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PART II

Statutory Notifications (S.R.O.)

GOVERNMENT OF PAKISTAN

ISLAMABAD HIGH COURT

NOTIFICATION

Islamabad, the 25th October, 2023

Mediation Practice Direction (Civil) Rules, 2023

To regulate the practice and procedure of Courts in relation to

Mediation in Civil Disputes

S. R. O. 1499(I)/2023.—Mediation as a method of alternate dispute resolution is given statutory recognition by the Alternate Dispute Resolution Act 2017 (the Act). In furtherance of the Act, rules are being notified from time to time.

For mediation as a sub-specialty of alternate dispute resolution, the following rules have thus far been notified by the Federal Government:

- (i) *Alternate Dispute Resolution (Accreditation) Rules, 2023.*
- (ii) *ADR Mediation Accreditation (Eligibility) Rules, 2023.*

(3293)

Price : Rs. 10.00

[2035(2023)/Ex. Gaz.]

In furtherance of the supervisory function of the High Court, the Islamabad High Court issues these rules in the exercise of its powers under Article 202 of the Constitution of the Islamic Republic of Pakistan, 1973, to be known as the *Mediation Practice Direction (Civil) Rules 2023*, and to be practiced by all Courts within the jurisdiction of the Islamabad High Court.

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1. **Notified Mediators; Notified ADR Centres.**—(1) Except for sufficient cause recorded in the order referring the dispute to mediation, Court-referred mediations in civil disputes should be referred for mediation by mediators notified under the Act, practising individually or under the aegis of an ADR Centre notified under the Act.

(2) The expression '*Mediator*' henceforth in this Practice Direction means a mediator notified under the Act, practising individually or under the aegis of an ADR Centre notified under the Act.

(3) Notwithstanding sub rules (1) & (2), mediations in family cases may be referred to '*agreed upon persons*¹', who are not notified mediators. Such agreed upon mediators should preferably be the trusted elders of the families.

2. **Consent to Mediate.**—(1) On the first appearance of a party, the Court shall direct such party to sign and file a *Mediation Consent Form* (per the Annex) for the parties' respective stances on mediation to be brought on record.

(2) The Court shall also cause the parties to sign and file a *Mediation Consent Form* in cases already filed where the recording of evidence has not commenced. For the avoidance of doubt, the Court shall on the parties' joint request refer the parties to mediation regardless of the stage the case has reached.

¹ Section 5 of the Alternate Dispute Resolution Act, 2017

(3) Where the parties agree to mediate, the Court will refer the parties to mediation and the parties' agreement to mediate shall be the foremost consideration for the Court.

(4) The Court's assessment of 'impossibility of mediation success' and 'intricacy of a question of fact or law' per sections 3(1)(b) and (c) of the Act should entail a very high threshold of Court's satisfaction to lean against mediation and, barring exceptionally strong reasons, should not override the parties' willingness to mediate, it being understood that the essence of mediation process is for the parties to be able to find a workable solution regardless of the underlying intricacies of fact and law.

(5) Where a party declines to mediate, the order sheet will reflect the Court's observations on the reasonableness of the refusal to mediate, and the order on costs at the conclusion of the trial will factor in an unreasonable refusal to mediate, not as a penalty, but as a reasonable estimate of the litigation costs the consenting party would have avoided if the case had gone to mediation, basing such estimate on the statement of litigation costs filed by the parties under the *Costs of Litigation Act, 2017*. This order will be made regardless of the party refusing mediation being successful in obtaining judgment in its favour².

3. **Decree on Settlement Agreement.**—(1) When mediation leads to a settlement, the settlement shall be reduced to writing as a *Settlement Agreement*, duly witnessed, and signed by the mediator and by the parties or their duly authorized representatives. It is mandatory to file the Settlement Agreement with the Court for Court-referred mediations³, and optional for non-Court-referred mediations⁴.

(2) The Court shall on notice to the parties pass judgment and decree in terms of the Settlement Agreement⁵, recording in the decree that it was passed in terms of the Settlement Agreement without formal adjudication by the Court and is executable⁶ as a decree by consent.

² Section 35(1)(iii), *Costs of Litigation Act, 2017*

³ *Sections 10(1)*

⁴ *Sections 10(5)*

⁵ *Section 10*

⁶ *Section 13*

4. **Court-referral without a suit.**—(1) Court-referred mediations include mediation referrals by Court on joint application by the parties without a suit filed by either party⁷. Such applications are to be registered as suits for record management purposes.

(2) The parties must demonstrate to the Court for their application being considered that they have applied, without success, to all notified ADR Centres for mediation, and the Courts shall not be requested, without good cause, to perform this function of ADR Centres.

