

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides:

1) for the determination by the Foreign Compensation Commission of claims to participate in a sum received by Her Majesty's Government from the Government of the People's Republic of China under the Agreement between the two Governments signed in Beijing on 5th June 1987 concerning the Settlement of Mutual Historical Property Claims; and

(2) for the distribution by the Commission of that part of the aforesaid sum that is paid to them to applicants who have established claims under the Order.

STATUTORY INSTRUMENTS

1987 No. 2201 FOREIGN COMPENSATION

The Foreign Compensation (People's Republic of China) Order 1987

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| Made | 18th December 1987 |
| Laid before Parliament | 8th January 1988 |
| Coming into force | 1st March 1988 |

At the Court at Buckingham Palace, the 18th day of December 1987

Present,

The Queen's Most Excellent Majesty in Council

Whereas Her Majesty is authorised to make provision by Order in Council under section 3 of the Foreign Compensation Act 1950 for the determination by the Foreign Compensation Commission (hereinafter referred to as "the Commission") of claims to participate in compensation received under an agreement with the government of any other country, for the making of reports by the Commission with respect to such claims and for the distribution by the Commission of such compensation:

And Whereas an Agreement (hereinafter referred to as "the Agreement") entered into between Her Majesty's Government and the Government of the People's Republic of China on 5th June 1987 provides that the Chinese Government shall pay to the Government of the United Kingdom the sum of £23,468,008 and that the Government of the United Kingdom shall be responsible for the settlement of claims and for any distribution from that sum:

And Whereas Her Majesty's Government in the United Kingdom intends to pay part of the said sum to the Commission for distribution:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in that behalf by the Act of 1950 or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

PART I

COMMENCEMENT, CITATION AND INTERPRETATION

1. This Order shall come into operation on 1st March 1988, and may be cited as the Foreign Compensation (People's Republic of China) Order 1987.

2. In this Order:—

"Bond" means a bond or other document of title in respect of a loan or obligation issued or guaranteed before 1st October 1949 by a former government of the territory or any part thereof or by any other public authority in the territory.

"British national" means:—

- (a) any individual who was at the material time a citizen of the United Kingdom and Colonies, a British subject by virtue of sections 2, 13 or 16 of the British Nationality Act 1948 or the British Nationality Act 1965, or a British protected person within the meaning of the said Act of 1948; except that any individual who was a British subject at any time before the date of the commencement of the said Act of 1948 only by virtue of the provisions of the Act of 1705, intitled "An Act for the Naturalization of the Most Excellent Princess Sophia Electress and Duchess Dowager of Hanover and the Issue of Her Body", shall be deemed not to be a British national;
- (b) any corporation, firm or association incorporated or constituted under the laws in force in the United Kingdom or in any territory for whose international relations Her Majesty's Government in the United Kingdom were, at the material time, responsible;
- (c) any individual who as regards any material time after 31st December 1949 was a citizen of Southern Rhodesia or a citizen of Rhodesia and Nyasaland, and any individual who as regards any material time after 31st October 1957 and prior to 17th September 1963 was a citizen of Singapore.

"Debt" means a sum due or owing, or a claim for unliquidated damages, but shall not include a balance in a bank, or any such sum or claim in respect of which a bond or share has been issued, or a pension or contributions towards a pension.

"Material time" means any time before 1st January 1980 at which it is material for the purposes of this Order whether or not a person is a British national.

"Person" includes, except where the context otherwise requires, an individual, corporation, firm, or association.

"Predecessor in title" means any person through whom, whether directly or indirectly, a person making application under this Order (including a trustee) has succeeded, whether by assignment or otherwise, to the property or claim to which the application relates.

"Property" includes all rights or interests of any kind in property.

"Relevant date" means 1st October 1949 or such later date before 1st January 1980 on which the applicant, or his predecessor in title, was deprived of title to or enjoyment of property, or of the right to recover a debt, or suffered loss in respect of a share, or became unable to recover a bank balance, or upon which a debt first became due for repayment.

"Rules of the Commission" means rules made by the Commission with the approval of the Lord Chancellor under section 4(2) of the Foreign Compensation Act 1950 regulating the procedure of the Commission in determining applications made under this Order.

"Share" includes stock, a debenture, debenture stock and any funded obligation of a corporation.

"Secretary of State" means Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs.

"The territory" means the territory which is on the date on which this Order comes into operation controlled by the authorities of the People's Republic of China.

"Trustee" includes a personal representative of a deceased person or a nominee; and "beneficiary" shall have a corresponding meaning.

PART II

THE FUND

3. The Commission shall pay into a fund to be called the People's Republic of China Fund (hereinafter referred to as "the Fund") all such sums as may be paid to them by Her Majesty's Government, being sums received under the Agreement and any income arising therefrom.

