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PART II

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN

MINISTRY OF LAW AND JUSTICE

NOTIFICATION

Islamabad, the 12th June, 2018

S.R.O. 736 (I)/2018.—In exercise of the powers conferred by section 25 of the Alternative Dispute Resolution Act, 2017 (XX of 2017), the Federal Government is pleased to make the following rules:

1. **Short title and commencement.**—(1) These rules may be called the Alternative Dispute Resolution Rules 2018.

(2) They shall come into force at once.

2. **Definitions.**—In these rules:

(a) “Act” means the Alternative Dispute Resolution Act, 2017 (XX of 2017);

(b) “administrative services” include the following services:

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- (i) space for ADR sessions;
 - (ii) secretariat support and clerical assistance including issuance of notices and authentication of documents relating to ADR;
 - (iii) long distance and local telephone access;
 - (iv) internet, telex and telecopier facilities;
 - (v) audio-video linkages; and
 - (vi) photocopying and other usual office services;
- (c) "Schedule" means the Schedule appended to the rules; and
- (d) "section" means a section of the Act.

3. **Initiation of ADR.**—(1) In a case mentioned in the Schedule appended to the Act, the Court shall, immediately after filing of written statement or reply, refer the case for ADR with or without framing the issues.

(2) Before reference to ADR under sub-rule (1), if a party files an application to the Court containing its disagreement to reference to ADR, the Court shall not refer the case for ADR.

(3) If the case is not referred to an ADR Centre, the Court shall specify the mode of ADR in the case as specified in section 2(a) and appoint the Neutral, team of Neutrals or any other person or persons agreed upon by the parties.

(4) If the parties agree to ADR through an ADR Centre, the Court shall refer the case to the ADR Centre.

(5) Before referring the case to a Neutral or a team of Neutrals, the Court or ADR Centre shall guide the parties regarding the relevant factors which the parties may take into account before they exercise their option as to the particular mode of settlement.

(6) If the case is referred to an ADR Centre, the ADR Centre shall, having due regard to the nature of the case and views of the parties, specify the mode of ADR in the case as specified in section 2(a) and appoint the Neutral or team of Neutrals.

(7) Where a party applies to the Court disputing the mode of ADR or appointment of Neutral or team of Neutrals and the parties disagree on this, the Court may proceed to try the case.

(8) The parties may, at any stage of a case including appeal or revision, submit a joint request to the Court for reference of the case for resolution through ADR and the Court shall refer the case for resolution through ADR as per joint request of the parties.

4. **ADR without Court intervention.**—(1) A party to a dispute may send to the other party a written invitation to conciliate, mediate or arbitrate under these rules, briefly stating the subject of the dispute.

(2) If the other party accepts in writing the invitation under sub-rule (1), any party may approach the Court or ADR Centre for appointment of Neutral, team of Neutrals or, with agreement in writing of the parties, any other person or persons for resolution of dispute through ADR.

(3) If the party initiating ADR does not receive a reply within fifteen days from the date on which he sends the invitation, he may elect to treat this as a rejection of the invitation and inform the other party accordingly.

(4) If there is prior agreement between the parties to a dispute on reference to any mode of ADR, a party may, after fifteen days of invitation to other party under sub-rule (1), approach the Court or ADR Centre for appointment of Neutral, team of Neutrals or any other person or persons for resolution of dispute through ADR.

5. **Procedure for panel of Neutrals.**—(1) The Government shall, in consultation with the High Court, notify the panel of Neutrals by giving mandatory representation to women in the panel.

(2) The Government shall not include any person on the panel of Neutrals without his consent and the panel of Neutrals shall contain names of Neutrals, brief, qualifications of the Neutrals, and their professional or technical experience in different fields.

(3) The Government may, in consultation with the High Court, add or delete any person in the panel of Neutrals.

6. **Qualification of persons to be appointed as Neutrals.**—(1) The Government shall consider the following persons for inclusion in the panel of Neutrals under section 4:

- (a) legal practitioners with at least seven years standing at the Bar;
- (b) retired Judges, judicial officers or civil servants;
- (c) Ulema;

- (d) jurists;
- (e) technocrats; and
- (g) experts or other professionals with at least seven years' experience in their respective fields.

