Government of Pakistan
Ministry of Law and Justice
*****

Subject: **IMPLEMENTATION OF RIGHT OF ACCESS TO INFORMATION ACT, 2017**

Reference Ministry of Law and Justice (Coord Section)'s Circular No.F.4(222)/2018-Coord dated 28th March, 2018 on the subject noted above.

02. The requisite information is enclosed herewith for up-loading on the Official website of this Division, through LIS Wing.

Encl: As Above

Fareeha

(FAREEHA JAVED)
Section Officer
Ph:051-9221253

Ms. Madeeha Khattak, Section Officer (Coord), Ministry of Law and Justice, Islamabad
Ministry of Law and Justice, Islamabad's U.O. F.No.7(12)/2017.Sol.I dated 10th April, 2018

THE CENTRAL LAW OFFICERS ORDINANCE, 1970

CONTENTS

SECTION

[1]Ordinance No. VII of 1970

[28th *March*, 1970]

An Ordinance to provide for appointment of Central Law Officers.

WHEREAS it is expedient to provide for appointment of Central Law Officers and to confer on them the right of audience in all courts in Pakistan;

AND WHEREAS the national interest of Pakistan in relation to the achievement of uniformity requires Central legislation in the matter;

Now, THEREFORE, in pursuance of the Proclamation of the 25th day of March, 1969, read with the Provisional Constitution Order, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:---

1.— Short title, extent and commencement. (1) This Ordinance may be called the Central Law Officers' Ordinance, 1970.

(2) It shall come into force at once.

2.— Appointment of Central Law Officers. (1) The President may appoint one or more Additional Attorneys-General, Deputy Attorneys-General and Standing Counsel as he may consider necessary.

(2) A person appointed under sub-section (1) shall hold office during the pleasure of the President and shall receive such remuneration and shall be subject to such conditions as may be determined by the President.

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[1]The Ordinance has been declared to be Validly made by the Competent authority *see*, the validation of Laws Act, 1975 (63 of 1975).

3. Qualification of the Central Law Officers. No person shall be qualified for appointment under sub-section (1) of section 2 unless,—

(a) in the case of an Additional Attorney-General and a Deputy Attorney-General, he is qualified for appointment as a Judge of the Supreme Court, and

(b) in the case of Standing Counsel, he is qualified for appointment as a Judge of a High Court,

but no person shall be appointed under the said sub-section if he is or has been a Judge of the Supreme Court or of a High Court.

[1][**3A.Retiring age of Central Law Officers**---(1) Subject to sub-section (2) of section 2, an Additional Attorney-General or a Deputy Attorney-General shall hold office until he attains the age of sixty-five years and a Standing Counsel shall hold office until he attains the age of sixty-two years.

(2) An Additional Attorney-General, Deputy Attorney-General or Standing Counsel may, by writing under his hand addressed to the President, resign his office.

(3) An Additional Attorney-General, Deputy Attorney-General or Standing Counsel who has, before the commencement of the Central Law Officers (Amendment) Ordinance, 1979, attained the maximum age specified in sub-section (1) shall cease to hold office on such commencement.

4. Right of audience. - In the performance of their official duties, the Additional Attorney-General, Deputy Attorney-General and Standing Counsel shall have the right of audience in all courts in Pakistan.

[2][**4A. Central Law Officers to be deemed to be public Prosecutors, etc** Notwithstanding anything contained in any other law for the time being in force all Additional Attorneys-General, Deputy Attorneys-General and Standing Counsel shall be deemed to be public persecutors and shall be competent to institute, file and conduct any proceedings, including appeal and revision for and on behalf of the Federal Government before any court or tribunal, including a special court constituted under any law.]

5. [Repeal and Savings.] Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (XXVII of 1981), s, 3 and Sch., II.

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[1] Ins. by the Central Law Officers (Amdt.) Ordinance, 1979 (63 of 1979), s. 2.
[2] Ins. by the Central Law Officers (Amdt.) Act, 1985 (17 of 1985), s. 2.

No.5/6/2007-LA
Government of Pakistan
Law, Justice and Parliamentary Affairs Division
Legal Advisors Cell
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Islamabad the 29th December, 2011.

OFFICE ORDER

In pursuance of the Policy formulated with the approval of the competent authority the following fresh terms and conditions of fee, payable to the Advocates and Advocates-on-Record on the Panel of this Ministry, on final disposal of a case on merit have been approved with immediate effect:-

S.No.	STATEMENT	PAYMENT RATE
a.	Fee for Civil Suits and Appeals in District Courts plus miscellaneous charges etc.	Rs.15,000/- inclusive of all Misc. Expenses.
b.	Fee for Civil Appeals, Writ Petition and ICA in the High Courts plus miscellaneous charges etc.	Upto Rs.20,000/-.
c.	Fee of AOR for CPLA in the Supreme Court:- i. Filling ii. Defence iii. Fee in addition to the fee proposed at (i) and (ii), in case, if the AOR actually argue the case, in the absence of DAG or in case where no Counsel/Law Officers is engaged. iv. Additional fee for per day appearances. v. Miscellaneous expenditure incurred per case on preparation of papers books etc.	 Upto Rs.15,000/- Upto Rs. 10,000/- Upto Rs. 10,000/- Rs.500/- Actual
d.	Court fee in addition to the professional fee.	Actual
e.	Consolidated fee in identical cases.	Minimum fee per identical case will be Rs.2000/- but maximum consolidated fee will be Rs.50,000/-.
f.	Fee in remanded cases assigned to the Advocates who conducted these in the trial Court.	Counsel will be appointed a fresh on fee provided at Column (a) and (b).
g.	Fee in cases dismissed or defence closed for non-prosecution of the Advocates.	No fee

