

4 Foreign Exchange Adjudication

Foreign Exchange Adjudication Department (FEAD) at BSC is responsible for ensuring that provisions of Foreign Exchange Regulation Act (FERA) 1947 are being followed by the different stakeholders including exporters, importers and Authorized Dealers (ADs) (Commercial Banks) to the extent of power vested to FEAD under section 23-B of FERA 1947. Focus of the department however remains mainly on persuading the delinquent exporters to bring stuck up export proceeds in the country and in case of their failure to do so, penalties are imposed on them as per provisions of FERA 1947.

4.1 Overview

Foreign Exchange Adjudication Department (FEAD) at BSC is responsible for ensuring that provisions of Foreign Exchange Regulation Act (FERA) 1947 are being followed by the different stakeholders including exporters, importers and Authorized Dealers (ADs) (Commercial Banks). Focus of the department however remains mainly on persuading the delinquent exporters to bring stuck up export proceeds in the country and in case of their failure to do so, penalties are imposed on them as per the procedure detailed in related provisions of the Foreign Exchange Regulation Act, 1947 and Adjudication Proceedings and Appeals Rules, 1988. Despite financial crisis in the international markets, FEAD has managed to arrange repatriation of a sizeable amount of stuck up foreign exchange in recent years.

4.2 Realization of export proceeds

During FY11, stuck up export proceeds equivalent to US\$ 37.5 million were realized as compared to US\$ 29.3 million during the preceding year indicating a net increase of US\$ 8.2 million showing the growth of 28 percent in export realization. Notably, the repatriation recorded during FY11 remained the highest during a year since inception of the FEAD. Court-wise comparative position at Karachi, Lahore, Faisalabad, Multan

Achievements

- Stuck up export proceeds equivalent to US\$ 37.5 million were realized during FY11 indicating a net increase of US\$ 8.2 million, a growth of 28 percent in export realization through FEAD when compared with last year.
- The share of Adjudication Court at Karachi in overall realization of stuck up proceeds has increased tremendously from US\$2.0 million in FY10 to US\$17 million in year FY11 which works out to be 7.5 times of last year's realization.
- A total number of 3,284 complaints in respect of delinquent exporters on a country wide basis were processed during FY11 and 968 complaints were disposed off.
- For the very first time, the FEOD lodged about 1,800 complaints against the ADs and a good number of complaints in this context have been disposed off.

Table 4.1: Realization of export proceeds

Adjudication Court	Export Proceeds realized in US \$		% Change
	FY10	FY11	
Karachi	2,116,140	16,870,028	697.2
Lahore	10,715,469	3,471,012	-67.6
Faisalabad	3,446,661	10,165,427	194.9
Multan	3,342,112	1,655,551	-50.5
Sialkot	9,677,303	5,313,146	-45.1
Total	29,297,685	37,475,164	27.9

and Sialkot is given in the Table 4.1. The share of Adjudication Court at Karachi in overall realization of stuck up proceeds has increased tremendously from US\$2.0 million in FY10 to US\$17 million in year FY11 which works out to be 7.5 times of last year's realization.

Comparing court performance, the highest growth in the export proceed realization has been witnessed in Karachi region (697 percent) and Faisalabad region (195 percent). Negative growth has been witnessed in Sialkot (245 percent) and Multan (50 percent) as compare to the last year export proceeds realization.

Major challenge in the way of a smooth adjudication process is non-traceability of delinquent exporters. For the purpose of tracing out the delinquent exporter, FEAD approaches Commercial Banks, Income Tax, NADRA, Customs, Companies Registrar Office (CRO)/ SECP and the Exporters Associations etc. Cases where delinquent exporters submit convincing reasons for delay in realization of export proceeds, the FEAD court can consider to approve flexible repatriation plans in such cases.

In case delinquent exporter is neither traceable nor attends the FEAD court, the adjudicating officers are empowered to take ex-parte decisions after fulfillment of the legal requirements and impose penalty there-against which is recoverable as arrears of land revenues. It is however noted with concerns that despite this provision in the law, the recovery of the penalty imposed by FEAD courts since their imposition has remained negligible due to non/ limited cooperation of the Revenue Authorities of the respective province.

Presently, total penalty amount of Rs. 9.7 billion is outstanding out of which the department has recovered Rs. 19.6 million only from delinquent exporters up to June, 2011. In this regard, cooperation and support from local law enforcement authorities, Tax and Revenue departments of concerned province can play an important role to recover the outstanding amount.

4.3 Decisions on complaints

FEAD during the current year continued to persuade exporters for realization of export proceeds. A total number of 3,284 complaints in respect of delinquent exporters on a country wide basis were processed during FY11 as against 1,806 complaints processed during FY10. During the year under review, 968 complaints were disposed off as against 1,296 complaints in the previous year. Court-wise details of the cases disposed of during the FY10 and FY10 are given in the Table 4.2.

Table 4.2: Complaints Disposed off

Adjudication Courts	Number of Cases		
	FY10	FY11	% Change
Karachi	361	278	-23.0
Lahore	444	333	-25.0
Faisalabad	103	182	76.7
Multan	51	22	-56.9
Sialkot	337	153	-54.6
Total	1,296	968	-25.3

4.4 Major Initiatives/Achievements

4.4.1 Comparative Study of FERA and FEMA

Comparative study of Foreign Exchange Management Act of India and FERA, 1947 was carried out to ascertain the differences and positive changes taken place in the FE Rules in India. The findings of the said study along with recommendations was submitted to EPD, SBP for consideration of necessary amendments in the FE Rules in the lights of

the proposal of the study especially in the area of imposition of penalties on ADs, provision of time frame for disposal of the cases by Adjudicating Officer and re-visiting of the provisions of the FERA relating to different Adjudicating Forums with a view to develop an Adjudicating Forum to further strengthen the existing system so as to foster the process of repatriation of stuck up foreign exchange in the country.

4.4.2 Strengthening of Due Diligence Process of ADs

While adjudicating the complaints lodged against exporter for realization of export proceeds, the FEAD courts at times have also noticed non compliance by the ADs of the instructions of SBP relating to due diligence of the customers as also other requirement prescribed in the FE manual. In many cases they do not carry out due diligence/ risk management i.e not verifying the credentials of the buyer and also do not take the legal action against the defaulting buyers. In many cases, repatriation becomes difficult due to time lapse. Therefore, FEAD courts are now directing the A.Ds to ensure compliance of these requirements. The Foreign Exchange Operation Department (FEOD) of SBP BSC has also been advised to monitor compliance of these requirements by banks before submitting complaints under section 23-B of FERA Act. During FY11, FEOD lodged complaints against the ADs which will reduce the delinquent exporters and will also help in tracing the delinquent exporters.

4.4.3 Automation of Complaint Management System:

The department has initiated an automated complaint management system, which will facilitate issuance of show cause notices to the individual delinquent exporters. In the second phase, the provision of consolidated show cause notices will be taken into hands.

4.5 Capacity Building of Human Resource

In the area of adjudication, a highly skilled and trained staff having knowledge of foreign exchange laws, regulations, trade finance, banking as also relevant legal provision is essential to ensure prompt disposal of complaints. During FY11, 10 officials of FEAD have received training under various standardized training modules conducted by NIBAF as per arrangements made by the Training and Development Department. The department also intends to arrange for training of its adjudicating officers at Federal Judicial Academy during FY12. Therefore, the department has continuously made efforts to train its workforce to improve their skill set.