

1988 No. 153

FOREIGN COMPENSATION

**The Foreign Compensation Commission (People's
Republic of China) Rules Approval Instrument 1988**

Made - - - - - *2nd February 1988*
Laid before Parliament *8th February 1988*
Coming into force - *1st March 1988*

Whereas the Foreign Compensation Commission have, in exercise of their powers under section 4(2) and (3) of the Foreign Compensation Act 1950(a), after consultation with the Council on Tribunals in accordance with the Tribunals and Inquiries Act 1971(b), made rules of procedure and submitted them to the Lord Chancellor for his approval:

Now, therefore, the Lord Chancellor, in exercise of the powers conferred on him by section 4(2) of the said Act of 1950, after consultation with the Council on Tribunals, in accordance with section 10 of the said Act of 1971, hereby approves the said rules in the Schedule hereto.

This Instrument may be cited as the Foreign Compensation Commission (People's Republic of China) Rules Approval Instrument 1988 and shall come into force on 1st March 1988.

Dated 2nd February 1988

Mackay of Clashfern C.

SCHEDULE

1. Citation and application
2. Interpretation
3. Claims
4. Time and form of applications
5. Estates of deceased persons
6. Minors
7. Unincorporated associations
8. Bond claims
9. Entitlement to compensation admitted

(a) 1950 c.12.
(b) 1971 c.62.

10. Answer
11. Reply, written argument and evidence
12. Further particulars
13. Adjudication
14. Amendments
15. Change of applicant
16. Death of applicant or devolution or transfer of claims
17. Language of proceedings and translations
18. Evidence
19. Associated applications
20. Oaths and affirmations
21. Reports or information
22. Summonses to witnesses and orders to forward documents
23. Taking evidence abroad
24. Extension of time
25. Orders and directions and dismissal of applications
26. Service by post
27. Copies of notices and applications
28. Rights of audience
29. Determinations
30. Review
31. Revocation of determinations
32. Composition of Commission
33. Selection of Commissioners
34. Majority decision
35. Admissions by Legal Officer
36. Amendment of determinations, orders and directions
37. Non-compliance with Rules

The Foreign Compensation Commission, in exercise of their powers under section 4(2) and (3) of the Foreign Compensation Act 1950(a), after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971, hereby make the following Rules:

Citation and application

1.—(1) These Rules may be cited as the Foreign Compensation Commission (People's Republic of China) Rules 1988.

(2) These Rules shall apply to all applications under the Foreign Compensation (People's Republic of China) Order 1987(b) from the date they come into force and no rules heretofore made by the Commission shall thereafter apply to such applications.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires:—

(a) 1950 c.12.

(b) 1987/2201.

“the Commission” means the Foreign Compensation Commission;

“Commissioner” means the Chairman or other member of the Commission;

“determination” means the determination of a claim under rule 9 or rule 29 of these rules;

“Legal Officer” means a Legal Officer appointed by the Commission to represent the interests of the Fund and any person authorised by the Commission to act in that behalf;

“the Order” means the Foreign Compensation (People’s Republic of China) Order 1987(a);

“personal representative” means the person to whom a grant of probate or confirmation or letters of administration shall have been made in any part of the United Kingdom;

“pleading” means the application (or any other document accepted by the Commission in lieu thereof), an answer, a reply and any particulars delivered in respect of such documents;

“Registrar” means a Registrar appointed by the Commission and any person authorized by the Commission to act in that behalf;

(2) Expressions defined in the Order shall in these Rules have the meanings assigned to them in the Order.

Claims

3.—(1) Unless the Commission otherwise order, a claim shall be made by an application in the appropriate form issued or approved by the Commission.

(2) The application shall be signed by the applicant or, in the case of a corporation, by the secretary or a director and shall be addressed to the Commission and delivered by prepaid post or by hand.

Time and form of applications

4.—(1) No application shall be entertained by the Commission unless—

(a) being an application in respect of a bond claim, it has reached the Commission on or before 30 June 1988; or

(b) being an application in respect of any other claim, it has reached the Commission on or before 31 August 1988.