Continued P/2

[from over leaf]

h.	Fee in restored cases after dismissal on non-prosecution or on restoration of defence.	As per terms originally settled.
i.	Fee other than fee of the AORs in cases not decided on merit, or withdrawn by the Plaintiff/Petitioner, on preliminary stage.	50% of the fee.
j.	Fee in cases decided against the Government due to negligence of the Panel Advocates.	- No fee
k.	TA/DA in cases of special nature assigned for conduct on station other than the stations of the Advocates of the Panel.	In addition to normal fee, TA/DA as admissible to BS-17, 19 & 20 Officer of the Federal Government for cases respectively in the District Courts, High Courts and Supreme Court.
l.	Fee in cases of sensitive nature/high profile cases/cases involving heavy amount.	Special fee may be recommended for Counsel in such cases subject to the approval by the Committee headed by the Secretary Law, Justice & Parliamentary Affairs Division.

(Wali-Ur-Rehman)
Superintendent

Distribution :-

1. The AGPR, Islamabad, (through DDO Solicitor Wing).
2. The Solicitor General, Dy. Solicitors, Assistant Solicitors & DAS, Law, Justice & Parliamentary Affairs Division .
3. S.O.(Sol-I,II,III) Law, Justice & Parliamentary Affairs Division.
4. The D.D.O Solicitor Wing, Law, Justice & Parliamentary Affairs Division.
5. Record.

No.F.9/1/2013-LA
Government of Pakistan
Ministry of Law, Justice and Human Rights
*****

Islamabad, the 3rd June, 2015

Subject: **POLICY/GUIDELINES FOR NOMINATIONS/RECOMMENDATIONS FOR APPOINTMENT OF LEGAL ADVISORS AND ENGAGEMENT/ PLACEMENT OF ADVOCATES ON THE PANEL OF ADVOCATES OF VARIOUS DEPARTMENTS.**

The following Policy/Guidelines have been framed for the appointment of Legal Advisors and engagement/placement of Advocates on the Panel of various Departments/Organizations/Corporations including the Panel of Advocates for this Division:-

i. In terms of clause (g) of sub-rule (1) of rule 14 of the Rules of Business, 1973, only those recommendations/nominations shall be considered by the "Committee for Selection of Legal Advisors/Panel Advocates", which are duly recommended by the concerned Departments/Organizations/Corporations for the appointment of Legal Advisor in consultation with the Attorney General for Pakistan.

ii. Advocates having at least 7 years practice as Advocate of High Court duly recommended by the Departments/Organizations/ Corporations concerned would be considered for their appointment as Legal Advisors in such Departments/ Organizations/Corporations, in consultation with the Attorney General for Pakistan, on retainership basis.

iii. Advocates who have at least 3 years practice as an Advocate of High Court and having good reputation/competency would be placed on the Panel of Advocates of the Departments/ Organizations/Corporations as well as Ministry of Law, Justice and Human Rights with the approval of the Committee.

iv. In terms of paragraph 12 of Appendix "F" to the Secretariat Instructions, 2004, it is imperative for each Ministry/Division/Department to create a Litigations Section and also appoint a Deputy Legal Advisor permanently or on deputation basis to deal with their litigation matters in smooth and proper manner.

v. Every Government Department or Semi Government or Public Corporate Body shall seek concurrence of the Law, Justice and Human Rights Division for engagement of lawyer where professional fee exceeds Rs.300,000/- (Rupees Three Lac). In such a case the concerned Department will send a Panel of at least three Advocates for selection of one of them alongwith proposed professional fee for approval of the Law, Justice and Human Rights Division. Any failure in doing so will render the engagement of Advocate/Counsel etc, void and no ex-post facto approval will be allowed.

Contd....P/2

vi. Each Department/Organization/Corporation will inform Law, Justice and Human Rights Division regarding number of lawyers as Legal Advisor and Panel lawyers according to its requirement, including present strength in the month of January each year.

vii. Senior Advocates of Supreme Court with good reputation would be placed on the Panel of Advocate-on-Record (AOR) and their professional fee shall be determined on case to case basis or consolidated fee in identical cases, as the case may be.

viii. On recommendations/nominations from the concerned Department, competent and experienced Advocates after conducting interviews by the Committee constituted by this Division shall be appointed as Special Public Prosecutors under the provisions of the relevant Laws.

ix. The existing list of Legal Advisors and Panel of Advocates shall be reviewed by the said Committee and only those Advocates having expertise in the relevant filed and satisfactory performance would be retained and the rest of Advocates would be de-notified.

x. On receipt of complaint against any Advocate from their Departments/Organizations/Corporations he/she would be removed after providing opportunity of hearing to the Advocate concerned by the Committee, if required.

xi. The decision of the Committee shall be expressed in terms of the majority. Ex-post-facto nomination/approval will be considered (subject to relaxation by the Committee) only in a special case keeping in view the sensitivity, nature and circumstances of the matter.

2. The Policy/Guidelines shall be circulated amongst all Ministries/Divisions/Departments/Organizations/Corporations for their information and strict compliance.

(Muhammad Shahid Hussain)
Joint Secretary/Member

(Farrukh Ali Mughal)
Solicitor/Member

Justice (Retd)
Muhammad Raza Khan
Secretary/Chairman

S.R.O. 635(I)/2011.—In exercise of the powers conferred by sub-section (2) of Section 2 of the Central Law Officers Ordinance, 1970 (VII of 1970), the President is pleased to make the following rules, namely:—

1. **Short title and commencement.**—(1) These rules may be called the Additional Attorney-General, Deputy Attorney-General and Standing Counsel (Terms and Conditions) Rules, 2011.

