

Access To Justice Development Rules 2002

Report No. 52

Access To Justice Development Rules 2002

The Law Commission Ordinance XIV of 1979 was amended by Ordinance No.LXX of 2002, thereby changing the name from Pakistan Law Commission to Law & Justice Commission of Pakistan. Further, the composition of the Commission was enlarged and its functions expanded. The Commission was also empowered to administer and manage the Access to Justice Development Fund, meant for strengthening the capacity of the subordinate courts, improving the training of judicial officers, promoting the quality of legal research/education and providing access to justice, legal aid and the protection of human rights. Section 6-A of the Ordinance established the Access to Justice Development Fund as follows:

“6A. Fund.- (1) There shall be established for the purposes of this Ordinance a fund to be called the Access to Justice Development Fund.

(2) The Fund shall consist of -

- (a) an endowment grant of initial amount equivalent to US \$24 million by the Federal Government in installments.;
- (b) other grants and donations made by the Federal Government, Provincial Governments or a Local Government;
- (c) donations and contributions made by individuals or institutions, and

(d) sums raised by the Commission.

6-B. Expenditure to be charged on the Fund.- The annual income generated by investment of endowment grant under clause (a) of sub-section (2) of section 6-A shall be utilized for the purposes and to the extent provided as hereunder.

- (a) 60.3% shall be allocated to the provinces on population basis to be called Provincial Judicial Development Fund for improving the capacity and performance of the subordinate courts and providing amenities and facilities to courts and litigants, as may be determined by the respective High Court(s);
- (b) 10% shall be set aside for special project in the under developed Provinces and regions;
- (c) not more than 4.5 % on Legal and Judicial Research;
- (d) not more than 4.5 % on the activities of the Federal Judicial Academy not covered by its budgetary allocation;
- (e) not more than minimum of 13.5 % with a cap of 20% for the legal empowerment of the poor and underprivileged persons for provision of legal aid or assistance to have access to justice, in accordance with the criteria to be laid by the Commission;
- (f) not more than minimum of 4.5 % with a cap of 10% to be spent on innovations in or promotion of legal education;
- (g) 2.7% shall be charged by the Commission for management of the Fund:

Provided that an amount allocated under clauses (a) to (g) if not spent for any category shall be carried forward for the same purposes for the next two years;

- (h) all other fund other than provided in clause (a) of sub-section (2) of section 6-A and the proceeds thereof, shall be utilized by the Commission for discharging its duties and functions under the Ordinance.

In order to administer the fund for the above specified purposes, the Commission Secretariat in consultation with the Ministry of Law, Justice and Human Rights, prepared a draft of the Access to

Justice Development Fund Rules in pursuance of the powers conferred under Section 9 of the Law & Justice Commission of Pakistan Ordinance 1979. The draft Rules were placed before the Commission for consideration and approval.

Commission's deliberations

The Commission examined Access to Justice Development Fund Rules and approved the draft rules subject to minor changes therein i.e. in rule 3(2) in the composition of the Governing Body, the name "Secretary, Ministry of Economic Affairs" be deleted and instead "Secretary, Law & Justice Commission of Pakistan" be added; in rule 6, the words "deem fit" be substituted by the words "be prescribed"; and correcting some typographical errors i.e. in rule 4(b) the figure "12" be substituted by the figure "9"; in rule 9(ii) the figure "13.3" be substituted for the figure "13.5"; and in rule 10 the figure "7" be substituted by the figure "9". Accordingly, the draft Rules have been notified in the Gazette of Pakistan (Appendix).

The Commission also approved the proposed increase of posts and budget grant for the working strength of the re-organised Law & Justice Commission's Secretariat, as already communicated to the Programme Management Unit (PMU) of the Ministry of Law & Justice and Ministry of Finance.

Appendix

Government of Pakistan
Law and Justice Commission of Pakistan
Islamabad, the 31st December 2002

S.R.O._____(I)/2002. - In exercise of powers conferred by sub-section (1) of section 9 of the Law and Justice Commission of Pakistan Ordinance, 1979 (XIV of 1979) the Law and Justice Commission of Pakistan is pleased to make the following rules for administering and managing the Access to Justice Development Fund.-

1. Short title and commencement.- (i) These Rules may be called the Access to Justice Development Fund Rules, 2002.

(ii) They shall come into force at once.