(2) An applicant shall be deemed to have complied with paragraph (1) of this rule if he shall have delivered to the Commission on or before the relevant date the application form issued by the Commission duly completed and signed or such other document as the Commission may accept as giving sufficient notice of the claim:

Provided that if the application was not made on the form issued by the Commission the Commission may require the applicant to complete an application in the appropriate form within a period specified by the Commission.

(3) A claim which has been withdrawn shall not be further entertained except with the leave of the Commission.

Estates of deceased persons

5.—(1) Subject to the provision of this rule, where a person has died who was qualified to make an application under the Order, an application may be made in respect of a claim on behalf of his estate notwithstanding that there is no personal representative, by any person who—

(a) has taken out a grant of probate or administration in respect of that estate in any part of the Commonwealth other than the United Kingdom; or

(b) is named as an executor in the last will of the deceased person; or

(c) appears to the Commission to be the widower, widow, child, grandchild, parent, brother or sister of the deceased person:

(a) S.I. 1987/2201.

(2) The Commission may at any time as regards any application require a grant of probate or administration to be obtained in the United Kingdom, may specify a time within which such grant of probate or administration shall be produced to the Commission and may require any person substituted as applicant by order of the Commission to sign all appropriate forms.

(3) The Commission shall not accept more than one application on behalf of the same estate.

Minors

6.—(1) Applications may be made on behalf of a minor by his parent or guardian, or any person appointed for the purpose by his parent or guardian, or a person appointed by the Commission.

(2) Upon any such minor attaining full age, the application shall be carried on in his name unless he shall withdraw it in writing upon or within three months after his attaining full age.

Unincorporated associations

7.—(1) Where an application under the Order is made in respect of any property of an unincorporated association, charitable or otherwise, the Commission may appoint any two or more persons who appear to them to be suitable to represent the interests of the association to make or continue an application on its behalf.

(2) The Commission may at any time discharge any appointment so made or appoint any other person in addition to, or in substitution for, any person previously so appointed.

(3) No person shall be appointed under the preceding paragraphs of this rule without his consent in writing.

(4) Any person for the time being so appointed shall for all the purposes of these Rules be deemed to be an applicant.

Bond claims

8. The Commission shall admit a claim in respect of a bond if—

- (a) they are satisfied the claim has been made in proper form by an applicant entitled to claim;
- (b) the application is supported by a statutory declaration in Form A in the Appendix; and
- (c) the bond to which the application relates has been delivered to the Commission.

Entitlement to compensation admitted

9.—(1) The Legal Officer may at any time file with the Registrar a statement recommending the Commission to admit a claim in the sum claimed or at a sum agreed in writing by the applicant to be the amount thereof, and the Commission may determine the claim accordingly.

(2) Without prejudice to the provisions of rule 8(b), before making a determination under the provisions of paragraph (1) of this rule the Commission may require an applicant to make or obtain a statutory declaration of the statements by which he has supported his claim.

(3) Where there is no agreement as to the amount of a claim, the Legal Officer may file with the Registrar a statement recommending the Commission to admit the claim in a specified amount with the facts and submissions on which he relies.

(4) On receipt from the Legal Officer of a statement under paragraph (3) of this rule the Registrar shall notify the applicant thereof in writing and shall require the applicant to send to the Commission within 28 days a statement in writing either of his agreement to accept the amount recommended by the Legal Officer as the amount of loss with respect to his claim or of the amount he would accept as the amount of that loss and of

any evidence, facts and submissions upon on which he relies in support of his claim to that amount.

(5) Subject to the provisions of rule 13, the Commission may admit the claim and assess the amount of loss with respect to the claim after 28 days from the date of service of the Registrar's notification referred to in paragraph (4) of this rule notwithstanding that no statement in writing by the applicant in reply thereto has been received by the Commission.

Answer

10.—(1) Unless the Commission otherwise direct, the Legal Officer shall file an answer in respect of a claim which has not been determined under the provisions of rule 9.

(2) The answer shall state which facts in the application the Legal Officer admits and which facts he denies and any other facts and submissions on which he relies.

(3) A copy of the answer shall be served on the applicant.

Reply, written argument and evidence

11.—(1) If the applicant wishes to reply to the answer, he shall deliver his reply within 28 days of service of the answer unless the Commission otherwise direct.

