

The Adjudication Proceedings and Appeal Rules, 1988

In exercise of the powers conferred by section 27 of the Foreign Exchange Regulation Act, 1947 (VII of 1947), the Federal Government is pleased to make the following rules to govern the procedure to be followed in respect of adjudication and appeal proceedings under the said Act, namely:---

1. Short title and commencement. —(1) These rules may be called the Adjudication Proceedings and Appeal Rules, 1988.

(2) They shall come into force at once.

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

(a) “Act” means the Foreign Exchange Regulation Act, 1947 (VII of 1947);

(b) “Adjudicating Officer” means the Adjudicating Officer referred to in section 23B;

(c) “section” means a section of the Act; and

(d) all other words and expressions used but not defined in these rules shall have the meaning assigned to them in the Act.

3. Commencement of adjudication proceedings.—(1) If any person, save as provided in sub-section (5) and (6) of section 23B, contravenes, or attempts to contravene or abets the contravention of the provisions of sub-sections (2), (3) and (5) of section 3, sub-section (3) of section 4, section 10, sub-section (1) of section 12 or sub-section (3) of section 20 or any rule, direction or order made thereunder, a complaint in this regard may be made to an Adjudicating Officer.

(2) A complaint under sub-rule (1), may be sent to, or filed before, the Adjudicating Officer having jurisdiction in the matter in terms of sub-sections (7) and (8) of section 23B, sub-sections (1), (2) and (3) of that section.

4. Procedure in adjudication proceedings.—(1) For holding an enquiry for the purpose of determining whether a person has contravened any of the provisions of sub-section (4), (5) or (6) of section 23B, the Adjudicating Officer shall serve a notice on such person requiring him to show cause, within fifteen days of the date of the service of the notice on him, why the penalty proposed in the notice should not be imposed on him;---

Provided that the said period of fifteen days may, upon sufficient cause being shown in an application in writing made by such person, be extended by the Adjudicating Officer so as not to exceed two months from the date of the service of the notice.

(2) Every notice under sub-rule (1) shall contain brief facts of the case, indicate the nature or substance of the contravention or offence alleged to have been committed by him and the evidence on the basis of which the contravention or the offence is alleged to have been committed.

(3) The notice under sub-rule (1) shall be issued at the last known address of the person and proof of service shall be kept on record.

(4) The person to whom notice under sub-rule (1) is issued shall invariably be asked to submit his explanation in writing and whether, additionally, he desires to be heard in person or through a duly authorised representative or an advocate.

(5) If after considering the cause, if any, shown by a person in his reply in writing to a notice under sub-rule (1), no case is made out, the notice shall be vacated by the Adjudicating Officer by an order in writing. But, if the Adjudicating Officer is of the opinion that adjudication proceedings be continued, he shall issue a notice fixing a date for appearance of that person either personally or through a counsel or any other authorised representative.

(6) On the date fixed under sub-rule (5) the Adjudicating Officer shall explain to the person proceeded against, or his counsel or representative, the contravention or the offence alleged to have been committed by such person indicating the provision of the Act or the rules, directions or orders made thereunder in respect of which the contravention is alleged to have taken place. If such person pleads guilty the Adjudicating Officer shall impose penalty authorised under the Act.

(7) In the event the person proceeded against does not plead guilty under sub-rule (6), the proceedings under sub-rule (6) shall be summarized in an appropriate order by the Adjudicating Officer, a copy of which shall be made available to such person, and shall frame the charge relating to the contravention or offence alleged against him.

(8) The Adjudicating Officer shall, after framing the charge under sub-rule (7) give opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and in respect whereof submits list of documents and witnesses forthwith and, if necessary, the hearing may be adjourned to a future date for production or the oral and documentary evidence, but thereafter the hearing shall proceed, as far as may be possible, from day to day.

(9) On the adjourned date, to which the adjudication proceedings are adjourned, the Adjudicating Officer shall take such evidence as is found relevant. If evidence and documents are not produced on the date fixed, the evidence may be closed and only that may be considered as is duly produced.