2. Definitions.- In these rules, unless there is anything repugnant in the subject or context.-

(a) 'Advisor' means an investment advisor or an investment company registered as such and includes an investment consultant;

(b) 'Chairman' means Chairman of the Commission;

(c) 'Commission' means Law and Justice Commission of Pakistan;

(d) 'Fund' means Access to Justice Development Fund consisting of endowment grants of the Federal Government under its access to justice programme;

(e) 'Managing Director' means Managing Director of the Fund;

(f) 'Secretary' means Secretary of the Commission;

(g) 'Governing Body' means a Committee of the Commission to administer and manage the Fund;

(h) 'Government' means the Federal or a Provincial Government as the case may be;

(i) 'Member' means Member of the Commission;

- (j) 'Ordinance' means Law and Justice Commission of Pakistan Ordinance;
- (k) 'Organization' means a bar council, a bar association, an educational institution or any other organization formed with the permission or authority of the Government and includes a non-governmental organization; and
- (l) 'rules' means rules made under the Law and Justice Commission of Pakistan Ordinance, 1979.

3. (1) The Commission shall have the possession, management and control of the Fund, its undertakings, properties and assets.

(2) The Fund shall be administered and managed by the Governing Body consisting of the Chairman, the Chief Justices of the four Provincial High Courts, the Secretary, Ministry of Finance, the Secretary, Ministry of Law, Justice and Human Rights and the Secretary, Law and Justice Commission of Pakistan, members.

(3) The Governing Body shall regulate its own procedures and co-opt any member of civil society as may deem appropriate in discharge of its functions.

(4) Any defect in constitution of the Governing Body shall not invalidate any thing done or any act performed by the Governing Body.

(5) The Governing Body shall hold its meeting at least once in three months.

(6) During the interval between meetings of the Governing Body the Chairman shall act in the best interest of the Fund.

4. The Governing Body shall. -

- (a) invest the Fund for generating income;
- (b) allocate the income earned on investment of Fund to the Fund windows specified under rule 9;
- (c) draw or authorise to draw Fund from the bank accounts;
- (d) verify the annual and half yearly accounts of the Fund.
- (e) approve investment policy and schemes for investment of the Fund;

Provided that no scheme of investment in an entity of a company shall be approved which is rated below A1+ for short-term and AAA for long term investment by a credit rating company within the preceding two years without advice of advisor or investment consultant;

(f) nominate director in a company in which an investment is made out of the Fund or there involves other special interest; of Fund by virtue of contractual arrangement as provided by Section 182 of the Companies Ordinance 1984;

(g) file petition for winding up of an indebted company under sections 305, 306 and 309 Companies Ordinance.

5. (1) The Fund shall be operated through an account to be opened in a bank as authorised by the Governing Body;

(2) the Fund account shall be operated jointly by two Members of the Governing Body or by the Secretary and the Managing Director authorised by it.

6. The Chairman shall appoint a Managing Director of the Fund from amongst officers not below the rank of Joint Secretary of the Commission and other investment advisors, consultants, accountants, auditors and other employees of the Fund management on such terms and conditions as may be prescribed.

7. The Managing Director shall. -

(a) prepare schemes for investment of the Fund for generating income.

(b) purchase, sell, endorse, transfer, negotiate or otherwise deal in securities of the Federal Government or any other securities of a legal description;

(c) raise loans for various projects and undertakings and for this purpose may pledge or otherwise charge the corpus of the capital and properties of the Fund;

(d) enter into contracts, agreements and arrangements, and execute necessary documents;

(e) open current, fixed, overdraft, loan, cash, credit or other accounts in local or foreign currency, with any bank as may be necessary and deposit into or draw money from

such accounts.

(f) cause the preparation and submission of annual and half yearly accounts of the Fund within the prescribed period;

(g) discharge any other function as authorised by the Governing Body;

8. (1) The Fund shall be invested with sound investment objectives with the advice of one or more professional investment managers, or advisors.

(2) The Governing Body may consider any investment criteria specified by a donor at the time of making donations to the Fund, but shall not follow such criteria if it is considered an imprudent investment of Fund by the advisor.

9. (1) There shall be maintained seven windows for allocation of income of the Fund in the ratio given as under:-

(i) Provincial Subordinate Courts (60.3%);

(ii) legal empowerment (13.5%);

(iii) Federal Judicial Academy where its activities are not covered by its budgetary provision (4.5%);

(iv) innovations in or promotion of legal education (4.5%);

(v) legal and judicial research (4.5%);

(vi) Fund management (2.7%); and

(vii) special projects in the under developed provinces/areas (10%).

(2) Any amount allocated if not utilized for any category, shall be carried forward for the same purposes for the next two years.

(3) The allocative ceilings of various Fund windows shall be determined on a tri-annual basis in the light of actual experience and review.