(2) These rules shall come into force at once except clause (a) of Rule 2 which shall come into force on and from the 1st of July, 2011.

2. **Retainership, perks and privileges, etc.**—An Additional Attorney General, Deputy Attorney-General and Standing Counsel shall be entitled to the following retainership, perks and privileges namely:—

(a) Additional Attorney-General

An Additional Attorney-General shall be entitled to such retainership, perks and privileges as admissible to a Judge of the High Court specified below:—

(i) Salary Rs. 347,345/-;

(ii) and Superior Judicial Allowance Rs. 136,500/-;

(iii) House rent if official residence not provided Rs. 65,000/-.

(iv) chauffeur driven car 1300CC capacity with twenty liters petrol and one hundred and twenty five kilogram CNG as admissible to a BS-21 Officer;

(v) telephone facility, office and residence, as admissible to a BPS 21 Officer.

(iv) traveling and other allowances, where required, in performance of his official duties to leave the place where he normally practices his profession at the rate admissible to a BS-21 Officer.

(b) Deputy Attorney-General

(i) Monthly retainer Rs. 150,000/- all inclusive;

(ii) chauffeur driven car 1300CC capacity with twenty liters petrol and one hundred and twenty five kilogram CNG as admissible to a BS.20 Officer;

(iii) telephone ceilings for office, no limit and residence upto one thousand five hundred rupees per month; and

(iv) traveling and other allowances, where required, in performance of his official duties to leave the place where he normally practices his profession at the rate admissible to a BS-20 Officer.

(c) Standing Counsel

(i) Monthly retainer Rs 100,000/- all inclusive;

(ii) chauffeur driven car 1000CC capacity with twenty liters petrol and one hundred and twenty five kilogram CNG as admissible to a BS-20 Officer;

(iii) telephone ceilings for office, no limit and residence upto one thousand five hundred rupees per month; and

(iv) traveling and other allowances where required in performance of his official duties to leave the place where he normally practices his profession at the rate admissible to a BS-20 Officer.

3. **Absence from office.**—During the absence, for any reason, the Additional Attorney-General, Deputy Attorney-General ... of a Standing Counsel the person appointed to act as Additional Attorney-General, Deputy Attorney-General or (as the case may be) as Standing Counsel shall receive the full emoluments of the office and shall exercise all the powers and perform all the duties of the office.

4. **Duties.**—(1) It shall be the duty of the Additional Attorney-General, Deputy Attorney-General and Standing Counsel,—

(a) to advise the Federal Government on any legal matter referred to them by the Federal Government and to perform such other duties of legal character as are assigned to them from time to time by the Federal Government;

(b) to appear on behalf of the Federal Government, if it so requires, in all cases, suits, appeals and proceedings before Supreme Court or a High Court, Federal Shariat Court or any Tribunal or Special Court constituted under any law in which the Federal Government is concerned; and

(c) to keep inform Law, Justice and Parliamentary Affairs Division as well as the administrative Ministry/Division/ Department concerned of the progress of the cases assigned to him.

(2) For the performance of duties mentioned in sub-rule (1) the Additional Attorney-General, Deputy Attorney-General and Standing Counsel shall be paid no fee other than the retainership payable under Rule 2.

5. **Appearance in Courts etc.**—(1) The Federal Government may require the Additional Attorney-General, Deputy Attorney-General and Standing Counsel to appear before Supreme Court, High Court, Federal Shariat Court or before any Tribunal, Commission or Special Court constituted under any law, in any case, suit, appeal or other proceedings in which the Federal Government is concerned.

(2) If the appearance is before any Court at a place other than the place which is his headquarters the Additional Attorney-General shall be paid a fee equal to daily allowance as admissible to a BS-21 and Deputy Attorney-General or Standing Counsel to a BS-20 Officer of the Federal Government.

(3) If appearance under sub-rule (1) requires the Additional Attorney-General, Deputy Attorney-General or Standing Counsel to be absent from his headquarters, the days of his absence, not being days of departure to and return from such appearance shall, for the purpose of sub-rule (2), be added to the days of such appearance.

6. **Responsibilities of Additional Attorney-General, Deputy Attorney General and Standing Counsel.**—The Additional Attorney-General, Deputy Attorney-General and Standing Counsel shall not,—

(a) advise or hold briefs against the Federal Government;

(b) advise or hold briefs in cases in which he is likely to be called upon to advise, or appear for, the Federal Government;

(c) defend accused persons in criminal prosecutions without the prior order or permission of the Federal Government;

(d) accept any appointment in any company, corporation or organization owned or controlled by Federal Government, without the prior permission of the Federal Government; and

(e) make a conceding statement unless so authorized by the Law, Justice and Parliamentary Affairs Division or with the prior approval of the Law, Justice and Parliamentary Affairs Division or the head of the administrative Division or the department concerned in writing.

7. **Repeal.**—The Ministry of Law, Justice and Parliamentary Affair's Notification No. S.R.O. 557(K), dated the 18th May, 1960 is hereby r`epealed.

FULL TEXT

14: Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

Entry into force: 10-II-1969

Text of the Convention in PDF

Outline of the Convention

(In the relations between the Contracting States, this Convention replaces the first chapter of the Convention on civil procedure of 1 March 1954)

CONVENTION ON THE SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS

(Concluded 15 November 1965)

The States signatory to the present Convention,

Desiring to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time,

Desiring to improve the organisation of mutual judicial assistance for that purpose by simplifying and expediting the procedure,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

Article 1

The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.