4.—(1) Any sums standing to the credit of the Fund may be temporarily invested by the Commission in such manner as the Treasury may authorise.

(2) All interest, dividends and other sums received by the Commission as a result of any investment made by them of any sum standing to the credit of the Fund shall be paid into the Fund.

5. When it appears to the Secretary of State that all payments to be made into the Fund have been made and that all payments which it is practicable to make out of the Fund have been made, he may direct that the Fund shall be wound up and that any sum remaining therein shall be paid into the Consolidated Fund.

PART III

GENERAL PROVISIONS CONCERNING THE ESTABLISHMENT OF CLAIMS.

6. An application shall not be entertained by the Commission under Part IV, V or VI of this Order unless:

(a) being an application under Part IV, it has reached the Commission on or before 30th June 1988, or, being an application under Part V or VI, it has reached the Commission on or before 31st August 1988; and

(b) it is made in accordance with the Rules of the Commission.

Provided that no such application shall be entertained by the Commission if it is made by the Crown, the Duchy of Lancaster or the Duke of Cornwall or by any person acting in their name or on their behalf.

7.—(1) Each application made under this Order shall be determined by a single member of the Commission, who may proceed directly to a final determination of the application solely on the written evidence and submissions, provided that, notwithstanding the foregoing:

(a) no claim shall be dismissed except upon determination by not less than two members of the Commission;

(b) where the aggregate of all amounts claimed by an applicant under this Order exceeds £100,000, the application shall in any event be determined by not less than two members of the Commission;

(c) the Commission:—

- (i) may if they think fit direct that an application be the subject of an oral hearing and
- (ii) shall not refuse a request for an oral hearing in respect of any application except by decision of not less than two members of the Commission.

(2) Nothing in paragraph (1) of this Article shall be taken as limiting or restricting the power of the Commission to review any determination in accordance with the Rules of the Commission.

8. Subject to the provisions of this Order, the Commission shall assess the amount of loss with respect to each claim established under this Order as may seem just and equitable to them having regard to all the circumstances.

9. If, for the purposes of this Order, it is necessary for the Commission to determine the rate of exchange between foreign currency and sterling on any date, that rate shall be deemed to be the middle rate for telegraphic transfers ruling in the London market on that date or, if the Commission consider that middle rate to be inappropriate, such rate as the Treasury may determine.

10. In assessing the amount of loss with respect to any claim established under this Order the Commission shall take into account the principal value only of the claim and shall not include any element in respect of interest thereon; and for this purpose the principal value of a claim shall be deemed to be the principal amount outstanding on the relevant date irrespective of whether any contract provided for the payment of interest.

11. In assessing the amount of loss with respect to any claim established under this Order, the Commission shall have regard to any compensation, recoupment or payment received in respect of that loss from any source by the person making the application or his predecessor in title or any trustee for such person or predecessor in title or, if the person making the application is a trustee, any beneficiary or any predecessor in title of any beneficiary.

12.—(1) An application under Part IV or V of this Order may be made by a trustee qualified under Articles 14 or 16 or by a beneficiary so qualified. An application by a trustee shall, however, be entertained by the Commission only in so far as the beneficial interest in the property or in the claim to which the application relates was, at the material times, owned by a British national.

(2) If an application under this Order is made by a trustee and by a beneficiary in relation to the same claim, and both the trustee and the beneficiary are qualified to make the application under this Order, the Commission may entertain the application made by the trustee in preference to that made by the beneficiary, or entertain the application made by the beneficiary in preference to that made by the trustee. The Commission shall dismiss the application by the trustee or by the beneficiary, as the case may be, which it has decided not to entertain.

13. The Commission shall report, in such manner as the Secretary of State may direct, upon any applications made under this Order, upon any claims established and upon the amount of loss assessed with respect to the claims so established.

PART IV

CLAIMS IN RESPECT OF BONDS

14.—(1) To establish a claim in respect of a bond under this Part of the Order, any person making application to the Commission shall be required to establish to the satisfaction of

the Commission that he:

- (a) was on 4th June 1987 (or, if he is a trustee, is a trustee for a person who was on 4th June 1987) either:
 - (i) a British citizen, a British Dependent Territories citizen, a British Overseas citizen, a British subject or a British Protected Person, or
 - (ii) a corporation, firm or association incorporated or constituted under the laws in force in the United Kingdom or in any country or territory for whose international relations Her Majesty's Government in the United Kingdom were on 4th June 1987 responsible, and
- (b) is and was on 4th June 1987 the beneficial owner of the bond to which the application relates, or is a trustee for a person who was the beneficial owner of the bond on 4th June 1987 and who has since died.