(2) Such reply shall contain any additional facts and submissions upon which he relies and shall be accompanied by any further evidence he wishes to put before the Commission.

(3) A copy of such reply shall be served by the Registrar on the Legal Officer who may make written submissions to the Commission thereon.

Further particulars

12.—(1) The Commission may direct the Legal Officer or an applicant to give further particulars of any pleading within a specified time.

(2) Subject to the provisions of rule 24, the Commission may dismiss any claim in respect of which any such direction has not been complied with.

Adjudication

13.—(1) The Commission may on an application by the applicant or of their own motion direct that a claim shall be the subject of an oral hearing.

(2) The application shall be made in writing within 28 days of the notification referred to in paragraph (4) of rule 9 or of service of the answer as the case may be.

(3) The Commission shall not refuse an application for an oral hearing in respect of any claim except by decision of not less than two Commissioners.

(4) If the Commission direct an oral hearing, notice of not less than 21 days, unless the applicant otherwise agrees, shall be given to the applicant and the Legal Officer by the Registrar of the date of the hearing and of any adjournment thereof.

(5) If the Commission do not direct an oral hearing, the Commission shall proceed to a determination of the claim.

(6) Subject to any directions given by the Commission in a particular case, every oral hearing shall be in public.

Amendments

14.—(1) A pleading may be amended only with the leave of the Commission.

(2) A copy of the proposed amendment shall be delivered to the Registrar who shall serve a copy on the applicant or the Legal Officer, as the case may be.

Change of applicant

15.—(1) Subject to the provisions of rule 16, an applicant may only be removed from or added to a subsisting application by order of the Commission. An application for such

removal or addition shall be in writing and shall state the reasons therefor and particulars of the proposed new applicant and shall be served on the Legal Officer and any applicant who may be affected.

(2) If the Legal Officer or any applicant desires to oppose such application he shall so inform the Commission and the proposed new applicant within 28 days of the service on him of such application.

Death of applicant or devolution or transfer of claims

16.—(1) Upon the death of an applicant or upon any devolution or transfer of any claim, the application may, subject to this rule, be continued as regards any claim not already determined by—

- (a) the personal representative of the deceased applicant;
- (b) a person claiming to be entitled to continue the application or any claim therein in lieu of any applicant by virtue of any devolution or transfer from the said applicant.

(2) After the expiration of three months from the date of the death of the deceased applicant or from the devolution or transfer of any claim, the application or claim in question may be continued under paragraph (1) of this rule only with the leave of the Commission.

(3) No person shall be entitled to continue an application or claim under paragraphs (1) and (2) of this rule unless he shall first produce his full particulars and evidence of his title to the satisfaction of the Commission and shall sign or execute the application form already filed with the Commission.

(4) Failing the grant of leave under paragraph (2) or compliance with paragraph (3) of this rule, the Commission shall dismiss the claim.

(5) Nothing in the rule shall be deemed to affect any application or claim surviving to a joint applicant.

Language of proceedings and translations

17.—(1) All applications to, and all proceedings of, the Commission under the Order shall be in the English language.

(2) The Commission may order an English translation to be made of any document. Any translation submitted by the applicant may be certified by the Registrar to be a true translation.

(3) The Commission may appoint interpreters to interpret oral evidence or to translate documents.

Evidence

18. The Commission shall not be bound by rules of evidence and may admit in evidence any document or statement whether on oath or not which they deem to have probative value, but no such document or statement may without leave of the Commission be used unless it has been disclosed to the applicant or the Legal Officer, as the case may be, and he has been given a reasonable opportunity to make submissions to the Commission thereon.

Associated applications

19. Where there are pending at the same time two or more applications which could, in the opinion of the Commission, be conveniently taken together, the Commission may, on the application of an applicant or the Legal Officer or of their own motion, order that such several applications or parts thereof be determined at the same time. Upon making such an order the Commission shall give any consequential directions that may be required.

Oaths and affirmations

20. The Commission shall have the power at an oral hearing to administer an oath to or take the affirmation of any applicant or witness and to require any such person to take

such oath or make such affirmation and to answer any question to which the Commission may lawfully require an answer.

