

4 Foreign Exchange Adjudication

Foreign Exchange Adjudication Department (FEAD) is the only legal forum available with SBP BSC which adjudicates the complaints received from Foreign Exchange Operation Department (FEOD) against delinquent exporters. The Department is working under the parameters of Foreign Exchange Regulations Act, 1947 under which powers to the adjudicating officers are delegated by the Federal Government vide Section 23-B of FERA. The focal point of FEAD rests on persuading the delinquent exporters to bring stuck up export proceeds in the country.

4.1 Overview

FEAD is the legal arm of the foreign exchange operations undertaken by the SBP and SBP BSC, and ensures timely inflow of exports receipts. It works in collaboration with the FEOD.

FEAD pursues the delinquents particularly exporters, to bring back stuck up foreign exchange from abroad. In undertaking legal proceedings, the Adjudicating officers of FEAD use the powers vested to them vide section 23-B of FERA 1947. In such cases where the situation becomes unmanageable at the end of Foreign Exchange Operations Department, the FEAD comes into act and the department formally brings the defaulting exporter to the court of law and listen to his/her grievances. FEAD provides equal opportunities on merit to the accused and the complainant. In case of judgment against the accused, penalties are imposed under section 23-B of FERA 1947. However, more emphasis is always on repatriation of precious foreign exchange.

4.2 Achievements during FY12

The FEA Courts managed to arrange repatriation of sizeable amounts of stuck up exchange in recent years. During FY12, stuck up export proceeds equivalent to US\$ 43.0 million were realized compared to US \$ 37.5 million previous year. The share of three Adjudicating Courts at Karachi out of total nine courts, stood at 57.9 percent in overall realization of stuck up proceeds during FY12. A total of 3,901 complaints of delinquent exporters on a country

Highlights

- Since inception in 1990, FEAD recovered US\$ 258,861,479/- upto 30-06-2012
- Stuck up export proceeds equivalent to US\$ 43.0 million were realized during FY12 indicating a net increase of 15 % in export realization through FEAD compared to previous year.
- With three Adjudicating Courts at Karachi, the realization of stuck up proceeds have increased to US\$ 24,894,551/- in year FY12 against US\$ 16,870,028/- in FY11.
- A total of 3,901 complaints of delinquent exporters on a country wide basis were processed during FY12 out of which 2,410 complaints were disposed off up to 30-06-2012.
- An amount of Rs.2, 253,000/- as penalties was imposed and recovered from ADs (Banks) on the complaints so far received from FEOD, HOK.
- Since inception by the efforts of Recovery Cell a handsome penalty amount of Rs.22.964/-million has been recovered from the exporters with the assistance of concerned District Revenue Officer (DRO) Karachi.
- FAQs were prepared first time for all stakeholders on FERA, 1947 and Adjudication Proceedings of the complaints.
- A Comprehensive database has been developed on Ms EXCEL and all data of FER cases for last six years has been captured

wide basis were processed during FY12 out of which 2,410 complaints (**Table 4.1**) were disposed of up to the end of FY12. For the first time FEAD disposed off 1,275 complaints against Authorized Dealers (ADs) received at Karachi for non submission of pre-adjudication information/ documents and imposed token penalties amounted to Rs. 2.3 million. The data also reflects (**Table 4.2**) that recovery performance of Lahore office; achieved 137.2% increase in repatriation of Foreign Exchange over previous year.

Table 4.1: Decision on Complaints

Adjudication Courts	Number of cases		% Change
	FY11	FY12	
Karachi	278	1,745	527.7
Lahore	333	338	1.5
Faisalabad	182	197	8.2
Multan	22	18	-18.2
Sialkot	153	112	-26.8
Total	968	2,410	149.0

Table 4.2: Realization of export proceeds (US \$)

Adjudication Courts	Export Proceeds	Realized in US\$	% Change
	FY11	FY12	
Karachi	16,870,028	24,894,551	47.6
Lahore	3,471,012	8,234,036	137.2
Faisalabad	10,165,427	6,839,824	-32.7
Multan	1,655,551	891,793	-46.1
Sialkot	5,313,146	2,131,450	-59.8
Total	37,475,164	42,991,654	14.7

One of the important milestones achieved was the development of a new Database wherein comprehensive data of last six years have been captured. This provides a very useful tool for multidimensional analysis of emerging trends and may also be used for policy making by Exchange Policy Department and Infrastructure Housing & Microfinance Department, SBP as well as commercial banks. During the period FEAD also prepared detailed FAQs for all stakeholders on FERA, 1947 and adjudication proceedings of the complaints.

FEAD also has a recovery cell to pursue the Revenue Authorities / Government Departments to recover the penalty from defaulting exporters. These authorities have collected Rs. 22.964 million out of the total penalty of Rs.9.5 billion imposed by the FEAD courts on defaulting exporters since inception. An amount of Rs. 98.2 million were waived by the superior courts as such an amount of Rs. 9.4 billion is still to be collected by the Revenue Authorities of respective provincial governments and district officers. During FY12, FEAD collected an amount of Rs.3.3 million with the assistance of concerned District Revenue Officer (DRO) Karachi. FEAD courts have also imposed penalty of Rs.2,253,000/- on ADs for non-compliance of FERA 1947 and these have been deducted by SBP from their accounts maintained at SBP.

The FEAD through its Adjudicating Officers in nine Courts of the country heard and processed 3,901 complaints against the delinquent exporters in the current year compared to 3,284 complaints in the preceding year FY11.

4.3 Comparative study of FERA (Pakistan) and FEMA (India)

In the year 2010 comparative study of FERA & FEMA was conducted to ascertain the differences and any positive changes to take place in the FE Rules. The findings and recommendations were sent to EPD for their considerations for proposing changes in the FE Rules. This initiative has been taken to get the statutory regulations amended to make the processes more compatible with the changed scenario.

4.4 Strengthening Due Diligence Process by ADs

State Bank of Pakistan has extended ADs licenses to all the commercial banks in the country to deal with the import and exports. However, they are required to comply with the rules and regulations enshrined in FERA 1947 and Foreign Exchange Manual.

However, ADs in a number of incidences violate FERA 1947 which causes delay in initiation of legal proceedings against the defaulting exporters. FEOD therefore lodged number of complaints against the ADs for non submission of pre-Adjudication documents. It has been observed that the authorized dealers, at the time of certification of E-forms, did not comply with the instructions communicated to them by SBP which later on cause default by the exporters. It was further noted that ADs in many cases do not carry out the due diligence/ risk management at the time of E-form verification such as credentials of the importer/ foreign buyer and also not obtain undertaking from the exporter on export of goods against DA/ TR basis.

4.5 Capacity Building of Human Resource

To improve skill set and knowledge level of Adjudicating officers and their coordinating, supporting staff, training programs have been arranged by Training Department of SBP BSC for FY13. Furthermore officers and other staff have been sent to various external capacity building sessions.

4.6 Future Outlook

As part of the re-engineering process, the departmental plans for FY13 include:

- i) Updation of Internal Manual of Instructions & Procedure of FEAD;
- ii) Upgrading database to offer online information bureau for banks, relevant departments of SBP and other institutions.