7. **Dis-qualification of persons appointed as a Neutral.**— (1) The following persons shall be deemed to be dis-qualified for being appointed as a Neutral or in the case of an already appointed Neutral, to be dis-qualified as Neutral:

- (a) any person who has been adjudicated as undischarged insolvent;
- (b) any person who has been declared of unsound mind;
- (c) any person against whom criminal charges involving moral turpitude are framed by a criminal Court and are pending;
- (d) any person who has been convicted and sentenced by a criminal Court for any offence involving moral turpitude;
- (e) any person against whom disciplinary proceedings or charges relating to moral turpitude have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment;
- (f) any person who is interested or connected with the subject matter of dispute or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing; or
- (g) any legal practitioner who has or is appearing for any of the parties in a suit or other legal proceedings.

(2) If a Neutral is disqualified under sub-rule (1) acts as Neutral in any case in which he was disqualified or violates any provision of the code of conduct, the Government may, after giving the Neutral a hearing and in consultation with the High Court, delete the name of the Neutral from the panel of Neutrals.

8. **Duty of a Neutral to disclose certain facts.**—(1) The Neutral shall disclose in writing to the parties, Court or ADR Centre any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality.

(2) A Neutral shall, from the time of his appointment and throughout the continuance of the ADR proceedings, without delay, disclose to the parties in writing, about the existence of any of the circumstances referred to in sub-rule (1).

9. **Cancellation of appointment of a Neutral.**—Upon information furnished by the Neutral or upon any other information received from any source, the Court or ADR may, after conducting such inquiry if it deems fit and after giving a hearing to the Neutral, cancel the appointment of the Neutral and replace such Neutral by another Neutral.

10. **Number and appointment of Neutrals.**—(1) The Court or ADR Centre shall appoint one Neutral unless the parties agree to appointment of a team consisting of two or three Neutrals.

(2) The ADR Centre may appoint a Neutral or a team of Neutrals if:

- (a) the parties to a dispute request the ADR Centre to make such appointment;
- (b) the agreement between the parties provides for the appointment of Neutral by the ADR Centre; or
- (c) the Court has referred the case to the ADR Centre.

(3) The parties shall submit one or more of the following documents to ADR Centre:

- (a) a copy of the invitation or Court order;
- (b) a copy of the acceptance by the other party;
- (c) a copy of the agreement, if any, between the parties providing for an amicable settlement of dispute between them by ADR;
- (d) any special qualification required for the Neutral; and
- (e) any additional information, if required, by the ADR Centre.

(4) In recommending or appointing an individual to act as Neutral, the ADR Centre shall take into consideration:

- (a) any qualification required for the Neutral by the agreement of the parties; and
- (b) such considerations as are likely to secure the appointment of any independent and impartial Neutral.

(5) A successor Neutral shall be appointed in the manner in which his predecessor had been appointed.

11. **Submission of statements to Neutral.**— (1) The Neutral may, upon his appointment, request each party to submit a brief statement in writing describing the general nature of the dispute, the points at issue and the amount, if any, of the claim and a party shall send a copy of such statement to the other party.

(2) The Neutral may request a party to submit a further statement in writing or any document or other evidence that is in possession of such party and the party shall submit such statement, document or other evidence to the Neutral and the other party.

12. **Schedule of ADR session.**—(1) The evaluator shall arrange preliminary hearing by fixing a date and place of the hearing session within seven days of receiving the documents.

(2) The Neutral shall schedule hearing with the agreement of the parties or the parties so as to conclude the hearing and submit the report within the time limit fixed under section 9.

13. **Attendance at ADR session.**— (1) The parties themselves and their attorneys shall attend an ADR session unless excused by the Neutral.

(2) A party other than a natural person like company or body corporate, a person who has authority to settle dispute shall attend ADR session on behalf of the legal person.

(3) If personal attendance of a party is likely to cause an extra-ordinary or otherwise unjustifiable hardship, the Neutral may excuse personal attendance of the party subject to availability of authorized representative of the party who is empowered to settle the dispute or immediate electronic availability of the party by phone or other mode of audio or video communication.