(10) If any person fails, neglects or refuses to appear before the Adjudicating Officer, as required under the Act or these rules, the Adjudicating Officer may proceed with the inquiry and proceedings in the absence of such person, after recording reasons for doing so, and may, if deemed necessary, proceed to give ex-parte decision in the light of the available material before him.

(11) If upon consideration of the evidence produced before the Adjudicating Officer and having given hearing, he is satisfied that the person proceeded against,---

(a) has not committed the contravention or the offence alleged, the notice shall be vacated and the person discharged; and

(b) has committed the contravention or the offence alleged the Adjudication Officer may, by order in writing, impose upon him such penalty as he thinks fit in accordance with the provisions of sub-sections (4), (5) and (6) of section 23B.

(12) Personal appearance, at any stage of the inquiry or the proceedings, referred to in the above sub-rules, may, on the request in writing of the person concerned, be waived or dispensed with, provided reasonable cause is shown in that behalf and such person is duly represented by a counsel or by an authorised representative.

5. Contents of the order of the Adjudication Officer.—(1) Every order made under sub-rule (10) or (11) of rule 4 shall specify the provisions of the Act or of the rules, directions or orders made thereunder in respect of which contravention has been alleged to have taken place and shall contain brief reasons for such decision, inter-alia, on the patron to be followed as nearly as possible as under:---

(i) summary of the facts and the nature of offence committed;

(ii) points for determination;

(iii) conclusions on each point giving reasons in the light of the explanation and evidence on the record;
and

(iv) the order.

(2) Every such order shall be dated and signed by the Adjudicating Officer.

6. Copy of the order.—(1) A certified copy of the final order, passed in the adjudication proceedings shall be supplied, free of charge, to the person against whom the order is made and all other copies of proceedings shall be supplied to him on application and payment of copy fee calculated according to the scale prevailing in the High Court of the province in which the office of the Adjudicating Officer is situated. A copy of the order shall also be sent to State Bank and to the Federal Government. The Federal Government and State Bank may also apply for and shall be given copies of all proceedings which shall, however, be without charge or fee.

(2) The copying fee referred to in sub-rule (1) shall be paid in cash to the Adjudicating Officer or paid in any bank, treasury or account as he may direct.

7. Procedure for filing appeal.—(1) An appeal to the Appellate Board may be presented to it or to any person authorised by it in this behalf during office hours either by the appellant personally or through his authorised representative or advocate.

(2) Every memorandum of appeal shall,---

(a) be in the form appended to these rules;

(b) be accompanied by the certified copy of the order appealed against;

(c) be accompanied by two spare copies of the memorandum of appeal and as many other copies thereof, duly signed by the appellant or his authorised representative or advocate, as there are respondents; and

(d) set forth concisely, and under distinct heads, the statement of case and the grounds of appeal numbered consecutively without any arguments or narrative.

(3) The Director of Adjudication in all appeals before the Appellate Board, shall additionally be the Respondent.

8. Procedure before Appellate Board.—(1) Subject to compliance with sub-section (4) of section 23C of the Act, when applicable, on receipt of an appeal under rule 7, the Appellate Board shall send a copy of the memorandum of appeal, with annexures thereto, together with a copy of the order appealed against, to each respondent and to the Director of Adjudication.

(2) The Appellate Board or any person authorised by it in this behalf shall issue notices to the appellant, the respondents and the Director of Adjudication fixing a date for the hearing of the appeal.

(3) On the date fixed for the hearing of the appeal, or any other day to which the hearing of the appeal may be adjourned, the appellant as well as the respondents or representatives thereof and the Director of Adjudication, shall appear and continue to appear on all adjourned dates.

(4) Where on the date fixed, or any other day to which the hearing of the appeal may be or is adjourned, the appellant and/or respondents or any of them fails to appear when the appeal is called on for hearing, the Appellate Board may decide the appeal on the basis of hearing the parties present, and in the absence of all of them, on the basis of record of the case.

