

EXTRAORDINARY

GOVERNMENT



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G A Z E T T E

KHYBER PAKHTUNKHWA

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GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT

NOTIFICATION

Dated Peshawar, the 11th March, 2021.

No. SO (Jud)/HD/P-214/2019- In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Alternate Dispute Resolution Act, 2020 (Khyber Pakhtunkhwa Act No. XLVIII of 2020), the Government of Khyber Pakhtunkhwa is pleased to make the following rules, namely;

THE KHYBER PAKHTUNKHWA ALTERNATE DISPUTE RESOLUTION RULES, 2021.

1. **Short title, application and commencement.**--- (1) These rules may be called the Khyber Pakhtunkhwa Alternate Dispute Resolution Rules, 2021.

(2) These rules shall apply to whole of the Province of Khyber Pakhtunkhwa.

(3) These rules shall come into force at such date as the Department may, by notification in the official Gazette, appoint and different dates may be so appointed for different districts of the Province of Khyber Pakhtunkhwa.

2. **Definition.**---(1) In these rules, unless there is anything repugnant in the subject or context, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "Act" means the Khyber Pakhtunkhwa Alternate Dispute Resolution Act, 2020 (Khyber Pakhtunkhwa Act No. XLVIII of 2020);
- (b) "Appendix" means Appendix appended to these rules;
- (c) "Code of Conduct" means the Code of Conduct as specified by the Department under section 24 of the Act;
- (d) "Commissioner" means the Commissioner of the Division concerned; and
- (e) "panel" means the panel of Saliseen.

(2) Words and expressions, used but not defined under these rules, shall have the same meanings as are assigned to them under the Act.

3. Saliseen Selection Committee.--- (1) The Department shall notify Saliseen Selection Committee for each Division, as mentioned in sub section (2) of section 7 of the Act.

4. Qualification and number of Saliseen.---(1) The Saliseen shall have such qualification, experience and age limit as provided in **Appendix-I**.

(2) The Saliseen Selection Committee shall be at liberty to select as many number of Saliseen for a district, depending on the availability and interest of the applicants:

Provided that the maximum number of Saliseen for a district shall not be more than fifty (50):

Provided further that the Department may, upon request of the Commissioner, increase the number of Saliseen for a district on need basis.

5. Selection of Saliseen.---(1) The Deputy Commissioner of the concerned district shall propose a list of persons, meeting the qualification mentioned in rule 4 of these rules for their nomination as Saliseen and get their willingness.

(2) The Deputy Commissioner concerned shall verify the list of Saliseen to the effect of their repute and integrity, through the District Intelligence Coordination Committee.

(3) The Deputy Commissioner, after verification of each nominee under sub-rule (2) above, shall forward the list of nominees to the Commissioner, being Chairman of Saliseen Selection Committee.

(4) The Commissioner shall call a meeting of the Saliseen Selection Committee, by intimating all the members.

(5) Decision of the Saliseen Selection Committee shall be with majority of vote. In case of tie, the Chairman of the Saliseen Selection Committee shall cast a decisive vote.

(6) Proceedings of the Saliseen Selection Committee shall be recorded in writing and proper record of all the process shall be maintained by the Deputy Commissioner.

(7) After approving a panel by the Saliseen Selection Committee, the Commissioner shall notify the panel for each district and copy of the Notification shall be invariably provided to the concerned person, the Deputy Commissioner and the District and Sessions Judge of the concerned district.

(8) Saliseen shall be selected for a period of three years and the period may be renewed upon satisfactory performance.

(9) Every Salis, selected under the Act and these rules, may undergo mandatory training, as prescribed by the Department, from time to time.

6. Addition and nomination of Salis in the panel.--- (1)The Saliseen Selection Committee may add a Salis, in the panel, subject to the fulfillment of the provisions of rule 5 of these rules.

(2) The referring authority may, for reasons to be recorded in writing, provisionally nominate such other persons otherwise qualified under these rules, as Saliseen, from outside the panel, at the request of the parties, for any given dispute, to be referred for Alternate Dispute Resolution, on case to case basis, subject to provision of sub-rule (2) of rule 10 of these rules:

Provided that the Saliseen, so nominated, shall submit, in writing, to the effect that they shall adhere to the Act, these rules and code of conduct to be specified.

7. Removal of Salis from the panel.---(1) A Salis can be removed from the panel, upon coming into knowledge either directly or on complaint of either of the parties regarding violation of the code of conduct to be specified:

Provided that the concerned Deputy Commissioner, upon coming into knowledge about violation of code of conduct of a Salis, shall immediately afford an opportunity of hearing to the Salis against whom violation of the code of conduct, to be specified, issues are framed and after satisfying himself, he shall recommend the case to the Commissioner for removal with written reasons.

(2) The Commissioner shall call meeting of the Saliseen Selection Committee for consideration and making a decision, as to whether sufficient grounds exist to remove a Salis from the panel or otherwise.