14. **Role of Neutral.**—(1) The Neutral shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

(2) The Neutral shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(3) The Neutral may conduct the ADR proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes

the parties may express, including the request by a party that the Neutral may hear oral statements, and the need for a speedy settlement of the dispute.

(4) The Neutral may, at any stage of the ADR proceedings, make proposals for a settlement of the dispute and the proposals need not be in writing and need not be accompanied by a statement of the reasons.

(5) The Neutral shall adhere to the timelines for resolution of dispute provided in section 9 and if no settlement or award is reached upon completion of such period, the Neutral shall submit failure of ADR report to the Court or the ADR Centre, as the case may be.

15. **Representation and assistance.**—A party shall inform, in writing, the other party and the Neutral of:

- (a) the name and address of any person who will represent or assist the party; and
- (b) the capacity in which the person will represent the party.

16. **Voluntary participation and self-determination.**—(1) A Neutral shall conduct the proceedings in a manner that supports the principles of voluntary participation and self-determination by the parties.

(2) For this purpose of sub-rule (1), a Neutral shall:

- (a) inform the parties, at or before the outset of the first settlement session, that any resolution of the dispute requires a voluntary agreement of the parties;
- (b) respect the right of each participant to decide the extent of his participation in the proceedings including the right to withdraw from the proceedings at any time; and
- (c) refrain from coercing any party to make a decision or to continue to participate in the proceedings.

17. **Costs for adjournment.**—(1) If a party fails to appear in an ADR session without obtaining excuse of appearance from the Neutral, the Neutral shall direct such party to pay to the other party costs for adjournment which shall not be less than one thousand rupees.

18. **Administrative services by ADR Centre.**—The ADR Centre shall provide the administrative services if:

- (a) the parties designate the ADR Centre for providing such services in the agreement; or
- (b) the parties, or the Neutral with the consent of the parties, request the ADR Centre to provide such services.

19. **Communication between Neutral and parties.**—(1) The Neutral may invite the parties to meet him or may communicate with them orally or in writing and he may meet or communicate with the parties together or with each of them separately.

(2) Unless the parties have agreed upon the place including ADR Centre where meetings with the Neutral are to be held, such place shall be determined by the Neutral by taking into consideration the circumstances of the ADR proceedings.

20. **Disclosure of information.**—(1) Subject to sub-rule (2), when the Neutral receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which the other party considers appropriate.

(2) When a party gives any information to the Neutral subject to a specific condition that it be kept confidential, the Neutral shall not disclose that information to the other party.

21. **Suggestions by parties for settlement.**—A party may, without prejudice to merits of the case, submit to the Neutral suggestions for the settlement of the dispute.

22. **Settlement.**—(1) When it appears to the Neutral that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit it to the parties for their observations.

(2) After receiving the observations of the parties, the Neutral may reformulate the terms of a possible settlement in the light of such observations.

(3) If the parties reach to an agreement on a settlement of the dispute, they may draw up and sign a written settlement and if requested by the parties, the Neutral may draw up or assist the parties in drawing up the settlement.

(4) When the parties sign the settlement, it shall be final and binding on the parties and persons claiming through them.

(5) The Neutral or the ADR Centre or both shall authenticate the settlement and provide a counter original to the parties while forwarding the original to the Court under section 10.

23. **Award.**—(1) The Neutral as arbitrator shall, as far as practicable, conduct arbitration proceedings in accordance with the Arbitration Act, 1940 (X of 1940) and render a written award with the consent and signatures of the parties.

(2) The Neutral or the ADR Centre or both shall authenticate the award and provide a counter original to the parties while forwarding the original to the Court under section 10.

24. **Confidentiality.**—The Neutral, ADR Centre and the parties shall keep confidential all matters relating to the ADR proceedings including terms and conditions of settlement except where its disclosure is necessary for purposes of its implementation and enforcement.

25. **Termination of ADR proceedings.**—(1) The Neutral shall terminate ADR proceedings in any of the following situations:

- (a) by the signing of the settlement by the parties, on the date of settlement; or
- (b) by a written declaration of the Neutral, after consultation with the parties, to the effect that further efforts at ADR are no longer justified, on the date of the declaration; or
- (c) by a written declaration of the parties addressed to the Neutral to the effect that the ADR proceedings are terminated on the date of the declaration; or
- (d) by a written declaration of a party to the other party and the Neutral, if appointed, to the effect that the ADR proceedings are terminated, on the date of the declaration; or
- (e) time allowed for ADR proceedings expired, on the date of expiry of the time.