This Convention shall not apply where the address of the person to be served with the document is not known.

Article 2

Each Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6.

Each State shall organise the Central Authority in conformity with its own law.

Article 3

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality.

The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

Article 4

If the Central Authority considers that the request does not comply with the provisions of the present Convention it shall promptly inform the applicant and specify its objections to the request.

Article 5

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either -

a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or
b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph *(b)* of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

Article 6

The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to the present Convention.

The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service.

The applicant may require that a certificate not completed by a Central Authority or by a judicial authority shall be countersigned by one of these authorities.

The certificate shall be forwarded directly to the applicant.

Article 7

The standard terms in the model annexed to the present Convention shall in all cases be written either in French or in English. They may also be written in the official language, or in one of the official languages, of the State in which the documents originate.

The corresponding blanks shall be completed either in the language of the State addressed or in French or in English.

Article 8

Each Contracting State shall be free to effect service of judicial documents upon persons abroad, without application of any compulsion, directly through its diplomatic or consular agents.

Any State may declare that it is opposed to such service within its territory, unless the document is to be served upon a national of the State in which the documents originate.

Article 9

Each Contracting State shall be free, in addition, to use consular channels to forward documents, for the purpose of service, to those authorities of another Contracting State which are designated by the latter for this purpose.

Each Contracting State may, if exceptional circumstances so require, use diplomatic channels for the same purpose.

Article 10

Provided the State of destination does not object, the present Convention shall not interfere with -

a) the freedom to send judicial documents, by postal channels, directly to persons abroad,
b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,
c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

Article 11

The present Convention shall not prevent two or more Contracting States from agreeing to permit, for the purpose of service of judicial documents, channels of transmission other than those provided for in the preceding Articles and, in particular, direct communication between their respective authorities.

Article 12

The service of judicial documents coming from a Contracting State shall not give rise to any payment or reimbursement of taxes or costs for the services rendered by the State addressed.

The applicant shall pay or reimburse the costs occasioned by --

a) the employment of a judicial officer or of a person competent under the law of the State of destination,
b) the use of a particular method of service.

Article 13

Where a request for service complies with the terms of the present Convention, the State addressed may refuse to comply therewith only if it deems that compliance would infringe its sovereignty or security.

It may not refuse to comply solely on the ground that, under its internal law, it claims exclusive jurisdiction over the subject-matter of the action or that its internal law would not permit the action upon which the application is based.

The Central Authority shall, in case of refusal, promptly inform the applicant and state the reasons for the refusal.

Article 14

Difficulties which may arise in connection with the transmission of judicial documents for service shall be settled through diplomatic channels.

Article 15

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that -

a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or
b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled -

a) the document was transmitted by one of the methods provided for in this Convention,
b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,
c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

Article 16

When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled -

a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and
b) the defendant has disclosed a *prima facie* defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each Contracting State may declare that the application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.

This Article shall not apply to judgments concerning status or capacity of persons.

CHAPTER II - EXTRAJUDICIAL DOCUMENTS

Article 17

Extrajudicial documents emanating from authorities and judicial officers of a Contracting State may be transmitted for the purpose of service in another Contracting State by the methods and under the provisions of the present Convention.

CHAPTER III - GENERAL CLAUSES

Article 18

Each Contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence.

The applicant shall, however, in all cases, have the right to address a request directly to the Central Authority.

Federal States shall be free to designate more than one Central Authority.

Article 19

To the extent that the internal law of a Contracting State permits methods of transmission, other than those provided for in the preceding Articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions.

Article 20

The present Convention shall not prevent an agreement between any two or more Contracting States to dispense with -

a) the necessity for duplicate copies of transmitted documents as required by the second paragraph of Article 3,
b) the language requirements of the third paragraph of Article 5 and Article 7,
c) the provisions of the fourth paragraph of Article 5,
d) the provisions of the second paragraph of Article 12.

Article 21

Each Contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the following -

a) the designation of authorities, pursuant to Articles 2 and 18,
b) the designation of the authority competent to complete the certificate pursuant to Article 6,
c) the designation of the authority competent to receive documents transmitted by consular channels, pursuant to Article 9.

Each Contracting State shall similarly inform the Ministry, where appropriate, of -

a) opposition to the use of methods of transmission pursuant to Articles 8 and 10,
b) declarations pursuant to the second paragraph of Article 15 and the third paragraph of Article 16,
c) all modifications of the above designations, oppositions and declarations.

Article 22

Where Parties to the present Convention are also Parties to one or both of the Conventions on civil procedure signed at The Hague on 17th July 1905, and on 1st March 1954, this Convention shall replace as between them Articles 1 to 7 of the earlier Conventions.

Article 23

The present Convention shall not affect the application of Article 23 of the Convention on civil procedure signed at The Hague on 17th July 1905, or of Article 24 of the Convention on civil procedure signed at The Hague on 1st March 1954.

These Articles shall, however, apply only if methods of communication, identical to those provided for in these Conventions, are used.

Article 24

Supplementary agreements between Parties to the Conventions of 1905 and 1954 shall be considered as equally applicable to the present Convention, unless the Parties have otherwise agreed.

Article 25

Without prejudice to the provisions of Articles 22 and 24, the present Convention shall not derogate from Conventions containing provisions on the matters governed by this Convention to which the Contracting States are or shall become, Parties.