Reports or information

21. The Commission may on an application by the applicant or the Legal Officer in that behalf or of their own motion order that a report or information be provided by any person nominated by the Commission on any matter affecting any claim and a copy thereof shall be supplied to the applicant and the Legal Officer who shall be entitled to comment thereon.

Summonses to witnesses and orders to forward documents

22.—(1) A summons for any person to attend to give evidence and to produce documents at an oral hearing shall be in Form B and an order to forward documents shall be in Form C, with such variations as circumstances may require.

(2) Where an applicant or the Legal Officer desires a summons or order to issue, the Commission may direct the Registrar to issue it and, in the case of a summons in Form B, the summons shall specify a sum to be tendered to the person to be summoned to attend which shall be reasonably sufficient to cover his expenses in travelling to and from the place of hearing.

(3) An applicant or the Legal Officer, as the case may be, shall serve with the summons an undertaking in Form D to pay to the person summoned to attend compensation for loss of time and any additional expenses which may be certified by the Commission to have been reasonably incurred.

(4) Each summons or order shall contain the name of one person only and shall be served personally a reasonable time before the date fixed for hearing.

(5) No summons or order issued pursuant to this rule shall be valid unless it is served upon the person named therein within 12 weeks from the date of signature by the Registrar and unless the conditions therein with regard to compensation for loss of time and expenses are complied with.

(6) A person served with a summons to attend to give evidence may apply to the Commission to set aside the same, whereupon the Registrar shall send notice of the application to set aside the summons to the person at whose instance it was issued and after taking into account the representations of both parties the Commission shall direct that the summons be confirmed or order that it be set aside.

Taking evidence abroad

23. The Commission may give such directions for the taking of evidence abroad and for the manner thereof as may be deemed expedient.

Extension of time

24. The time appointed by these Rules, other than any time appointed by paragraph (1) of rule 4, for doing any act or taking any step in proceedings—

- (a) shall, if the act is to be done or the step taken by a person normally resident outside the United Kingdom, be extended by 28 days; and
- (b) may be extended if the Commission so order, for any period in their discretion notwithstanding that the time appointed has already expired.

Orders and directions and dismissal of applications

25. Without prejudice to any other provision for orders or directions in these Rules, the Commission may on an application by the applicant or the Legal Officer in that behalf or of their own motion make any order or give any direction in connection with any application or may dismiss any application.

Service by post

26. Save as otherwise provided in these Rules, any notice or other document required or authorised to be served on any person for the purposes of these Rules may be sent by

pre-paid post to that person at his last ordinary or permanent address notified to the Commission or other address for service specified in any notice given under these Rules, and if so sent it shall be deemed to have been duly served on the date of such posting. The address of a solicitor instructed by an applicant to act generally in relation to his claim shall be deemed to be an address for service specified as aforesaid.

Copies of notices and applications

27. All notices and applications to the Commission or to the Registrar shall be in writing and shall be sent by pre-paid post or delivered by hand and a copy thereof shall be served by the Registrar on the applicant or the Legal Officer, as the case may be.

Rights of audience

28. The following persons only may address the Commission—

- (a) an applicant other than a corporation;
- (b) the Legal Officer;
- (c) counsel retained by or on behalf of an applicant or the Legal Officer;
- (d) a solicitor acting generally in the proceedings for an applicant (in this subparagraph referred to as "a solicitor on the record"), any solicitor employed by a solicitor on the record, any solicitor engaged as an agent by a solicitor on the record, and any solicitor employed by a solicitor so engaged;
- (e) in the case of an applicant other than a corporation, any person who satisfies the Commission that he is a relative or friend of the applicant he proposes to represent and that he has the authority of the applicant to represent him in that behalf;
- (f) in the case of an applicant corporation, counsel or solicitor as aforesaid, or, if the Commission give leave, a director or the secretary.

Determinations

29.—(1) A determination of every claim not previously withdrawn shall be made by the Commission, and notice in writing thereof shall be given to every applicant and the Legal Officer. It shall not be necessary for the Commission to meet for the purposes of announcing their determination.