(2) The Neutral shall, upon termination of the ADR proceedings, send an intimation thereof in writing to the Court or ADR Centre.

26. **Communication between the Neutral and the Court.**—(1) The Neutral shall not communicate with the Court except for:

- (a) intimating about the failure of a party to attend the ADR proceedings;
- (b) intimating that the parties have reached a settlement agreement or an award has been issued; and
- (c) obtaining advice on procedural matters with the consent of the parties.

27. Notification of ADR Centre.—(1) The Government shall, by notification in official Gazette, notify one or more ADR Centres in public or private sector.

(2) If an ADR Centre indulges in malpractice, violates the Act or the rules, the Government may, by notification in official Gazette, de-notify the ADR Centre.

(3) The ADR Centre shall act through its administrative officer appointed by the Law and Justice Division on its own in case of public sector ADR Centre or on the recommendation of owner private party in case of private sector ADR Centre.

(4) Law and Justice Division of the Government shall issue instructions for establishment and maintenance of private sector ADR Centre.

(5) The owner private party of private sector ADR Centre shall submit an undertaking for compliance with Act, the rules and the instructions issued by Law and Justice Division, and continuous provision of facilities and services at the ADR Centre before notification of the ADR Centre under sub-rule (1).

28. Costs.—(1) Unless otherwise directed by the Court or ADR Centre or agreed by the parties, the parties shall equally bear costs of ADR proceedings.

(2) The parties shall pay in advance the costs of ADR proceedings for provision of administrative services in accordance with Part-I of the Schedule.

(3) The parties shall pay the costs of services for ADR proceedings other than administrative services costs of ADR Centre, if any, and fee of the Neutral on actual bill basis.

(4) The Court may, on request from the ADR Centre and after hearing the parties, fix the costs of the administrative services at a rate higher than that set out in the Schedule if, in exceptional circumstances of the case, this appears to be necessary.

29. Fee of Neutral.—(1) The Court shall fix fee of the Neutral and in accordance with Part-II of the Schedule and direct the parties to pay whole or half of the fee in advance to the Neutral or the parties shall agree to pay the fee to the Neutral.

(2) The Court or the ADR Centre may, on request from the Neutral and after hearing the parties, fix the fee of the Neutral at a rate higher than that set out in the Schedule if, in exceptional circumstances of the case, this appears to be necessary.

(3) Where more than one Neutral is appointed, each Neutral shall be paid separately the fee set out in the Schedule.

(4) Unless otherwise directed by the Court or agreed by the parties, the parties shall equally bear the fee of the Neutral.

30. Deposits for evaluator and other costs.—(1) The Neutral may, at any time and in consultation with the ADR Centre, direct the parties to deposit with the ADR Centre an amount as an advance for the costs and fee of an evaluator or costs for any other expense not envisaged in these rules but required to be incurred in the ADR proceedings.

(2) In the absence of ADR Centre, the parties shall directly pay the costs envisaged in sub-rule (1) as may be determined by the Neutral on case to case basis.

(3) On termination of the ADR proceedings, the ADR Centre shall return the unspent deposits under sub-rule (1) to the parties in the same proportion in which it was deposited by the parties.

31. Non-payment of costs and fee.—If a party fails to pay the costs or fee within the time fixed by the Court, ADR Centre or Neutral, the Neutral shall inform the parties in order that one or the other party may make the required deposit and if the required deposit is not made, the Neutral may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of the declaration.

32. No cash payment.—Unless otherwise directed by the Court and as far as practicable, the parties shall make payments of costs and fees under these rules through banking channel and the Neutral or the ADR Centre may not receive the costs or fee in cash.

33. Services as the registry.—(1) In case of ADR proceedings through an ADR Centre, the ADR Centre shall register the proceedings and intimate in writing to the parties the registration number of the proceedings and the parties shall quote this number in all future reference to the ADR proceedings.

(2) The ADR Centre shall make necessary entries in the register of ADR proceedings and keep a separate record of the proceedings preferably in a secure electronic form.