(2) Any person making application to the Commission in accordance with paragraph (1) shall be required to deliver to the Commission the bond to which the application relates and to make a statutory declaration in such form as may be prescribed by the Commission in relation to the matters specified in paragraph (1)(b).

15. For the purposes of this Part of the Order:—

- (a) the value to be assigned to a bond denominated in sterling shall be the amount specified as the nominal capital value on the bond;
- (b) the value to be assigned to a bond denominated in a currency other than sterling but bearing on its face the sterling equivalent of its nominal capital value shall be taken to be the amount so specified in sterling;
- (c) the value to be assigned to any other bond denominated in a currency other than sterling shall be the amount of that currency specified as the nominal capital value on the bond converted at the rate of exchange ruling between that currency and sterling on the date of issue of the bond.

PART V

CLAIMS IN RESPECT OF DEBTS, BANK BALANCES, SHARES AND OTHER PROPERTY

Qualifications to make Application

16. An application to the Commission for the purpose of establishing a claim under this Part of the Order may be made by any person who was on 5th June 1987 (or, if he is a trustee, is a trustee for a person who was on 5th June 1987) either:—

- (a) a British citizen, a British Dependent Territories citizen, a British Overseas citizen, a British subject or a British Protected Person, or
- (b) a corporation, firm or association incorporated or constituted under the laws in force in the United Kingdom or in any country or territory for whose international relations Her Majesty's Government in the United Kingdom were on 5th June 1987 responsible.

Property

17.—(1) To establish a claim under this Part of the Order in respect of property (other than a debt, a balance in a bank, a share or a pension or contributions towards a pension), any person making application to the Commission shall be required to establish to the satisfaction of the Commission:—

- (a) that he is a person qualified under Article 16 of this Order to make such application;
- (b) that immediately before the relevant date the property to which the application relates was situated in the territory and was British property (as provided in paragraph (2) of this Article); and
- (c) that he or his predecessor in title (or, if he is a trustee, the person for whom he is a trustee or the predecessor in title of such person) was deprived on a relevant date of ownership or enjoyment of such property by any act of confiscation, nationalisation, expropriation, destruction, or dispossession whether direct or indirect or through the application of measures effectively causing dispossession.

(2) Property shall be deemed to be British property for the purposes of this Article to the extent that it was beneficially owned by a British national.

Debts and Bank Balances

18. To establish a claim under this Part of this Order in respect of a debt or a balance in a bank, any person making application to the Commission shall be required to establish to the satisfaction of the Commission:—

- (a) that he is a person qualified under Article 16 of this Order to make such application;
- (b) that his application relates, either
 - (i) to a debt which at the relevant date was owing to a British national from a public authority or other person (other than a British national) resident or carrying on business in the territory and which is still unpaid; or
 - (ii) to a balance which was held by a British national on the relevant date in a bank in the territory and which is still outstanding; and
 - (iii) to a balance in a bank in the territory which, as a result of any provision of the Agreement, he (or if he is a trustee, the person for whom he is a trustee) has become unable to recover and which is still outstanding; and
- (c) that he (or, if he is a trustee, the person for whom he is a trustee) is the person to whom the debt or the outstanding bank balance is owing.

Shares

19. To establish a claim under this Part of the Order in respect of a share, any person making application to the Commission shall be required to establish to the satisfaction of the Commission:

- (a) that he is a person qualified under Article 16 of the Order to make such application;
- (b) that the share was beneficially owned at the relevant date by a British national;
- (c) that the company to which the share related was incorporated or constituted under the laws in force in the territory; and
- (d) that he or his predecessor in title (or, if he is a trustee, the person for whom he is trustee or the predecessor in title of such person) has suffered loss in respect of the share as a result of any act of confiscation, nationalisation, expropriation or other act of dispossession applied in the territory on a relevant date to the share or to the company or to any of its assets.

20. For the purposes of this Part of this Order, the Commission may, if they think fit, assume, without proof of any specific act of dispossession, that any person has been deprived of title to or enjoyment of any property, or that such a person has suffered loss in respect of a share, and that such deprivation or loss was the result of an action or course of action or omission of the authorities of the area in which the property or share was situated.

PART VI

CLAIMS IN RESPECT OF PENSIONS

21. To establish a claim under this Part of this Order, any person making application to the Commission shall be required to establish to the satisfaction of the Commission:

- (a) that he was on 5th June 1987 a British citizen, a British Dependent Territories citizen, a British Overseas citizen, a British subject or a British Protected Person;
- (b) that his application relates to a pension, or to the contributions made towards a pension, which is or would in due course have become payable to him by any public authority in the territory or by a person (other than a British national) resident in the territory;
- (c) that at a time when he was a British national the payment to him of the pension was stopped, or his future rights to receive payment of the pension were taken away or ceased.

