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United States Forces Korea
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United States Forces Korea
Regulation 1-27

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Administration

SETTLEMENT OF TORT CLAIMS AND NON-COMBAT ACTIVITY CLAIMS IN KOREA

*This regulation supersedes USFK Regulation 1-27, dated 19 May 2004.

FOR THE COMMANDING GENERAL:

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Summary. This regulation implements Army Regulation 27-20 (Claims) and Department of Defense Instruction 5515.08 (Assignment of Claims Responsibility), which assign to the United States Army responsibility for processing all tort claims and non-combat activity claims arising in Korea.

Summary of Changes. This publication has been substantially changed. A full review of its contents is required.

Applicability. This regulation applies to all tort claims and non-combat activity claims arising within the territory of the Republic of Korea and to all units, organizations, and agencies assigned to, attached to or under the jurisdiction of United States Forces Korea (USFK).

Forms. USFK forms are available at <http://www.usfk.mil/usfk/>

Supplementation. Supplementation of this regulation or issuance of command and local forms is prohibited unless prior approval is obtained from USFK Judge Advocate (FKJA), Unit #15237, APO AP 96205.

Internal Control Provisions. This regulation does not contain management control checklists.

Records Management. Records created as a result of processes prescribed by this regulation must be identified, maintained, and disposed of according to AR 25-400-2. Record titles and descriptions are available on the Army Records Information Management System (ARIMS) website at <https://www.arims.army.mil>.

Suggested Improvements. The proponent of this regulation is the Office of the Judge Advocate, United Nations Command, Combined Forces Command, United States Forces Korea, and 8th Army. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the USFK Judge Advocate (FKJA), APO AP 96205.

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Chapter 1

Introduction

1-1. Purpose

This regulation implements Army Regulation (AR) 27-20 (Claims) and Department of Defense Instruction (DODI) 5515.08 (Assignment of Claims Responsibility), which assigns to the United States (US) Army, responsibility for processing all tort claims and non-combat activity claims arising in the Republic of Korea (ROK).

1-2. References

a. The following are required publications:

- (1) AR 27-20 (Claims).
- (2) DoDI 5515.08 (Assignment of Claims Responsibility).
- (3) Article XXIII, US-ROK Status of Forces Agreement (SOFA).
- (4) Navy Judge Advocate General Instruction (JAGINST) 5890.1A (Administrative Processing and Consideration of Claims on Behalf of and Against the United States).

b. The following are related publications:

- (1) Department of the Army Pamphlet 27-162 (Claims Procedures).
- (2) Air Force Instruction 51-501 (Tort Claims).
- (3) Air Force Instruction 51-502 (Personnel and Government Recovery Claims).

1-3. Explanation of Abbreviations

Abbreviations used in this regulation are explained in the glossary.

Chapter 2

Responsibilities and Procedures

2-1. Policy

United States Forces Korea (USFK) policy is to promote just, efficient, and expeditious processing of all claims arising within the command. The accomplishment of this result requires total cooperation on the part of unit claims personnel. The investigation of claims must be conducted thoroughly and objectively, without preconceived determinations regarding the merits of the matter under consideration.

2-2 . Responsibilities

The Secretary of Defense has assigned single-service responsibility for tort claims arising in the ROK to the US Army. The Commander/Chief, U.S. Armed Forces Claims Service - Korea (USAFCS-K), under the supervision of the Staff Judge Advocate, 8th Army, is responsible for the implementation of DODI 5515.08 and AR 27-20. Unit commanders, unit claims officers, and Judge Advocates (JA) are responsible for compliance with all pertinent provisions of DODI 5515.08 and AR 27-20, and implementing the procedures set forth in this regulation.

2-3. Procedures

a. A tort claim exists when there is a claim for personal injury, death, or damage to, or loss or destruction of, property when caused by an act or omission of military personnel or civilian employees of the DA or DOD, acting within the scope of their employment, that is determined to be negligent or wrongful; or when incident to the noncombat activities of the Armed Services. Any incident occurring within the territory of the ROK which results, or may result, in a tort claim, against the US Government, will be brought to the attention of the claims office serving the unit involved.

b. The claims officer receiving such information or tort claim will investigate the matter or claim in accordance with the appropriate Service claims regulation and forward it to the Commander/Chief, USAFCS-K, for further processing.