(2) Subject to the provisions of rules 30 and 31, all determinations of the Commission shall be final.

Review

30.—(1) The Commission may direct that a determination be reviewed if in their opinion the interests of justice so require.

(2) Before reviewing any determination the Commission shall serve upon the applicant notice of intention to review.

(3) On review, the Commission may invite the applicant and the Legal Officer to submit additional written evidence or argument or to attend an oral hearing but, subject as hereinafter provided, neither the applicant nor the Legal Officer shall, unless the Commission otherwise direct, be entitled on review to have an oral hearing or to submit any additional evidence or argument.

(4) On review, an applicant shall be entitled to submit additional written evidence and argument if the Commission propose to disallow or reduce the amount of a claim and the Legal Officer shall be so entitled if the Commission propose to increase the amount of a claim or to allow a claim which has been disallowed.

(5) The Commission shall give the applicant and the Legal Officer notice of any such proposal as is referred to in paragraph (4) of this rule and any written evidence or argument shall be served upon the Commission before the expiration of 28 days from the service of the notice of such proposal.

(6) There shall not be more than one review of any determination.

(7) If it appears to the Commission that an applicant has died and no grant of

representation to his estate has been produced to them, the Commission may review the determination of a claim made by the deceased applicant without serving any notice of intention to review or may, if they think fit, by order appoint such person as they think proper to represent the estate of the deceased applicant for the purpose of such review, and in that case the foregoing provisions of this rule shall apply to the person so appointed as they apply to an applicant and notice of intention to review shall be served upon that person.

(8) Where the Commission receive no acknowledgment within 28 days from the date of posting of the notice of intention to review, or within such further period as may be specified therein for replying thereto, the provisions of paragraph (7) of this rule shall apply as if the applicant had died.

Revocation of determinations

31. Notwithstanding the provisions of rules 29 and 30, if it shall appear to the Commission that the determination by the Commission of any claim (whether such determination shall have been reviewed by the Commission or not) has been affected by any alteration of the provisions of the Order or as a result of any proceedings questioning the determination under section 3 of the Foreign Compensation Act 1969(a) or otherwise, the Commission may revoke the determination either wholly or in part and in lieu thereof or of the part revoked make a fresh determination. Any such revocation shall be made after giving reasonable prior notice thereof to the applicant and the Legal Officer and after consideration of any submission in writing or, subject to the leave of the Commission, of any oral evidence or argument on behalf of either party.

Composition of Commission

32.—(1) Subject to the provisions of Article 7 of the Order and of these Rules, any determination, order, direction or other act of the Commission may be made, given or done by a single Commissioner.

(2) Any review of a determination in accordance with the provisions of rules 30 and 31 shall be conducted by not less than two Commissioners.

Selection of Commissioners

33.—(1) The Chairman, or in his absence the next senior Commissioner, may select any Commissioners required to hear and determine any particular application or group of applications or any matter arising therein, or to conduct any review of a determination, and may from time to time vary the Commissioners selected, and where more than one Commissioner is required shall appoint the Commissioner who is to preside.

(2) If in the course of any hearing one or more of the Commissioners so appointed becomes unable to attend another Commissioner may, with the consent of the applicant, in like manner be appointed.

Majority decision

34. In case of disagreement the opinion of the majority of the Commissioners hearing or determining an application or conducting the review of a determination shall prevail. If the opinions shall be equally divided the opinion of the presiding Commissioner shall prevail.

Admissions by Legal Officer

35. In determining any application the Commission shall not be bound by any admission or concession of the Legal Officer on any question of fact or of law.

Amendment of determinations, orders and directions

36. Clerical mistakes or errors in determinations, orders or directions, arising from

(a) 1969 c.20.

any accidental slip or omission may at any time, without review, be corrected by the Commission of their own motion after giving notice to the applicant and the Legal Officer or on the application of the applicant or the Legal Officer after giving notice to the other of them.

Non-compliance with Rules

37. Non-compliance with any of these Rules shall not render void any proceedings unless the Commission shall so direct.

APPENDIX

FORM A

FOREIGN COMPENSATION ACT 1950

I
of
*as Trustee forwho died
on.....do solemnly and
sincerely declare as follows:-

I am and was/the said deceased was* on 4th June 1987 the beneficial owner of the bond(s) to which this application under the Foreign Compensation (People's Republic of China) Order 1987, relates, AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

DECLARED at
.....
.....
.....

