accorded the meaning argued by the Applicant.

75. The Tribunal finds that, in exercising his discretion, the HRVP may take any such measures as he deems necessary to verify the information submitted by the Applicant, including contacting the organizers of the event. As the Tribunal's jurisprudence establishes, the HRVP's discretion in this respect is broad and the HRVP determines the best ways to fulfill the responsibilities entrusted upon him in deciding whether access is justified "for business needs relevant to the Bank Group."

Issues of confidentiality and anonymity

76. Staff Rule 2.01, paragraph 5.01 provides that:

A staff member who has brought an allegation of misconduct against another staff member may be informed of any disciplinary measures imposed under Staff Rule 3.00, “Office of Ethics and Business Conduct (EBC),” or Staff Rule 8.01, “Disciplinary Proceedings,” as a result of the allegation. [...] A staff member informed under this section shall not disclose the information to any other person. *In addition, the World Bank Group Human Resources Vice President, or his/her designee, may decide that information about disciplinary measures in a particular case should be disclosed to other staff members when the circumstances warrant.* (Emphasis added.)

77. The Applicant argues that Staff Rule 2.01, paragraph 5.01 treats disciplinary decisions as “limited access” and, although the HRVP may disclose such information “when circumstances warrant,” the HRVP is not “to engineer such circumstances, or to define ‘circumstances’ so broadly that they equate to everyday life.” The Bank submits that it has reassured the Applicant that, in contacting the organizers of the event to which he has been invited, “no information relating to [the Applicant’s] Personnel information (including information relating to his misconduct) will be shared with the intended host(s) during such communications.”

78. The Tribunal observes that, under Staff Rule 2.01, disclosure of personnel information is in principle prohibited. Under paragraph 5.01, the HRVP may disclose information related to a staff member’s disciplinary measures “when circumstances warrant.” While it may be inferred that the intent of the Staff Rule is to leave this prerogative to the HRVP, the Tribunal notes that the circumstances to be relied upon by the HRVP cannot be so broad as to render the object of the confidentiality provisions meaningless. Looking at the entirety of the confidentiality provisions in the Staff Rules, the approach to disclosure of personnel information is restrictive and is limited to the specific scenarios set forth therein. Staff Rule 2.01, paragraph 3.01 clearly states that “[p]ersonnel [i]nformation shall not be disclosed by the Bank Group, except as provided in this Rule.”

79. The Tribunal further observes that any information relating to a staff member’s disciplinary measures, being of a “sensitive and highly confidential nature,” is designated under

Staff Rule 2.01, paragraph 2.01 as “limited access documents.” The implication of this is that access to such “sensitive and highly confidential” information is only justified in exceptional cases. For example, while Staff Rule 2.01, paragraph 4.01(c), allows Bank officials to access staff records, the rule excludes “limited access documents” from it. Even when circumstances justify the disclosure of misconduct-related information to Bank officials or persons outside the Bank Group, such as governmental bodies of member countries and public international organizations, the Rule mandates that disclosure be done in accordance with the Staff Rules. The Tribunal finds that any disclosure of misconduct-related information by the HRVP must therefore be confined to the scenarios identified in Staff Rule 2.01.

80. The Applicant has argued that the confidentiality provisions in the Staff Rules limit the power of the HRVP to contact the organizers of the event provided such contact may risk revealing the Applicant’s misconduct and resulting disciplinary measures. The Tribunal observes that the Bank itself has acknowledged that the act of contacting the organizers of the event may lead them to note “that this is different from the usual more liberal approach to access.” In the absence of an allegation of breach of confidentiality in the instant case, the Tribunal considers, however, that a fear that the organizers of the event may raise questions regarding the Applicant’s misconduct status is not a sufficient ground to limit the HRVP’s discretion in this respect. While the Applicant’s misconduct has not been subject to an unauthorized disclosure, the Tribunal recalls that the obligation of confidentiality of personnel information requires that the Bank take every reasonable measure to ensure that the Applicant’s misconduct and resulting disciplinary measures are not disclosed to any staff member during the business needs’ verification process.

81. The Tribunal observes that the Applicant was granted anonymity in his first case. While the Applicant argues that the protection accorded by anonymity extends beyond the publication of the judgment, the Tribunal notes that, according to Rule 28 of the Tribunal’s Rules, the anonymity granted to the Applicant only prevented the publication of the Applicant’s name in the Tribunal’s judgment. Nevertheless, if the rules of anonymity do not have the direct effect of limiting the HRVP’s discretion to contact the organizers of the event, as previously mentioned,

the HRVP's actions must be aligned with the Staff Rules governing confidentiality of personnel information.

Claims that the HRVP has amended the restricted access

82. The Applicant claims that the HRVP has “illicitly recrafted the sanction” and abused his discretion by imposing a novel requirement that the Applicant may be granted access to the Bank’s premises only if his physical presence is required, which the Applicant asserts is not only contrary to the written text of the sanction but also improperly restricts the “business needs” standard of the sanction. According to the Bank, the HRVP, in gathering all necessary information to assist his determination, needs to know whether the Applicant’s in-person presence is required or whether the event in question can take place outside the Bank’s premises.