c. Tort claims are considered scope of duty SOFA claims if they are caused by members of the US Armed Forces in the performance of their official duties or if they arise from the use of any vehicle, vessel, or aircraft owned by the US Armed Forces and used by its armed forces, provided either that the vehicle, vessel or aircraft causing the damage was being used for official purposes or that the damage was caused to property being so used. Non-scope of duty SOFA claims are claims against members or employees of the US Armed Forces arising out of tortious acts or omissions in the ROK not done in the performance of official duty.

d. Any incident occurring within the territory of the ROK which results, or may result in a claim or lawsuit cognizable under the US-ROK SOFA will be brought to the attention of the Foreign Claims Branch of USAFCS-K.

e. Non-SOFA based claims, such as those involving military dependents and contractors, should be forwarded to the nearest servicing claims office. Any claims office receiving such information or claim will conduct a preliminary investigation, then forward the claim, investigation, and a recommendation for payment, to USAFCS-K, for further processing.

f. Tort claims will not be negotiated, compromised, settled, denied, or asserted, without prior consultation with, and written approval from the Commander/Chief, USAFCS-K.

g. Notwithstanding the assignment of single-service responsibility for tort claims in the ROK to the US Army under DOD Instruction 5515.08, Navy JAGINST 5890.1A gives to US ship commanders visiting Korean ports authority to settle claims under \$2,500 caused by personnel acting outside the scope of their official duties. Navy ship commanders processing claims under this authority are required to give timely notice to USAFCS-K in order to prevent multiple payments of the same claim.

Chapter 3 Claims

3-1. Claims Filed Pursuant To The US-ROK SOFA

a. Procedures for Scope of Duty Claims.

(1) All claims and lawsuits cognizable under the US-ROK SOFA alleging damage or injuries based on the official duty conduct of members of the US Armed Forces (including Korean Augmentation to the US Army personnel) and civilian components (including Korean General Schedule, Korean Service Corps, and Korean Wage Board employees, but not US invited contractors) will be filed directly with the ROK District Compensation Committee (DCC) or District

Court having jurisdiction over the area where the loss occurred or where the claimant lives. Any such claim or lawsuit must be filed within the three year ROK statute of limitations commencing from the date on which the injured party becomes aware of or should have become aware of such damage and of the identity of the person who caused it, or within the ten-year statute of limitations in case of not knowing of such damage and/or the identity of the tortfeasor before that time.

(2) All SOFA claims are filed against the ROK Government as if the incident giving rise to the claim had been committed by ROK Armed Forces. SOFA claims are adjudicated by ROK Government attorneys using applicable ROK laws and procedures. Any damages awarded in scope of duty SOFA cases are paid from ROK treasury funds.

(3) The role of the Foreign Claims Branch, USAFCS-K in the SOFA claims process is to investigate incidents and allegations, to provide investigative reports and legal opinions to the ROK Government, and to reimburse the ROK Government on a quarterly basis a percentage of claims paid out on behalf of the United States.

(4) Claims from citizens or residents of the ROK alleging damages incurred due to the acts or omission of personnel or employees of non-appropriated fund organizations will be processed as ordinary scope of duty claims, but reimbursement of the US percentage will be made from non-appropriated funds.

b. Procedures for Non-Scope of Duty (Ex-Gratia) Claims.

(1) Claims alleging damage or injuries caused to Korean nationals and other residents of the ROK by the acts or omissions of members of the US Armed Forces and civilian components (excluding family members, contractors, Korean Augmentation To the United States Army (KATUSA), and local national employees) outside the scope of official duties will be filed with the DCC using the same procedures established for scope of duty claims. The two year time limit set forth in the Foreign Claims Act (FCA) (10 USC §2734), as implemented in AR 27-20, will apply to all non-official duty claims.

(2) The DCC will open an evidence file and prepare a brief summary of the facts together with a legal opinion and a valuation estimate. This file will be forwarded with the original documents to the Foreign Claims Branch, USAFCS-K where a US Foreign Claims Commission (FCC) will convene to review the evidence under the guidance of the FCA and, if appropriate, determine an appropriate amount of damages.

(3) The United States has no legal liability to compensate claimants for damages or injuries caused by US Armed Forces and civilian components acting outside the scope of their official duties. The FCA was created to foster goodwill and maintain friendly relations with the citizens of host nations. Pursuant to this goal, the US may, in appropriate cases, accept the financial burden of compensating victims of tortious or criminal non-scope conduct when it is in the best interest of the US to do so. Any settlement amount offered under this authority is strictly *ex gratia*. It is not imposed as a matter of law and is not subject to appeal to the DCC or the courts.