(3) The Commissioner, through an official notification, shall, on approval of the Saliseen Selection Committee, remove name of a Salis from the panel, and provide a copy of the said notification to the concerned Deputy Commissioner, District and Sessions Judge and the person concerned.

(4) The Salis, aggrieved from the decision of Saliseen Selection Committee, may file an appeal to the Department against such decision and the Department shall decide the appeal within thirty (30) days.

8. Reference in Civil Disputes.--- (1) Before directing the parties to exercise option for Alternate Dispute Resolution in Civil disputes which are not sub-judice, the concerned Deputy Commissioner, Additional Deputy Commissioner or Assistant Commissioner, as the case may be, shall refer such dispute for Alternate Dispute Resolution, subject to the condition that the referring officer inform the parties that they may approach the court, and they have given written consent that they prefer settlement through Alternate Dispute Resolution.

(2) The court may also refer a case for Alternate Dispute Resolution under sections 3 and 6 of the Act.

(3) The Saliseen shall settle the dispute within time as specified in sub-section (4) of section 3 of the Act.

9. Reference in compoundable offences.---Where a matter is compoundable, as specified in section 345 of the Code, and the criminal proceedings have not been commenced in the court, the referring authority, with the consent of the parties, refer for Alternate Dispute Resolution to facilitate compounding of the offence, subject to the condition that the referring authority inform the parties that they may approach the court, and they have given written consent that they prefer settlement through Alternate Dispute Resolution.

(2) The Saliseen shall try to facilitate compounding of the offence within time as specified in sub-section (3) of section 4 of the Act.

(3) The court may refer a case for Alternate Dispute Resolution under sections 4 and 6 of the Act.

10. Alternate Dispute Resolution proceedings.---(1) The number of Saliseen, in a dispute, shall be determined by the referring authority, depending on the nature of the dispute.

(2) Every party shall nominate their equal number of Saliseen and a neutral Salis mutually agreed by all parties from amongst the panel:

Provided that if a party could not select a Salis from the panel of his choice, despite considerable effort, the referring authority, upon written request of the party, may nominate a Salis from outside the panel under sub-rule (2) of rule 6 of these rules:

Provided further that the neutral Salis shall always be from the panel.

(3) If the parties fail to agree on a neutral Salis, then the referring authority shall nominate a neutral Salis, not related to the parties and dispute.

(4) If any of the parties delays or causes to delay the proceedings of Alternate Dispute Resolution, he shall be liable to the cost under sub-section (3) of section 13 of the Act, and the Saliseen shall be authorized to proceed further with the matter, subject to prior authorization of the referring authority.

(5) The settlement of the Alternate Dispute Resolution shall be by the mutual consensus of all the Saliseen.

(6) The parties may agree on the procedure to be followed by the Saliseen in the conduct of Alternate Dispute Resolution proceedings.

(7) Where the parties do not agree on any particular procedure to be followed by Saliseen under sub-section (6) above, the Saliseen shall follow the following procedure:

- (a) they shall fix, in consultation with the parties, a time schedule, the dates and the time of each proceeding, where all the parties or their authorized attorneys have to be present;
- (b) they shall hold the proceedings at any convenient location, agreeable to them and the parties, as they may determine; and
- (c) each party shall furnish to Saliseen such other information as may be required by them in connection with the issues to be resolved.

(8) Government may, from time to time, give such directions as it deems fit, regarding the conduct of Alternate Dispute Resolution and the same shall be binding on the parties and Saliseen.

11. Saliseen not bound by Qanoon-e-Shahadat Order or Code of Civil or Criminal Procedure.---The Saliseen shall not be bound by the provisions Qanoon-e-Shahadat, Civil Procedure Code or Criminal Procedure Code, but shall be guided by the principles of fairness and justice, having regard to the rights and obligations of the parties, and the circumstances of the dispute.

12. Communication between Saliseen and the referring authority.---(1) In order to preserve the confidence of the parties and neutrality of the Saliseen, there shall be no communication between the Saliseen and the referring authority after the appointment of Saliseen.

(2) If any communication between the Saliseen and the referring authority is necessary, it shall be in writing and copies of the same shall be given to the parties or their attorney holders.

(3) Communication between the Saliseen and the referring authority shall be limited to communication by the Saliseen-

- (a) with the referring authority about the failure of party to attend;
- (b) with the referring authority with the consent of the parties;
- (c) regarding their assessment that the case is not suitable for settlement through Alternate Dispute Resolution; and
- (d) the parties have settled the dispute.

13. Settlement.--- (1)The Saliseen shall submit the settlement and award in written form to the referring authority on the format as specified in **Appendix-II**, in case the Alternate Dispute Resolution is either fully or partially successful:

Provided that no settlement and award can be made by a Salis repugnant to any law.

(2) If the parties have either directly resorted to Alternate Dispute Resolution or through a referring authority, other than the court, and they wish to give finality to the settlement, so reached, then the parties may approach the court.

(3) The court, upon receipt of the settlement under sub-rule (2) above, if satisfied that the matter has been voluntarily settled and submitted on format as specified in **Appendix- II**, shall pronounce judgment and pass decree in terms of the settlement.