(5) The Appellate Board may make such inquiry, as it may consider necessary, and after given the appellant an opportunity of being heard, if he so desires, pass such order as it thinks fit, confirming, altering or annulling the order appealed against or remand the case with such directions as it may give in this behalf:---

Provided that no order enhancing any penalty shall be passed unless the person affected thereby has been given an opportunity of showing cause against it and being heard in person or through a counsel:--
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Provided further, that if the sum deposited by way of penalty exceeds the amount directed to be paid by the Appellate Board, the excess amount shall be refunded to the appellant.

9. Contents of the order in appeal.—(1) The order of the Appellate Board shall be in writing and shall contain a narrative of facts and state full reasons for its decision on each ground of appeal.

(2) The order referred to in sub-rule (1) shall be dated, signed and sealed by the Appellate Board and a copy thereof shall be supplied, free of any charge or fee, to the parties, the Federal Government, the State Bank and the Director of Adjudication.

10. Representation of party.— Any person who has been proceeded against under section 23B, or any other section of the Act, or who has filed an appeal before the Appellate Board under section 23C, may

appoint a pleader, advocate, or any other person, duly authorised by him, to appear and plead and act on his behalf before the Adjudicating Officer or the Appellate Board in any inquiry or appeal under the Act.

11. Service of notices and orders.—A notice or an order issued under these rules shall be served on any person in the following manner, that is to say,---

(a) the notice, issued by the Adjudicating Officer under sub-rule (1) of rule 4, shall be in writing in duplicate, signed and sealed by him. Such notice may be served in such manner as may appear expeditions or convenient, inter alia,---

(i) the notice shall, if practicable, be served personally by any person deputed by the Adjudicating Officer, by delivering or tendering to the person concerned one of the duplicates. Simultaneously, another copy of the notice, in the same manner signed and sealed may also be sent by registered post, acknowledgement due or courier service;

(ii) every person on whom the notice is served shall, as the case may be, sign a receipt on the back of the duplicate when personally served, and in the case of service by post or courier, on their respective receipts;

(iii) refusal to accept in every case, shall be deemed to be proof of service of notice;

(b) at the request of the complainant or the accused, they may be allowed to serve summons on their own or respective witnesses or produce the witnesses whose list shall be supplied within such time as the Adjudicating Officer may allow;

(c) the service of a notice on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered post or by courier, addressed to the chief officer of the corporation. In such case, the service shall be deemed to have been effected when the notice would arrive in ordinary course of post or through the courier;

(d) where the person to be served is in the active service of the State or of a statutory body or a company the notice shall ordinarily be sent in duplicate to the head of the office in which such person is employed, and such head shall thereupon cause the notice to be served and shall return the duplicate under his signature with the endorsement of receipt of the notice for the person named therein. Such signature shall be evidence of due service;

(e) where the person cannot, by the exercise of due diligence, be found, he may be served by leaving one of the duplicates for him with some adult/male of his family or household or his servant and the person with whom the notice, is so left shall sign a receipt therefore on the back of the duplicate;

(f) if service in the manner mentioned by the foregoing procedure cannot by the exercise of due diligence be effected, the serving person, when so authorised by the Adjudicating Officer, shall affix one of the duplicates of the notice to some conspicuous part of the house or homestead in which the person ordinarily or last resided or the service may be ordered by any mode of substituted service, including publication in a newspaper and thereupon the notice shall be deemed to have been duly served;

(g) when the Adjudicating Officer desires that notice issued by him shall be served at any place outside the local limits of his jurisdiction, it shall ordinarily be sent in duplicate by post or courier service as provided in clause (a); and

(h) if a person, of his own accord and without service of notice, either personally or through a representative or counsel appears in the proceeding before an Adjudicating Officer, he shall be deemed to have been served with the notice and shall be given a copy of the show cause notice.