Article 26

The present Convention shall be open for signature by the States represented at the Tenth Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 27

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 26.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 28

Any State not represented at the Tenth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 27. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for such a State in the absence of any objection from a State, which has ratified the Convention before such deposit, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession.

In the absence of any such objection, the Convention shall enter into force for the acceding State on the first day of the month following the expiration of the last of the periods referred to in the preceding paragraph.

Article 29

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification referred to in the preceding paragraph.

Article 30

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 27, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 31

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 25, and to the States which have acceded in accordance with Article 28, of the following -

a) the signatures and ratifications referred to in Article 26;

b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 27;

c) the accessions referred to in Article 28 and the dates on which they take effect;

d) the extensions referred to in Article 29 and the dates on which they take effect;

e) the designations, oppositions and declarations referred to in Article 21;

f) the denunciations referred to in the third paragraph of Article 30.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at The Hague, on the 15th day of November, 1965, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Tenth Session of the Hague Conference on Private International Law.

N.B. On 25 October 1980 the Fourteenth Session adopted a Recommendation on information to accompany judicial and extrajudicial documents to be sent or served abroad in civil or commercial matters (*Proceedings of the Fourteenth Session*, Tome I, *Miscellaneous matters*, p. 67; *idem*, Tome IV, *Judicial co-operation*, p. 339; *Practical Handbook on the Operation of the Hague Service Convention*, Appendix 3, p. 129).

ANNEX TO THE CONVENTION: Active Model Forms (Request, Certificate, Summary)

FULL TEXT

28: Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

Entry into force: 1-XII-1983

Text of the Convention in PDF

Outline of the Convention

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

(Concluded 25 October 1980)

The States signatory to the present Convention,

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions -

CHAPTER I - SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are -

a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where -

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a)* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention -

a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II - CENTRAL AUTHORITIES

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures -

a) to discover the whereabouts of a child who has been wrongfully removed or retained;

b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

d) to exchange, where desirable, information relating to the social background of the child;

e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;

g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III - RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain -

a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

b) where available, the date of birth of the child;

c) the grounds on which the applicant's claim for return of the child is based;

d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by -

e) an authenticated copy of any relevant decision or agreement;

f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV - RIGHTS OF ACCESS

Article 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V - GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalisation or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units -

a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI - FINAL CLAUSES

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 4 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force -

(1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
(2) for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following -

(1) the signatures and ratifications, acceptances and approvals referred to in Article 37;
(2) the accessions referred to in Article 38;
(3) the date on which the Convention enters into force in accordance with Article 43;
(4) the extensions referred to in Article 39;
(5) the declarations referred to in Articles 38 and 40;
(6) the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
(7) the denunciations referred to in Article 44.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

APPENDIX 'F'

(*See* Instruction 74)

[1]INSTRUCTIONS REGARDING THE CONDUCT OF CASES OF THE FEDERAL GOVERNMENT IN COURTS, ETC.

Suit or legal proceedings by Government

1. No-civil suit or legal proceedings shall be instituted or initiated on behalf of the Federal Government by any Division/Department without the prior consultation with the Law, Justice and Human Rights Division.

2. When the administrative Division/Department concerned considers it advisable that a suit or legal proceedings be instituted or initiated on behalf of the Federal Government a detailed and clear summary should be furnished to the Law, Justice & Human Rights Division showing:–

(a) The circumstances which, in the opinion of the administrative Division/Department, render institution of the suit or legal proceedings in the court of law.

(b) The subject of the claim and the relief sought.

(c) The steps which have been taken so far to obtain satisfaction of the claim.

(d) The comments or objections, if any, which have been urged by the opposite party against the claim.

(e) The evidence, which is believed to be obtainable and which it is proposed to adduce in support of the claim.

(f) Any other facts which the administrative division/ department may consider material or relevant to the case.

(g) List of property movable and immovable and/or securities from which it is proposed to realise the amount claimed, if decreed.

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[1]These Instructions apply *mutatis mutandis* to service appeals before the Service Tribunals and cases before special courts and tribunals.

3. Copies of all documents referred to in the report should, as far as possible, accompany the report; where for any reason, the copies cannot be supplied the originals should be submitted.

4. If the Law, Justice and Human Rights Division agrees it will nominate a counsel to file and conduct the suit or legal proceedings.

Defence of suits, etc.

5. No suit/legal proceedings be defended if the claim and relief sought is justified and genuine.

6. The object of the notice prescribed by section 80 of the Code of Civil Procedure, is to allow ample time to the Government to inquire into the genuineness or otherwise of the claim or relief sought and to affect a settlement of all just claims before a suit is brought, and the best use should be made of the opportunity thus given by the law towards equitable and amicable adjustment of claims.

7. When notice of an intended suit is given under section 80 of the Code of Civil Procedure, the officer to whom it is delivered, or the head of office at which it is left, should forthwith endorse, or cause to be endorsed, on the notice:—

(a) the date and time of receipt;

(b) the manner of delivery; and

(c) the signature of the officer making the endorsement, with date.

8. The departmental officer concerned should, immediately on receiving any notice of an intended suit, proceed to enquire into the matter and to consider the claim put forward and move the proper authority to decide, in consultation with the Law, Justice and Human Rights Division, whether any and, if so, what steps should be taken to adjust the claim (whether in whole or in part) or whether the notice-giver be left to take such legal action as he may deem proper.

9. When the departmental authority having power to deal with the case is clearly of the opinion that the whole or any part of the claim put forward is justly due he should, in consultation with the Law, Justice and Human Rights Division, proceed to endorse settlement thereof accordingly.