5. **Inconclusive Mediation.**—If mediation in a pending case does not lead to a Settlement Agreement within the timeframe stipulated in the Act, the case will be re-listed in the cause list of the Court for judicial proceedings to resume. It is clarified that there is no bar on either party or the Court proposing mediation again and the parties resorting to mediation at a later stage during the proceedings.

6. **Mediation Register.**—Each Court will maintain a register of mediation referrals and will transmit the following particulars to the Registrar of the High Court on a monthly basis by the first week of the succeeding month:

- (i) number of mediation referrals, with referral dates,
- (ii) number of applications received and disposed of under section 8 of the Act
- (iii) number of successful mediations, reckoned from the date of decree.

F.No.165/Legis./IHC/556.]

SARDAR TAHIR SABIR,
REGISTRAR.

⁷ Section 8

Annex – Mediation Consent Form

In the [_____] Court

Case No. _____

Mediation Consent Form

(includes the notes)

*(Section 3 of the Alternative Dispute Resolution Act, 2017, and Mediation Practice Direction (Civil)
Rules 2023 of the Islamabad High Court)*

[Suit / Application Title with number]

On behalf of [name of party]

I. [Party] consents / does not consent to mediation.

II. Consent not given:

State reasons why does the party consider that it will get faster and more effective resolution of its dispute through litigation instead of mediation.	
The party confirms that it has discussed the costs of litigation with its counsel, and prefers nonetheless to litigate.	

III. Consent given:

(i) Preferred ADR Centre:

or

(ii) Preferred Mediator:

NOTES TO THE FORM (comprising an integral part of this Form)

- (a) Under section 3 of the Alternate Dispute Resolution Act, 2017, the parties are required to convey to this Court if they consent to mediation. If they consent, then they may either chose their own notified mediator, or, failing their consensus, the Court will, on preference of the parties, either refer the parties for mediation to a notified ADR Centre or will appoint a notified mediator.
- (b) Refusal to mediate has to be supported with good reason. Unreasonable refusal to mediate will be taken into account by the Court in its costs order in the judgment.
- (c) The mediator will not give any decision; his role is limited to facilitating the parties to arrive at a settlement. He will not give any legal advice. If he is called upon to give his views on the legal merits of any aspect of the dispute, he may do so, but only in the presence of both the parties, with the express caveat that the parties must obtain independent legal advice, and that the parties shall neither rely on, nor refer to in any manner in any legal proceedings, the mediator's view on the legal merits of aspects of their dispute.
- (d) A mediator will not be called as a witness, except and only to the extent required to prove the genuineness of the settlement agreement where it is in question.
- (e) A mediator will not act for nor represent a party to the mediation in any proceedings in any capacity in which the matter in dispute directly or indirectly touches or concerns the subject matter of the mediation.
- (f) The parties shall make their good efforts to commence mediation and shall seek to conclude mediation within 30 days. A further

period of 15 days can be allowed. If the mediation is not successful, the Court will resume hearing the case; however, the parties may at any stage of the proceedings file a fresh *Mediation Consent Form*, and the aforesaid timeframes will repeat.

- (g) The mediator shall observe complete confidentiality of communications made during the mediation, and shall not without the permission of the Court disclose any information in any form conveyed by the parties during the mediation.
- (h) The expressions ‘information’ and ‘communication’ include information conveyed in any form, be it written, oral, transcribed, electronic, digital, audio, visual or other form. The Court may permit disclosure only where the commission of a crime is being investigated and there is sufficient cause for the Court to infer the complicity of the mediator in the commission or concealment of crime.
- (i) Complaints of a disciplinary nature against the process of mediation and against the mediator or ADR Centre cannot be lodged in this Court. Such complaints are to be filed with the Law Division of the Federal Government.
- (j) If the mediation remains unsuccessful, the mediator will file a report with the Court. The mediator’s report shall be brief and restricted to:
 - (a) identifying any party’s unreasonable refusal to mediate or intentional stonewalling of the mediation process; and
 - (b) if settlement proposals were exchanged, a brief description of the parties’ respective settlement offers, identifying the points in the settlement offers on which the parties agree and on which they disagree.
- (k) The mediator’s report shall not contain nor allude to any communication or information exchanged, conveyed or received during mediation, except to the limited extent provided in paragraph (j) or except to the extent that both parties consent in writing for the mediator to disclose such information in the report.

- (l) If the mediation is successful and leads to a settlement agreement, the parties shall file in Court a duly signed and witnessed settlement agreement, countersigned by the mediator (and the ADR Centre, if the mediation was through an ADR Centre), for judgment and decree to be rendered accordingly.
- (m) If you want to learn more about mediation in general, you can visit <https://imimmediation.org/en/resources/what-is-mediation/>.
- (n) Mediation advocacy is a specialization. Please contact the bar association for a list of advocates with certified training in mediation advocacy.

Signed in acknowledgment.

[Party]

[Advocate]

Filed on: _____