83. The Tribunal is persuaded by the Bank’s argument. In exercising his discretion to decide and determine that the Applicant’s entry is warranted for “business needs relevant to the Bank Group,” it is not unreasonable for the HRVP to be informed if the Applicant’s in-person presence is required for the event or whether there is an alternative venue for the event outside the Bank’s premises. The Tribunal does not see in any of these actions of the HRVP any contradiction with the responsibilities entrusted upon him to consider all necessary factors and the Bank’s best interests in making his determination.

WHETHER THE BANK HAS APPLIED A CONSISTENT POLICY OF ENTRY TO THE APPLICANT AND
SIMILARLY SITUATED STAFF AND FORMER STAFF MEMBERS

84. The Applicant alleges that there was never a policy regulating his entry into the Bank’s premises and that the Bank’s alleged policies were gradually articulated during litigation. In the Applicant’s view, the absence of a formal, pre-existing policy is revealed by the Bank’s “abruptly shifting standards.” For its part, the Bank claims that it has since 2014 provided the Applicant with “comprehensive written guidance” and denies any inconsistency between its response to the Applicant’s entry requests and its established standard practices and the 2015

protocol of entry, which it claims applies without distinction to all persons who are subject to restricted access to the Bank Group's premises resulting from disciplinary sanctions.

85. The Manager, HRDCO's declaration annexed to the Bank's pleadings notes that the information provided to the Applicant between July and August 2015 "summarized the Bank Group's established standard practices in the form of an entry protocol that HRDCO has put in place for all persons who are subject of restricted access to Bank Group premises." On the basis of this declaration, the Tribunal ordered the Bank to produce evidence in support of this assertion. Pursuant to this order, the Bank acknowledged that "HRDCO's practical steps and processes in handling restrictions on access to premises are not all laid down in a specific policy or procedure, but rather are based on its case by case decisions, documented in individual cases."

86. The Tribunal subsequently ordered the Bank to produce evidence of at least five individuals who have had their access to the Bank's premises restricted for misconduct. The Bank produced documentation in relation to three individuals noting that no further evidence is available as other individuals have not yet sought permission to access the Bank's premises. This documentation, which the Tribunal reviewed *in camera*, shows that the three individuals in question had their access to the Bank's premises restricted on similar terms as the Applicant's.

87. The Tribunal observes that, because the Bank's entry standards have been for the most part consistent over the years, there is no evidence for the Applicant's claims that the HRVP has acted arbitrarily and abused his discretion. Furthermore, the Tribunal accepts the Bank's statement that "HRDCO's practical steps and processes in handling restrictions on access to premises are not all laid down in a specific policy or procedure, but rather are based on its case by case decisions, documented in individual cases." In response to the Tribunal's orders for document production, the Bank has demonstrated that entry conditions are imposed, without distinction, on any individual who had had his or her access to the Bank's premises restricted for misconduct. In the absence of clear evidence showing that the Bank has treated the Applicant differently than other "similarly situated" staff or former staff members, the Tribunal finds that there is no evidence of arbitrariness in the way the Bank has handled the Applicant's restricted access.

WHETHER DUE PROCESS WAS FOLLOWED DURING THE SECOND REQUEST

88. Another of the Applicant's claims is that the HRVP's actions of January 2017 were contrary to due process because, without identifying a single deficiency in the Applicant's Second Request, the HRVP "(i) set the invitation aside; (ii) gave the Applicant no chance to gather any further information needed; and (iii) insisted on confronting the host." The Bank denies this assertion and asserts that the Manager, HRDCO was on sick leave at the time of the Second Request and unable to provide an explanation before the Applicant withdrew his request. The Bank submits that it has followed due process in providing the Applicant with detailed and consistent information and advance notification of the protocol of entry and giving the Applicant the opportunity to respond through his Counsel.

89. The Tribunal has consistently upheld the importance of following due process in reaching adverse decisions against a present or former staff member. The Tribunal held in *Q*, para. 51, that:

[T]he defects in the process leading up to the no-hire flag's placement and later replacement debar the Bank from again reinstating this flag absent further due process undertaken in conformity with the terms of this judgment. (*Dambita*, Decision No. 243 [2001], para. 28.) So that this relief is effective, the Tribunal orders that the no-access flag, and any other flags that might be present in the Applicant's [personnel] record, be removed subject to reinstatement through proper process [...].

90. In *Dambita*, para. 26, the Tribunal emphasized that:

[T]he placement of any flags, for whatever purpose, must follow the basic elements of due process, including, specifically, written notification and the right to reply. This applies to present and former staff. The Respondent thus failed to comply with due process in placing the no-access flags without written notification to the Applicant, and without her having been given a right to reply.