10. The eligible expenditures of amount allocated to each Fund window under rule 9 shall be.

(a) Subordinate Courts window. -

(i) automation of the courts;

(ii) reliable storage space for records;

- (iii) information kiosks;
 - (iv) provision of court-related conveniences and amenities to the litigants; and
 - (v) performance reward for the subordinate judiciary on the basis of supervision reports and recommendations submitted by the inspection team of the High Courts.

- (b) Legal empowerment window. -
 - (i) clinical legal aid to clients affected by violation of their fundamental rights by the executive, especially on matters concerned with criminal justice;
 - (ii) representation in public interest litigation;
 - (iii) public awareness and legal literacy campaigns; and
 - (iv) awareness on environmental laws.

- (c) Legal innovations window.-
 - (i) innovations in teaching of legal education and development of curriculum, including funding of pilot projects;
 - (ii) improving standard of legal education;
 - (iii) efforts directed at improvements in professional standards of the legal professionals;

- (d) Federal Judicial Academy window.-
 - (i) training programs for the judiciary including mobile training arrangements and facilities;
 - (ii) development of new courses, especially attempts at innovations;
 - (iii) training and education for non-judicial personnel, e.g. administrators, registrars and other support staff dealing in policy development and Implementation, case flow management, budget, planning, information system and record management.

- (e) Judicial and legal research window. -
 - (i) legal and judicial research aimed at improving the delivery of judicial and legal services and the quality of the judgments;
 - (ii) initiatives to reform laws and advocacy related endeavours.

- (f) Fund management window.-
 - (i) salaries of auditors, consultants, investment advisors and officers and staff of Fund management;
 - (ii) purchase of equipment, vehicles and stationary etc;
 - (iii) preparation of accounts and balance sheets of the Fund; and
 - (iv) payment of fees, salaries, travelling, daily and other allowances and any

other payment to be charged on the Fund.

(g) Under developed area window. -

The eligible expenditure under this window shall be as provided at clauses (a to c) or for any other special project.

11. A request for funding from legal empowerment, legal innovations and judicial and legal research windows shall be assessed in accordance with the criteria laid down by the Governing Body for each fund window and evaluated on the quality of the proposal, its technical soundness, the clarity with which estimates are set out and the extent to which its targets are realistic.

12. The financial year of the Fund shall commence from the first day of July each year, and end on the last day of June of the following year.

13. (1) The books of accounts of the Fund shall be prepared and kept in accordance with these rules, and where these rules are silent, in accordance with the provisions of the Companies Ordinance, 1984.

(2) The books of accounts shall be kept at Head Office of the Commission at Islamabad or at such other place as the Governing Body deems appropriate, and shall always be open for inspection by the Members.

14. (1) Within 50 days of the close of the financial year, the accounts of the Fund shall be balanced and audited and the income and expenditure statement and the balance sheet shall be certified by an auditor, qualified to act as such, in pursuance to the provisions of the Companies Ordinance, 1984.

(2) The audited income and expenditure statements, balance sheets and reports prepared in accordance with the relevant laws, rules or bye-laws and where the law and rules are silent, in accordance with the Companies Ordinance 1984, alongwith any other document required by law or rule to be annexed or attached thereto shall be placed before the Commission not later than 150 days after the close of each financial year.

(3) The Commission shall consider the audited accounts of the Fund within thirty days of their receipt under sub rule (2) and to apprise them if they are in order.

(4) Within 60 days of close of the first half of each financial year, the accounts of the Fund containing copies of income/ expenditure statements of that half year shall be submitted to the Commission.

15. The name and logo of the Fund shall be inscribed on the seal of the Fund and shall be affixed on all agreements made by the Fund.

16. The Chairman, Members and other officers of the Commission, its auditors and legal advisors, and their heirs, executor and administrator respectively, shall be indemnified out of the assets of the Fund, from and against all suits, proceedings, costs, charges, issues, damages and expenses which they or any of them shall or may incur or sustain, by reason of any act or omission in or about the execution of their duty in their respective office or in discharge of their duties, except such, if any as they incur or sustain by or through their own wilful neglect or wilful default respectively, and no such person or officer or the auditor or the legal advisor, shall be answerable for the act, neglect or default of any other such person, officer or legal advisor or for joining in any receipt of the sake of conformity, or for the solvency or honesty of any banker or a corporate entity with whom any money or effects belonging to the Fund are be invested or for any other loss or damage due to any such causes aforesaid, or which may happen in or about the execution of their duties or discharge of their responsibilities, unless the same happens through their own wilful neglect or wilful default.