14. Failure of Alternate Dispute Resolution.---If the efforts of the Salis fail to bring about a settlement between the parties or does not result in an award, the Salis shall submit a report to the referring authority which shall proceed as per the law.

15. Execution of an order or a decree.--- Where an order or a decree is passed by a court, following Alternate Dispute Resolution, it shall be executed under the relevant criminal and civil laws.

16. Code of Conduct of the Saliseen.--- (1) A Salis shall not take any benefit either in cash or in kind from the parties to the dispute other than the authorized honoraria.

(2) A Salis shall not take part in the Alternate Dispute Resolution in which he has direct interest, including but not limited to business, profession or blood, which may result in conflict of interest.

(3) A Salis shall act impartially and objectively to resolve the dispute and shall not, at any stage of the proceedings, act to protect undue interest of any party.

(4) A Salis shall try to ensure equal and legal rights of all parties and shall not extend illegal favor to a party.

(5) A Salis shall limit himself to the extent of facts presented before him and shall not himself start investigating about the dispute.

(6) A Salis, nominated for the Alternate Dispute Resolution, shall not act as an attorney or authorized person to appear on behalf of the parties in the same dispute in which he is acting as a Salis.

(7) A Salis shall not disclose viewpoint of his co-Salis to a party which may result in enmity between the Salis and party.

(8) A Salis shall not disclose any information of a party to the other party which may further aggravate the dispute.

(9) A Salis shall ensure privacy of information about parties and proceedings even after completion of Alternate Dispute Resolution.

(10) A Salis shall uphold the integrity and fairness of the Alternate Dispute Resolution process.

(11) A Salis shall ensure that the parties are fairly informed and have an adequate understanding of the procedural aspects of the process.

(12) A Salis shall satisfy himself that he is qualified to undertake and complete the assignment in a professional manner.

(13) A Salis, who has been adjudged insolvent or against whom criminal charges are leveled, shall be deemed to have violated the code of conduct to be specified.

(14) The code of conduct to be specified can be further amended from time to time and such amendments shall be binding on the Salis.

17. Honoraria for the Saliseen.--- (1) The total amount of honoraria for Saliseen for a given dispute may range from a minimum of rupees twenty thousands (20,000) to the maximum of rupees two lacs (200,000).

(2) The amount of total honoraria shall be determined by the referring authority depending on the nature of the dispute:

Provided that no honoraria shall be paid to Saliseen in cases where Alternate Dispute Resolution has failed.

(3) The total honoraria amount, paid by the parties to dispute, shall be equally divided amongst the Saliseen.

(4) Government may revise the rates of honoraria, as specified under sub-rule (1), after every three (03) years.

Appendix-I

Criteria for Selection of Saliseen

S.#	Category of Saliseen.	Qualification/Experience.	Minimum Age.
1.	Retired Judicial Officers.	A retired judge of Supreme Court, High Court or a judge of lower courts having at least fifteen (15) years of service.	55years.
2.	Retired Civil Servants.	A retired civil servant of BPS 17 and above and having at least fifteen (15) years of service.	55 years.
3.	Lawyers.	Having valid license of Khyber Pakhtunkhwa Bar Council and a member of District Bar with at least seven (07) years of experience in Civil or Criminal cases.	30 years.
4.	Experts.	Bachelor's degree with seven (07) years' experience in relevant field and having good reputation and integrity.	35 years.
5.	Ulema.	Sanad from a Government's recognized entity with seven (07) years post education experience in Islamic teachings.	45 years.
6.	Notables of the locality.	Local elders with reputation and integrity, and having experience of minimum 10 years in dispute resolution.	40 years.

Appendix-II

Format of the Settlement and Award

In pursuance to the referring of the dispute pertaining to _____ (name of issue) _____ among the parties:

1. Name _____, Son/Daughter of _____
CNIC _____, Resident of _____
And _____
2. Name _____, Son/Daughter of _____
CNIC _____, Resident of _____

by the _____ (name of referring officer or court) under the Khyber Pakhtunkhwa Dispute Resolution Act, 2020 and the Khyber Pakhtunkhwa Dispute Resolution Rules, 2021, we the below mentioned saliseen:

1. Name _____, Son/Daughter of _____
CNIC _____, Resident of _____

2. Name _____, Son/Daughter of _____
CNIC _____, Resident of _____

_____ Have examined the case

_____ and have settled the dispute as
following

_____.

The above settlement and award has been read out and explained to the parties in language they understand, and the parties or their authorized representatives have agreed to the same.

Signature and Name of all Saliseen

Signature and Name of all the parties or their authorized persons.

The above settlement and award has been witnessed by the following two witnesses from each side of the parties in their presence and duly signed.

Witnesses on behalf of Party No. I

Witnesses on behalf of Party No. II

1. Witness _____ Son/Daughter of _____
CNIC _____ Resident of _____.
2. Witness _____ Son/Daughter of _____
CNIC _____ Resident of _____.

Sd/xxx

**SECRETARY TO
GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT.**