Signature

this.....day of.....

Before me,.....

a Solicitor/Commissioner for Oaths.

*delete as required

FORM B

FOREIGN COMPENSATION ACT 1950

**SUMMONS TO ATTEND TO GIVE EVIDENCE
FOREIGN COMPENSATION COMMISSION**

IN THE MATTER OF AN APPLICATION pending before the Foreign Compensation Commission

by

Applicant

To

of

You are hereby summoned to attend at on the day of 19..... at in the noon and so from day to day until the above matter has been heard to give evidence in the above application.

And also to bring with you and produce at the time and place aforesaid (specify documents to be produced)

Dated this day of 19.....

Registrar

This summons is issued at the request of *.....

You are not obliged to attend unless on the service of this summons the said *..... tenders to you the sum of £..... on account of your expenses, and gives you a written undertaking to pay to you such further sum in respect of expenses and loss of time as the Commission may certify to be reasonable.

If you fail to attend as aforesaid the Chairman of the Commission may certify your absence to the High Court which may if it thinks fit punish you as for a contempt of Court.

You may if you think fit apply in writing to the Commission, for just cause, particulars whereof must be stated, for an order to set aside this summons. Any such request must be delivered by hand or sent by post addressed to the Registrar of the Commission at within seven days after service of this summons. If the cause is ill-health a medical certificate must be enclosed with the request.

This summons is of no validity unless served upon you within twelve weeks from the date of its signature above.

Receipt of Expenses

I hereby acknowledge the receipt of the sum of £..... on account of my expenses and of the required written undertaking.

Signed**

* Fill in the name of the person requesting the summons.

** To be signed by the person to whom the summons is directed.

FORM C

FOREIGN COMPENSATION ACT 1950

**ORDER TO FORWARD DOCUMENTS
FOREIGN COMPENSATION COMMISSION**

IN THE MATTER OF AN APPLICATION pending before the Foreign Compensation Commission

by

Applicant

To

of

You are hereby required to deliver by hand or forward by post to the Registrar of the Commission at on or before the day of 19..... the following documents:-

If the said documents or any of them are not in your possession, custody or power or if you claim to have legal objection to the production of the documents or any of them you must on or before the last-mentioned date forward as above directed a declaration signed by yourself giving the reasons for your inability or objection to forward each of the documents to which such reasons apply.

If you know the name and/or address of the person in whose possession, custody or power the said documents or any of them now are or have been you must give it.

Dated this day of 19.....

Registrar

This order is issued at the request of *.....

If you fail without reasonable excuse to comply with this Order the Chairman of the Commission may certify your failure to the High Court which may if it thinks fit punish you as for a contempt of Court.

This Order is of no validity unless served upon you within twelve weeks from the date of its signature as above.

The Commission will refund to you the cost of forwarding the said documents.

*** Fill in the name of the person requesting the summons.**

FORM D

FOREIGN COMPENSATION ACT 1950

FORM OF UNDERTAKING TO PAY EXPENSES AND COMPENSATION FOR LOSS OF TIME

FOREIGN COMPENSATION COMMISSION

In addition to the sum of £..... paid to the said *..... in respect of expenses I hereby undertake to pay to the said *..... such further sum in respect of expenses and/or loss of time as the Commission may certify to be reasonable.

Signature of the person
applying for the summons in
Form B

* Insert name of witness

The seal of the Foreign Compensation Commission was hereunto affixed this 21st day of January 1988.

A. W. E. Wheeler
Chairman

D. H. Wright
Secretary

EXPLANATORY NOTE

(This note is not part of the Instrument)

By this Instrument the Lord Chancellor approves rules made by the Foreign Compensation Commission to govern the procedure to be followed by the Commission in the disposal of applications under the Foreign Compensation (People's Republic of China) Order 1987. They are substantially based on those made for the purposes of previous Orders providing for the determination of claims and the distribution of compensation by the Commission.