10. Any amount held to be justly due to the claimant should be formally and unconditionally tendered to him without prejudice and

without requiring him to give an acquittance in full adjustment of his claim, but upon a receipt for the sum tendered. No tender of payment or payments should be made after the suit has been brought except with the approval of and in accordance with the instructions of the Law, Justice and Human Rights Division.

11. Under Order V, rule 2, C.P.C. the summons in a suit is required to be accompanied by a copy of the plaint or concise statement thereof. If a summons is not accompanied by a copy of plaint/petition, or concise statement, service should be refused, if possible, with a note requesting for a copy of the plaint/petition and the matter should be brought to the notice of the Law, Justice and Human Rights Division forthwith. In no case the duplicate copy of the summons, when received, should be returned to the court before showing the case to the Law, Justice and Human Rights Division.

12. At subsequent stages of a suit and in appeals copy of plaint/petition, or of memo of appeal, is not sent with the notice and quite often Ministries/Divisions find it difficult to link those notices with the main case in dispute. It is, therefore, imperative that in each Division/Department, a Section, hereinafter referred to as the Litigation Section, should be earmarked for dealing with or co-ordinating the litigation cases. This Section should receive all summons/notices from courts, maintain a nominal index of litigation cases in the following form, in a Register, and keep a watch over their progress.

Name of parties	Nature of cases	Subject	Court	Counsel	File No.	Result
A B C vs Pakistan	Civil suit or appeal	Service matter, arbitration	High Court, Peshawar	A.G., Peshawar		Dismissed

13. Where service of a summons/notice not accompanied by a copy of plaint has been affected, the court issuing the summons, not being a High Court or the Supreme Court, should be immediately requested to supply the same and extend the date of hearing accordingly. The matter should simultaneously be reported to the Law, Justice and Human Rights Division for further advice and appropriate action in the matter. The envelopes of such summons/notice should be kept intact.

14. When a summons has been duly served, the Litigation Section should, after noting its particulars in the nominal Index Register, pass it on to the concerned officer or department who should collect relevant

information and documents/papers from the concerned quarters, examine the matter thoroughly and then refer it to the solicitor to the Government of Pakistan in the Law, Justice and Human Rights Division for further examination and nomination of an Advocate to undertake the defence of the case, if considered necessary.

15. Where a summons does not give adequate time for examination and arranging defence, an authorised officer of the administrative department concerned should appear *in person* in the court and apply, under rule 5, Order XXVII of the First Schedule to the Code of Civil Procedure, for a reasonable extension of time. In the absence of prior notice under section 80 CPC, the court is obliged to give at least 3 months time for the filing of written statement and first hearing.

16. In case of applications for interim injunction *pendente lite,* time allowed is usually 3 to 7 days. If, for any reason, it is not possible to arrange defence in time, some recognised agent, *i.e.* a person holding power-of-attorney in this behalf, should appear in the court on the date of hearing and seek adjournment for about 15 days. Thereafter the case should be referred to the Solicitor with utmost despatch.

Usually, plaints are to be read as part of the application for interim injunctions but quite often copies of plaints are not supplied by courts alongwith notices for the hearing of such applications. Where copies of plaints are not so received, the same should be procured from the court before referring the case to the Law and Justice Division.

17. After the Law, Justice and Human Rights Division has examined the case and nominated an Advocate to defend/conduct it in a court of law, a responsible officer of the administrative department concerned *well-conversant with the facts* of the case, and preferably stationed at or near the seat of the court, should contact and brief the counsel at the earliest and well before the next date of hearing of the case. *This responsibility should never be left to the sub-ordinate staff.*

18. Although it should not normally be necessary for the departmental representative to be present in the court on each date of hearing, he should remain in touch with the counsel and keep watch over the progress of the case. Whenever required by the counsel he must present himself in the court and render all possible assistance to the counsel in the conduct of the case, as if it was his personal case. Where, however, a department has an

office at the station where the suit is pending, some one may be deputed to attend the court and assist the counsel on each date of hearing if possible.

Action on Termination of Proceedings

19. As soon as a suit is decided, particularly when the decision is adverse to the Government, the administrative department concerned should apply, in the prescribed form, to the concerned Court/Copying Branch or the District Judge for copies of judgment and decree-sheet "for official use". These would be supplied free of cost. In addition, the counsel should also be asked to apply separately for certified copies of judgment and decree-sheet.

Appeals.

[1]20. If the decision is either wholly or partially adverse to the Government, the matter should be reported immediately to the Solicitor, Complete record of the case, along with copies of judgment and decree-sheet and comments of the department, should be sent to him thereafter as soon as these copies become available.

21. Although time is the essence in litigation in general, in appeal it is of utmost importance because the time allowed for appeals is limited and appeals filed after the expiration of limitation period are ordinarily dismissed as barred by time and no appeal lies against the refusal of a court to condone delay. It is, therefore, very necessary that the litigation cases in general and appeals in particular should be handled with promptness and diligence.

[2]*When time left for filing an appeal is less than 7 days, an officer of the administrative department, not below the rank of Deputy Secretary, should bring the file personally to the solicitor.*

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[1]Certified copies of judgment *etc.* should be kept by the Department in safe custody, as the same may have to be filed in court if appeal is to be filed and photo-stat copies thereof should be placed on the file. In fact, original of all important documents should be kept by the Department in safe custody as soon as litigation or threat of litigation starts.