(4) No claims award will exceed the value normally allowed in the host nation for such damages or injuries. Nothing in the SOFA or the FCA precludes a claimant's rights to bring suit directly against the offending party in a ROK court if the settlement proposed by the Foreign Claims Commission is deemed unsatisfactory.

c. Advance Payments

(1) Advance payments of repair, medical and funeral expenses are available in appropriate SOFA cases, both scope of duty and non-scope of duty, although the procedures for each type of case are different. For both scope and non-scope of duty cases, claimants must file their requests at the DCC and provide evidence of financial hardship. Advance payments are inappropriate in cases where they are sought as a mere convenience or to avoid normal claims processing delays or where a sufficient amount of time has elapsed since the incident giving rise to the claim making the request no longer timely. An advance payment does not constitute an admission of liability by the US. Any amount paid in advance will be deducted from the final award.

(2) In scope cases, the decision to make or deny an advanced payment is in the sole discretion of the DCC. In general, if a financial hardship has been demonstrated, the DCC will consider a request for advance payment of up to 50% of a claimant's repair or medical expenses and 100% of funeral expenses, except in cases where claimant's financial hardship is determined to be the result of untimely claim filing.

(3) In non-scope cases Agreed View #3 to SOFA Article XXIII sets forth the justification and procedures for USFK to make payment in appropriate circumstances. If an advance payment is warranted, the Foreign Claims Branch, USAFCS-K, may pay up to \$10,000 of medical or funeral expenses in advance of settling the main claim.

3-2. Non-SOFA Tort Claims

a. Claims based on maritime incidents and those caused by members of the Joint US Military Advisory Group, Korea (JUSMAG-K), or other DOD personnel not falling into one of the definitions listed in Article I of the US-ROK SOFA fall outside the SOFA and will be filed directly with USAFCS-K.

b. Claims in which the victim is a US citizen or third country national whose presence in the ROK are for reasons of official US Government duty (including accompanying family members and invited contractors), or an invitee onto a U.S. military installation, also fall outside the SOFA and should be filed directly with USAFCS-K or with their local claims office under authority of the Military Claims Act (MCA) (10 USC 2733). Local claims offices receiving such claims should complete a preliminary investigation, then forward the claim, investigation, and recommendation for payment, to USAFCS-K. Local offices may also be required to assist USAFCS-K, with further investigation.

c. United States military retirees, US citizen tourists, and other US citizens or third country nationals who are residing in, or visiting the ROK with no official duty connection to the US Government, and are not invitees onto a U.S. Military installation, are not proper claimants under the MCA.

3-3. Affirmative Claims

a. Assertion. The Affirmative Claims Branch of USAFCS-K will assert all tort claims that may result in favor of the US Government.

b. Investigation. Unit commanders, unit claims officers, and JAs are responsible for identifying potential affirmative claims and reporting them to the Commander/Chief, USAFCS-K. Unit commanders, unit claims officers, and JAs may also be required to assist USAFCS-K in investigating such claims.

c. Collection. Only the Commander/Chief, USAFCS-K is authorized to assert a demand, negotiate a settlement, compromise a potential claim, or collect compensation for claims on behalf of the United States.

(1) When money is collected for property damage to US Government property, to include government owned vehicles, the Affirmative Claims Branch of USAFCS-K, will deposit it into an account authorized by Congress and AR 27-20.

(2) When money is collected for medical expenses furnished to a service member, US Government employee, or other personnel entitled to receive such care, it is deposited into the account of the servicing medical treatment facility. If multiple US Government medical treatment facilities provided treatment to the individual, the money will be apportioned among the facilities providing such treatment.

(3) When money is collected for wages paid to a service member or US Government employee because that person was unable to work due to injuries suffered in the incident giving rise to the claim, it is forwarded to the account supporting the operation of the installation to which the service member or employee was assigned at the time the injuries were incurred.

**Glossary
Abbreviations**

AFI	Air Force Instruction
AR	Army Regulation
CFC	Combined Forces Command
DCC	District Compensation Committee
DOD	Department of Defense
DODI	Department of Defense Instruction
FCA	Foreign Claims Act
FCC	Foreign Claims Commission
JA(s)	Judge Advocate(s)
JAGINST	Judge Advocate General Instruction
KATUSA	Korean Argumentation to the United States Army
MCA	Military Claims Act
OJA	Office of the Judge Advocate
ROK	Republic of Korea
SOFA	Status of Forces Agreement
UNC	United Nations Command
USAFCS-K	United States Armed Forces Claims Service - Korea
USFK	United States Forces Korea