

5 Foreign Exchange Adjudication

Foreign Exchange Adjudication Department, set up under Section 23B of the Foreign Exchange Regulations Act 1947, runs nine courts countrywide and is the only legal forum available to SBP & SBP-BSC for adjudicating cases of delinquent exporters having failed to realize export proceeds. It also adjudicates complaints against Authorized Dealers for non-compliance of Foreign Exchange Regulation Act (FERA) & SBP instructions. The Department imposes penalties in case of violation of prevalent laws/regulations as per the procedure laid down in FERA & Adjudication Proceedings & Appeal Rules, 1988.

5.1 Overview

Foreign Exchange Adjudication Department (FEAD) at SBP-BSC adjudicates the complaints received from Foreign Exchange Operations Department (FEOD) against the delinquent exporters for non-realization of foreign exchange and ensures timely inflow of exports receipts. In case of non-compliance, exporters as well as Authorized Dealers (commercial banks) are penalized under the powers vested with the Adjudicating Officers under Section 23B of Foreign Exchange Regulations Act (FERA) 1947 after due process.

Box 5.1 Highlights

- While FEAD has managed realization of US\$ 346 million by the delinquent exporters since its inception, it has achieved the following milestones in FY14:
 - Stuck-up export proceeds equivalent to US\$ 49.4 million were realized through the Department.
 - A total of 6,521 complaints of delinquent exporters on a country-wide basis were taken up during the year, out of which 2,099 complaints were disposed of.

5.2 Achievements during FY14

The FEA Courts managed to arrange repatriation of sizeable amounts of otherwise stuck-up foreign exchange proceeds in recent years. During FY14, stuck-up export proceeds equivalent to US\$ 49.4 million were realized (**Table 5.2**).

The FEAD, through its Adjudicating Officers in nine Adjudicating Courts of the country, heard and processed 6,521 complaints against the delinquent exporters in the year under review as compared to 5,957 complaints in the preceding year FY13.

Table 5.1 Decision on Complaints

Adjudication Courts	Number of cases		% Change
	FY13	FY14	
Karachi	512	1057	106.4
Lahore	773	546	-29.4
Faisalabad	137	250	82.5
Multan	33	39	18.2
Sialkot	222	207	-6.7
Total	1,677	2,099	25.1

Table 5.2 Realization of export proceeds (US \$)

Adjudication Courts	Export Proceeds Realized in Million US\$		% Change
	FY13	FY14	
Karachi	31.7	31.2	-1.6
Lahore	8.4	12.0	42.0
Faisalabad	6.0	4.1	-30.5
Multan	0.6	0.7	4.5
Sialkot	2.7	1.4	-46.3
Total	49.4	49.4	0.0

Box 5.2 Recovery Cell

FEA Department also has a Recovery Cell to pursue the Revenue Authorities/Government Departments in order to recover penalty from defaulting exporters. As a result of consistent efforts by FEAD, these authorities have collected Rs.27.2 million out of the total penalty of Rs. 32.7 billion imposed by the FEA Courts on defaulting exporters since inception. An amount of Rs. 98.2 million was waived by the superior courts, and as such an amount of Rs. 32.6 billion is still to be collected by the Revenue Authorities of respective Provincial Governments and District Officers. The Recovery Cell continuously pursues the respective Revenue Authorities for the purpose.

5.3 Strengthening of Due Diligence Process by Authorized Dealers (Banks)

State Bank of Pakistan has extended Authorized Dealers' licenses to the commercial banks in the country in order to deal in foreign exchange. An Authorized Dealer is required to comply with such general or special instructions which the State Bank may give from time to time and may not engage in any transaction involving foreign exchange which is not in conformity with the terms of its authorization.

However, in a number of cases, ADs violate FERA 1947 which causes delays in initiation of legal proceedings against defaulting exporters. FEOD, therefore, lodged a number of complaints against ADs for non-submission of documents required for completion of pre-Adjudication formalities. It has been observed that the Authorized Dealers, at the time of certification of E-forms in some cases do not comply with the instructions communicated to them by SBP, which later on make it easy for the exporters to remain non-compliant to the requirements of FERA 1947. It was further noted that ADs in many cases do not carry out due diligence/risk management at the time of Form-E certification such as verifying credentials of the importer/foreign buyer and also do not obtain undertaking from the exporter on export of goods against DA/TR basis.

Besides, in a large number of overdue bills reported by the ADs in V-16 over "EORS" where shipments are made on D.P (documents against payment) or C.A.D (cash against documents), banks assume no responsibility to take up the matter with the foreign banks as to why they released the original "Title Documents" to the importer without obtaining payment of the goods.