PART VII

PAYMENTS OUT OF THE FUND

22.—(1) The Commission shall make payments out of the Fund to every person who has established a claim under this Order and who applies to the Commission for payment.

(2) If any person who has so established a claim shall have died before the amounts payable to him under Articles 23 and 24 of this Order have been paid to him, such payments or the balance thereof shall be made to his personal representatives if they apply to the Commission for payment: provided that, if the Commission are satisfied that no grant of administration of his estate has been made in the United Kingdom and that the assets of his estate (including the amount payable under this Order) do not exceed £1,500 in value, the Commission may, at their discretion and subject to such conditions as the Commission think proper, make such payment either to any person who has taken out administration in any other part of the Commonwealth, or to the person who shall appear to the Commission to be the person who, being a widower, widow, child, father, mother, brother or sister of the deceased person, would, under the law of England, have the prior right to a grant of administration of the estate of the deceased person if such deceased person had died intestate domiciled in England.

(3) If any person whose claim has been so established is a minor at the date when the amounts payable to him under Articles 23 and 24 of this Order are due to be paid, the Commission may make payment thereof into the Supreme Court, or, if the amount thereof does not exceed £5,000, into the County Court for the district in which the minor resides, under the provisions of the Trustee Act 1925, or, if the amount does not exceed £50, may place the same on deposit in the name of the Commission in any bank for such time as the person remains a minor.

(4) The reference in paragraph (1) of this Article to a person who has established a claim under this Order includes a reference to any person who has become entitled to the amounts payable or any part of them, in consequence of any assignment or transfer of the benefit thereof and who produces such evidence of his title as may be reasonably required by the Commission.

23.—(1) The payment in respect of each claim established under this Order shall be a fraction of the distributable amount of the Fund equal to the proportion which the amount assessed in respect of the claim bears to the total of the amounts assessed with respect to all claims established under this Order: provided that no such payment in respect of any claim shall exceed the amount of the loss with respect to that claim as assessed by the Commission under this Order.

(2) The distributable amount shall be the total of all sums paid into the Fund, after the deduction of any payments made therefrom into the Consolidated Fund in accordance with any Order in Council made under section 7(2) of the Foreign Compensation Act 1950 as originally enacted and as applied by section 3(3) of the Foreign Compensation Act 1962.

24.—(1) Whether or not all claims under this Order have been finally determined by the Commission, the Commission shall make from the Fund interim payments in accordance with paragraph (3) of this Article and may make from the Fund interim payments under paragraph (4) of this Article.

(2) Interim payments made under the provisions of this Article shall be made on account of payments to be made in accordance with Article 23 of this Order.

(3) At such time or times after 31st August 1988 as the Secretary of State shall specify the Commission shall make to all persons whose claim in respect of a bond has been established under Part IV of this Order an interim payment representing such percentage

of the amount assessed in respect of the claim as the Secretary of State may direct. For this purpose the Commission shall, when so requested by the Secretary of State, estimate the total liability likely to fall upon the Fund, and report thereon to the Secretary of State.

(4) Subject to the prior approval of the Secretary of State, the Commission may, at such time or times as they may decide, make interim payments to any of the persons who have established claims under Parts V and VI of this Order.

(5) Interim payments made under the provisions of paragraph (4) of this Article shall be made at a uniform rate upon the assessed amount of the claim. The uniform rate of payment shall be determined by the Commission having regard to the total liability likely to fall upon the Fund.

(6) For the purposes of this Article a claim shall be deemed to be established under this Order even though the determination thereof may be subject to review and the phrase "assessed amount of the claim" shall be construed accordingly.

25.—(1) Subject to the provisions of paragraph (2) of this Article, the Commission shall, as a condition of the making of any payment to any person under this Order, require him to surrender to the Commission all available documents of title, if any, relating exclusively to the claim to which the payment relates and shall require him to sign and deliver to the Commission a document in such form as the Commission may determine declaring that he renounces all those claims to which the payment relates.

(2) If the person for whose benefit a payment is to be made is a minor, the Commission shall, as a condition of the making of any payment into Court or placing the same on deposit under paragraph (3) of Article 22 of this Order, require the person who, in accordance with the Rules of the Commission, has made an application for payment on the minor's behalf to surrender to the Commission the documents of title, if any, under his control relating exclusively to the claim and to sign and deliver to the Commission a document in such form as the Commission may determine declaring that the minor renounces all claims to which the payment relates; and the document so signed shall operate as a valid surrender by the minor of all such claims.

(3) All documents which are delivered to the Commission under paragraphs (1) and (2) of this Article shall remain in their custody until the Fund is wound up and the Commission shall then deliver them to the Secretary of State.

G. I. de Deney

Clerk of the Privy Council