91. While the Tribunal has stated that different considerations apply when access restrictions are a matter of misconduct or security, it has, however, consistently held that due process standards apply similarly in both cases. In *Q* (*No. 2*), Decision No. 438 [2010], para. 35, the Tribunal specifically observed that:

[E]ven though the due process standards set out in *Dambita* and in *Q* are similar, the circumstances in those cases are significantly different. In *Dambita*, the central issue was misconduct. The Bank had concluded that the applicant had been involved in misconduct, and barred her from employment as a result. In contrast, in *Q*, the initial decision to place flags in the applicant's personnel files was based on issues relating to Bank security, and a no-hire and no-access flag was placed in the applicant's file. There was no question of misconduct, and the decision to place flags was not the result of disciplinary action. While the Tribunal deemed the Bank's action in response to the applicant's behavior to have been punitive in nature, the question of misconduct under the Bank's Staff Rules did not arise. It will also be recalled that in *Dambita* (at para. 27) the Tribunal noted the distinction between the imposition of flags as disciplinary action and the imposition of flags for security purposes. Thus different considerations apply depending on whether the matter is one of misconduct or of security; in *Dambita* the Tribunal determined whether the disciplinary action was justified, whereas in *Q* it only decided whether the Bank abused its discretion in placing flags in the Applicant's personnel files as a matter of security.

92. As established in its jurisprudence, the Tribunal observes that the obligation to follow basic elements of due process required that the Manager, HRDCO, or an HRDCO representative in his absence, inform the Applicant of the reasons he or she found his Second Request to be deficient and provide him with the opportunity to reply. The record shows that the Bank did not indicate to the Applicant how the written invitation and the information enclosed with the Second Request were insufficient or even how the Applicant could correct those deficiencies. The Bank rather informed the Applicant that it would "undertake the standard due diligence steps which may include contacting the staff member who has issued the invitation [...]." The Tribunal observes, nevertheless, that the basis under which the Applicant claims that the Bank has violated due process in respect of the Second Request is intrinsically linked to the main question before this Tribunal regarding the HRVP's exercise of discretion in implementing the restricted access imposed on the Applicant for misconduct, including the need to contact the organizers of the event. Having found that the HRVP in exercising his discretion may take any such measures as he deems necessary to verify the information submitted by the Applicant, including contacting the organizers of the event, the Tribunal concludes that the Applicant's claim that due process was violated is not supported by the record.

WHETHER CONDITIONING ACCESS TO THE BANK'S PREMISES ON THE AVAILABILITY OF AN ESCORT
IS WITHIN THE HRVP'S DISCRETION

93. The Tribunal has in numerous instances recognized that conditioning access to the Bank's premises, for a staff member or former staff member, on the availability of an escort may be necessary for security considerations relating to a member's presence such as threats, intimidating or harassing behavior, visible agitation, altercations, attempting to leave the Bank with unauthorized documents, and other inappropriate behavior. *See, e.g., Yoon (Nos. 13, 14, 16, 17, and 18)*, paras. 21, 49, 79; *Mwake*, para. 34; *B*, para. 28. Also, imposition of a required escort may be necessary to avoid disruption in the workplace, or when a member has previously displayed a disregard for a lack of authorization to be on the Bank's premises, if foreseeable events that may trigger violence from a member can reasonably be deduced, or when a member has made excessive demands to a Bank unit sufficient to raise concerns. *See Yoon (Nos. 13, 14, 16, 17, and 18)*, para. 79; *B*, para. 28; *Mwake*, para. 34. Actions that raise questions regarding a staff member's mental state and capacity to cause harm to themselves or others may also make the imposition of an escort necessary. *See Yoon (Nos. 13, 14, 16, 17, and 18)*, paras. 8, 49.

94. The Tribunal notes the Bank's statement that the requirement of an escort is "consistent with HRDCO's established standard practices when assessing any request from a person who is [the] subject of restricted access." In its response to the Tribunal's order of 27 March 2018, the Bank further stated that, "where a person's access is controlled resulting from their proven misconduct, security measures are put in place to ensure that their access to the Bank premises is exercised in a way that is consistent with the limitations." While not expressly stated in the HRVP's letter of 30 May 2014, the Tribunal acknowledges nonetheless the HRVP's broad discretion in conditioning the Applicant's entry to the Bank's premises on the availability of an escort.

95. The Applicant argues that the Bank has a fully automated system for tracking the visitor's entries as well as video surveillance systems and that having the Applicant escorted at all times serves no practical purpose. The Tribunal observes that, in its response to its order of 25 April 2018, the Bank provided the Tribunal with information and documentation that has convincingly

shown that the Bank's automated access control systems would not be sufficient to limit the Applicant's presence on the Bank's premises to the purposes of his visit. On the basis of this information, the Tribunal finds that it is not unreasonable for the Bank to require that the Applicant be escorted while on the Bank's premises to ensure that the Applicant's visit is restricted to the offices that need his presence.

96. Having convincingly demonstrated that an escort is necessary to ensure that the Applicant's visit to the Bank's premises is limited to its intended purpose, and in the absence of evidence to support the Applicant's claim that the requirement of an escort is abusive or arbitrary, the Tribunal concludes that the Bank's decision to require that an escort accompany the Applicant during his visits to the Bank is not unreasonable.

DECISION

The Application is dismissed.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 May 2018