[2]This should be followed in other court cases as well when the date of hearing falls within 7 days

22. The periods of limitation prescribed for various kinds of appeals, etc., are as under:–

No. of article of the first schedule to the Limitation Act, 1908, or other relevant rule and description of appeal or application.		Period of Limitation
	1	2
151.	From a decree or order of a High Court in the exercise of its original jurisdiction.	20 days.
152.	Under the Code of Civil Procedure to the court of a District Judge.	30 days.
156.	Under the Code of Civil Procedure to a High Court.	90 days.
158.	Application to set aside or to get an award remitted for reconsideration.	30 days from the date of service of notice of filing of the award.
161.	For a review of judgment by a court of Small Causes.	15 days.
162.	For a review of judgment by a High Court.	20 days.
164.	Application by a defendant to set aside a decree passed *ex-parte*.	30 days from the date when he has knowledge of the decree.
178.	Application for the filing in court of an award.	90 days from the date of service of notice of making of award.

1		2
Order XIII. Supreme Court Rules, 1956	For petition for special leave to appeal to the Supreme Court.	30 days where leave to appeal is refused by the High Court; otherwise 60 days.
Order XII, Rule 6B. Supreme Court Rules, 1956.	For appeal to the Supreme Court where certificate of fitness is granted by a High Court.	30 days from the date of grant of certificate.

23. In computing the period of limitation, the days from which such period is to be reckoned and in case of appeals, or application for review, the day on which the judgment complained of is pronounced and the time requisite for obtaining a copy of the judgment/decree appealed from or sought to be reviewed is to be excluded.

Execution.

24. A decree favourable to government may be executed either by the court which passed it or by such other court in whose jurisdiction the judgment-debtor voluntarily resides or carries on business, or personally works for gain or owns property sufficient to satisfy the decree. While referring a case for execution of a decree it is, therefore, necessary that an inventory of the movable property, containing a reasonably, accurate description of the same, and a list of immovable property, containing a description and location of such property sufficient to identify the same, and a specification of the judgment-debtor's share or interest in such property should be furnished to the Solicitor.

If an appeal is instituted by the opposite party and the execution of the decree is stayed by the order of the court, the interval before the decision of the appeal should be made use of in making inquiries as to the property of the judgment-debtor.

Writ Petitions.

25. The instructions in the preceding paragraphs apply *mutatis mutandis* to Writ Petitions. It is, however, to be noted that High Courts usually call for reports/comments from the administrative departments

concerned before admitting the petitions to regular hearing. Failure to comply with the orders of the High Court may lead to the admission of petitions to regular hearing which may then take long time to be decided. It is, therefore, imperative that the reports/comments asked for should be promptly supplied to the High Courts and where it is not possible the High Court may be requested, before the expiry of the time allowed, for reasonable extension. The report/comments should be shown to the Law, Justice and Human Rights Division before sending the same to the High Court.

Arbitration.

26. According to Government decision no provision is to be made in agreements with domestic contractors for resolution of disputes through arbitration. However, if the agreements already concluded by or on behalf of the Government contained any condition of getting any question, difference or dispute decided by reference to arbitration then the same has to be acted upon and the instructions contained herein before apply *mutatis mutandis* to the conduct of arbitration proceedings to which a Ministry/ Division/Department of the Federal Government is a party.

Expenses.

27. All expenses on the conduct of litigation, including costs, court fees, counsel fees, not being the decretal amount of costs payable to the other party under the decree or order of the court, are payable by the Law and Justice Division out of the funds placed at its disposal. The penal costs ordered by the court to be paid to the other party for any default on the part of the government and the charges payable to the witnesses are, however, to be paid by the administrative department concerned.

All expenses in criminal cases are payable by the administrative departments concerned.

Mode of submission of cases

28. To ensure quick disposal of files and to avoid un-necessary correspondence and delay a self-contained summary of the case indicating the point or points on which the advice of the Law, Justice and Human Rights Division is required should be placed on the file *in duplicate in the opinion cases* and at least *in triplicate in court cases*. In court cases, para-wise comments, on plaints/petitions should also be furnished in triplicate. Such references to the Law, Justice and Human Rights Division from the Ministries/ Divisions should be made preferably at a senior level.

29. Draft of para-wise comments, etc., should be typed in double space and half-margin should be left to enable the Law, Justice and Human Rights Division to carry out amendments wherever considered necessary.

30. Standardised court labels (S-209-A to 212-B) obtainable from the Controller of Stationery and Forms, should be used while sending a court case to the Law, Justice and Human Rights Division.

31. If a reference is made to any earlier advice of the Law, Justice and Human Rights Division the number and date of that advice must invariably be quoted and if possible, a copy of the same be placed on the file. Whenever a case is referred to the Law, Justice and Human Rights Division and any previous opinion of the Law, Justice and Human Rights Division on the point at issue is within the knowledge of the referring Division, it should also invariably be quoted in the referring note indicating the number and date of that previous opinion.

32. Unnecessary references on which the Ministries/Divisions should themselves be able to formulate opinion should not be referred to the Law, Justice and Human Rights Division. With particular reference to drafting of pleadings and affidavits it should be noted that while an officer signing any pleading or affidavit on behalf of the Government has every right to be satisfied that there is no mis-statement of facts, actual drafting of pleadings and affidavits and the choice of wording have always been the privilege and the responsibility of the counsel conducting a case on behalf of the Government. Therefore, so long as facts are correctly set out in the pleadings or affidavit there should hardly be any occasion for objection as to the contents, arrangement or wording used by counsel in such pleadings or affidavit and should not normally be referred to the Law, Justice and Human Rights Division for vetting.

For list of officers authorised to sign and verify plaints/written statements Law and Justice Division's Notification No. SRO, 1013/(K)/71 dated 28.08.1971 may be consulted.