34. ADR in criminal cases.—(1) The Court may on its own or on the application of a party may seek consent of parties or the other party for initiation of ADR proceedings in a compoundable criminal case for the purposes of section 14.

(2) The Court may, with the consent of parties:

(a) commence ADR proceedings in a compoundable criminal case; and

(b) appoint a Neutral or any other person for conducting the ADR proceedings.

(3) The process of ADR by the Neutral shall, as nearly as possible with necessary adaptations, be same as in civil cases under these rules.

(4) The Neutral or the other person appointed under sub-rule (2) shall mediate and facilitate compounding of offence between the parties within thirty days from the date communication of reference to him.

35. **Training.**—(1) The Government may arrange or direct an ADR Centre to arrange training of the Neutral or persons aspiring to become Neutrals in the specialized fields of arbitration, mediation, conciliation and neutral evaluation.

(2) If it is required by the Government, the Neutrals or a category of Neutrals shall satisfactorily complete the training under sub-rule (1).

SCHEDULE

PART-I COSTS FOR ADMINISTRATIVE SERVICES AT THE ADR CENTRE

[See rule 28]

	Amount in dispute in rupees	Amount of costs for administrative services in rupees
(i)	Where the total amount in dispute does not exceed Rs. 5,00,000/-	Rs. 5,000/- (Rupees five thousand)
(ii)	Where the total amount in dispute exceeds Rs. 5,00,000/- but does not exceed Rs. 10,00,000/-.	Rs. 5,000/- plus one percent of the amount by which the total amount in dispute exceeds Rs. 5,00,000/-.
(iii)	Where the total amount in dispute exceeds Rs. 10,00,000/- but does not exceed Rs. 25,00,000/-.	Rs. 10,000/- plus point five or one half (0.5) percent of the amount by which the total amount in dispute exceeds Rs. 10,00,000/-
(iv)	Where the total amount in dispute exceeds Rs. 25,00,000/- but does not exceed Rs. 50,00,000/-.	Rs. 17,500/- plus point two five (0.25) percent of the amount by which the total amount in dispute exceeds Rs. 25,00,000/-.
(v)	Where the total amount in dispute exceeds Rs. 50,00,000/-.	Rs. 23,750/- plus point one two five (0.125) percent of the amount by which the total amount in dispute exceeds Rs. 50,00,000/- subject to the maximum of Rs. 35,000/-.

Note: Where the dispute cannot be expressed in terms of money, the Court or the ADR Centre shall, in advance and after consultation with the parties, determine the amount of costs in each case.

PART-II
FEE OF A NEUTRAL

[See rule 29]

	Amount in dispute in rupees	Amount of fee of one Neutral in rupees
1.	where the total amount in dispute does not exceed Rs. 5,00,000/-.	Rs. 10,000/- (Rupees ten thousand only).
2.	where the total amount in dispute exceeds Rs. 5,00,000/- but does not exceed Rs. 10,00,000/-.	Rs. 10,000/- plus one percent of the amount by which the total amount in dispute exceeds Rs. 5,00,000/-.
(iii)	where the total amount in dispute exceeds Rs. 10,00,000/- but does not exceed Rs. 25,00,000/-.	Rs. 15,000 plus point five or one half (0.5) percent of the amount by which the total amount in dispute exceeds Rs. 10,00,000/-.
(iv)	where the total amount in dispute exceeds Rs. 25,00,000/- but does not exceed Rs. 50,00,000/-.	Rs. 22,500/- plus point two five (0.25) percent of the amount by which the total amount in dispute exceeds Rs. 25,00,000/-.
(v)	where the total amount in dispute exceeds Rs. 50,00,000/-.	Rs. 28,750/- plus point one two five (0.125) percent of the amount by which the total amount in dispute exceeds Rs. 50,00,000/- subject to the maximum of Rs. 35,000/-.
<i>Note:</i> Where the dispute cannot be expressed in terms of money, the Court or the ADR Centre shall, in advance and after consultation with the parties, determine the amount of fee in each case.		

[F.No.7(13)/2018-D&L.]

SAADAT IQTIDAR ALAM,
Section Officer (D&L).