33. (i) Under paragraph 44 of the Secretariat Instructions, the Attached Departments of the Government of Pakistan are authorised to make un-official references to the Law, Justice and Human Rights Division under intimation to the parent Ministry/Division. Such references should clearly show that the reference is being made under intimation to the parent Ministry/Division.

(ii) Subordinate Offices and the Statutory and autonomous bodies which are not authorised to make direct references to the Justice Division should, route their references only through the Ministries/Divisions concerned.

34. In case of Departments authorised to correspond directly with the Law, Justice and Human Rights Division, the references should come under the signature of a fairly senior officer. In case of Attached Departments the officers sending the reference should indicate their *ex-officio* Secretariat status.

35. The cases touching upon service matters and interpretation of financial rules and regulations should be referred to the Establishment Division or, as the case may be, to the Ministry of Finance in the First instance and the assistance of Law, Justice and Human Rights Division should be sought only if a question of law is involved.

36. Where a Division obtains an opinion from the Law, Justice and Human Rights Division, the referring Division should not in announcing Government's decision (*i.e.* that Division's own decision) disclose that the Law, Justice and Human Rights Division was consulted. Care should be taken that endorsement in such cases meant for the Law, Justice and Human Rights Division are not carried out in the copies meant for other Divisions and Departments.

37. While the Law, Justice and Human Rights Division would welcome, where considered expedient, back references from the administrative Divisions for reconsideration of its opinions, but such references should be at least from the same level at which legal opinion was tendered in the Law, Justice and Human Rights Division.

38. Where in any case there is a difference of opinion between the Law, Justice and Human Rights Division and the Division concerned and the latter desires to consult the Attorney-General, it should send to the former all relevant papers together with a self-contained summary of the case precisely indicating the points on which the advice of the Attorney-General is sought. *Under no circumstances a case is to be referred to the Attorney-General by the administrative Divisions directly.*

39. The Secretary in each Division will be personally responsible for the observance of these instructions by his subordinates including the officers in the attached and subordinate offices. He should ensure that his subordinates do not disregard these instructions. When a case is finally disposed of and decided against the Government he should have an inquiry instituted in the matter and take appropriate action against the concerned officials where the judgment has gone against the Government because of the non-observance of the rules of procedure on the part of the dealing officials. Where any lacuna in law or procedure is revealed steps should be taken to amend the law or the rules, as the case may be, if considered necessary and expedient.

Implementation of Judgements/Orders passed by the Federal Services Tribunal.

[1]40. On acceptance of an appeal by the Federal Services Tribunal, a written order is communicated to the concerned parties and respondent Ministries/Divisions/Departments. On receipt, the judgement is to be examined on top priority basis with a view to filing a Civil Petition for Special Leave to appeal (CPSLA) before the Supreme Court of Pakistan for which 60 days time is available to the aggrieved parties. In case, it is decided in consultation with the Law, Justice and Human Rights Division that an order passed by the Tribunal does not involve any substantial question of law of public importance for moving a CPSLA before the Supreme Court of Pakistan, the order should be implemented forthwith under intimation to the Registrar, Federal Services Tribunal, Islamabad.

[1]Inserted *vide* Establishment Division's O. M. No. F. 10/14/92-Lit-I dated 4.5.1993.

13. Consultation with the Foreign Affairs Division.-- The Foreign Affairs Division shall, subject to orders in pursuance of any general or special delegation made by that Division, be consulted on all matters which affect the foreign policy of Pakistan, or the conduct of its foreign relations.

14. Consultation with the Law and Justice Division-- (1) The Law and Justice Division shall be consulted--

(a) on all legal questions arising out of any case;

(b) on the interpretation of any law;

(c) before the issue of or authorization of the issue of an order, rule, regulation, by-law, notification, etc. in exercise of statutory powers;

(d) deleted vide Cabinet Division No.104/10/76-Min, dated 26-3-1976.

(e) before instituting criminal or civil proceedings in a court of law in which the Government is involved;

(f) whenever criminal or civil proceedings are instituted against the Government at the earliest possible stage; and

[3](g) before the appointment of a legal adviser in any Division or any office or corporation under its administrative control and the Law and Justice Division will make its recommendations after consultation with the Attorney General.

[2](1A) A Division may, for compelling reasons for a particular case, engage a private counsel and for that purpose shall refer the case to Law and Justice Division which may, after consultation with the Attorney General, allow engagement of such counsel on payment of fee by the Division concerned.

(2) No Division shall consult, the Attorney General except through the Law and Justice Division and in accordance with the procedure laid down by that Division.

(3) If there is disagreement between the views of the Attorney General and the Law and Justice Division, the case shall be submitted to the Minister for Law and Justice for opinion. If the Minister disagrees with the Attorney General, the case shall be referred to the Prime Minister for orders who may refer the matter to the Cabinet if he so desires.

(4) For any proposed legislation, the Law and Justice Division shall be consulted in accordance with rules 27 to 30.

(5) Bills or Ordinances received from the Provincial Governments or Governors requiring assent or instructions of the President shall be examined in the Division concerned and shall be submitted to the President through the Law and Justice Division.

14A. Consultation with Revenue Division.- (1) No Division shall, without previous consultation with the Revenue Division, authorise the issue of any orders, other than orders in pursuance of any general or special delegation made by the Revenue Division, which will affect directly or indirectly the collection of revenue from federal taxes, levy of taxes, duties, cesses or fees.

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[3] Amended vide Cabinet Division Memo No.104/83/78-Min (Pt.II) dated 21st November, 1979.

[2]Inserted vide SRO 130(1)/2017, dated 3rd March, 2017