Administrative Licensing Law of the PRC

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

Article 1 — This Law is enacted in accordance with the Constitution for the purposes of regulating the creation and implementation of administrative licenses, protecting the lawful rights and interests of citizens, legal persons, and other organizations, safeguarding public interests and social order, and ensuring and supervising the effective exercise of administrative functions by administrative organs.

Article 2 — "Administrative license" as used in this Law means an act whereby an administrative organ, upon the application of a citizen, legal person, or other organization and after examination in accordance with the law, permits the applicant to engage in a specific activity.

Article 3 — This Law applies to the creation and implementation of administrative licenses. This Law does not apply to the examination and approval by administrative organs of personnel, financial, foreign affairs, and other matters of other organs or of public institutions directly under their administration.

Article 4 — The creation and implementation of administrative licenses shall be in accordance with the statutory powers, scope, conditions, and procedures.

Article 5 — The creation and implementation of administrative licenses shall comply with the principles of openness, fairness, impartiality, and non-discrimination. The relevant provisions on administrative licenses shall be published; unpublished provisions shall not be the basis for the implementation of administrative licenses. The implementation and results of administrative licenses shall be made public, except for those involving state secrets, trade secrets, or personal privacy.

Article 6 — In implementing administrative licenses, administrative organs shall follow the principle of convenience and efficiency, improve work efficiency, and provide quality services.

Article 7 — Citizens, legal persons, or other organizations shall have the right to make statements and the right to a defense with respect to the implementation of administrative licenses by administrative organs; where they refuse to accept an administrative license decision, they shall have the right to apply for administrative reconsideration or file an administrative lawsuit in accordance with the law; where their lawful rights and interests are damaged as a result of an administrative organ illegally implementing an administrative license, they shall have the right to claim compensation in accordance with the law.

Article 8 — An administrative license that has been granted in accordance with the law shall not be changed without authorization. Where laws, regulations, or rules are amended or repealed, or where the objective circumstances upon which the administrative license was granted have changed significantly, the administrative organ may modify or withdraw the administrative license that has been in force for the public interest. Where damage is caused to a citizen, legal person, or other organization as a result, the administrative organ shall pay compensation in accordance with the law.

Chapter II — Creation of Administrative Licenses

Article 9 — Administrative licenses may be created by law. Where administrative licenses have not been created by law, administrative regulations may create administrative licenses. Where necessary, the State Council may, by means of a decision, create administrative licenses; upon the expiration of the decision, the State Council shall promptly propose to the National People's Congress or its Standing Committee the enactment of a law, or formulate administrative regulations on its own.

Article 10 — Where administrative licenses have not been created by laws or administrative regulations, local regulations may create administrative licenses. Where administrative licenses have not been created by laws, administrative regulations, or local regulations, the rules of the people's governments of provinces, autonomous regions, and municipalities directly under the central government may create provisional administrative licenses. The provisional administrative licenses shall be submitted to the standing committee of the people's congress at the same level for evaluation after one year of implementation.

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Article 11 — No administrative license may be created for any matter that falls under any of the following circumstances: (1) matters that citizens, legal persons, or other organizations can decide on their own; (2) matters that the market competition mechanism can effectively regulate; (3) matters that trade organizations or intermediary institutions can manage through self-regulation; or (4) matters that administrative organs can supervise and administer by means of post-event supervision or other administrative means.

Article 12 — Administrative licenses may be created for the following matters: (1) specific activities directly involving national security, public safety, macroeconomic regulation, ecological environmental protection, or activities directly involving personal health, safety of life and property that require approval in accordance with statutory conditions; (2) the development and utilization of limited natural resources, allocation of public resources, and market access for specific industries directly involving the public interest that require the conferral of specific rights; (3) professions and trades that provide services to the public and are directly related to the public interest that require the determination of qualifications with special reputation, conditions, or special skills; or (4) important equipment, facilities, products, and articles directly involving public safety, personal health, and safety of life and property that require technical inspection, testing, quarantine, and other technical review.

Chapter III — Implementing Agencies of Administrative Licenses

Article 13 — Administrative licenses shall be implemented by administrative organs that have the power to grant administrative licenses, within the scope of their statutory functions and powers.

Article 14 — Where laws or regulations authorize an organization with the function of managing public affairs to implement an administrative license, the authorized organization shall implement it within the scope of the statutory authorization.

Article 15 — An administrative organ may, within the scope of its statutory functions and powers, entrust another administrative organ with the implementation of an administrative license in accordance with the provisions of laws, regulations, or rules. The entrusting organ shall announce the content of the entrusted administrative organ and the entrusted administrative license. The administrative organ that entrusts the implementation of the administrative license shall be responsible for supervising the acts of the entrusted administrative organ in implementing the administrative license and shall bear legal liability for the consequences of such acts.

Article 16 — The state shall establish a relatively centralized system of administrative licensing power. The people's governments of provinces, autonomous regions, and municipalities directly under the central government may, with the approval of the State Council, decide on an administrative organ to exercise the power of administrative licensing of the relevant administrative organs.

Chapter IV — Procedures for the Implementation of Administrative Licenses

Section 1 — Application and Acceptance

Article 17 — A citizen, legal person, or other organization applying for an administrative license shall submit the application to the administrative organ that has the power to grant the administrative license. The application may be submitted by letter, telegram, telex, fax, electronic data interchange, e-mail, or other means.

Article 18 — Where an administrative license needs to be processed in accordance with the statutory conditions and procedures by the administrative organ, the applicant shall submit truthful application materials and shall be responsible for the truthfulness of the application materials.

Article 19 — Where an administrative organ accepts an application for an administrative license, it shall issue a written receipt affixed with the special seal of the administrative organ and dated. Where the application materials are incomplete or do not conform to the statutory form, the administrative organ shall

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inform the applicant of all the content that needs to be supplemented and corrected on the spot or within five days at one time.

Section 2 — Examination and Decision

Article 20 — An administrative organ shall examine the application materials submitted by the applicant. Where the application materials are complete and conform to the statutory form, the administrative organ shall make a written decision on the administrative license. Where an on-site inspection is required in accordance with the statutory conditions and procedures, the administrative organ shall assign two or more staff members to conduct the on-site inspection.

Article 21 — Where an administrative organ makes a decision on an administrative license, if it is required by law to be subject to hearing, bidding, auction, inspection, testing, quarantine, appraisal, expert review, or other procedures, the administrative organ shall comply with the relevant provisions.

Article 22 — An administrative organ shall make a decision on an administrative license application within 20 days from the date of acceptance, unless the administrative license can be granted on the spot. Where an extension is necessary, the extension may be made with the approval of the responsible person of the administrative organ, but the extended period shall not exceed 10 days. Where matters are handled jointly by multiple administrative organs, no more than 45 days shall be taken.

Article 23 — Where an administrative organ makes a decision to grant an administrative license, it shall issue an administrative license certificate, affix a label, stamp a seal, or grant a license plate to the applicant within 10 days from the date of the decision. Where an administrative organ makes a decision not to grant an administrative license, it shall state the reasons and inform the applicant of the right to apply for administrative reconsideration or file an administrative lawsuit.

Section 3 — Hearing

Article 24 — Where laws, regulations, or rules provide that a hearing shall be held for the implementation of an administrative license, or where the administrative organ considers it necessary to hold a hearing for other administrative license matters involving significant public interest, the administrative organ shall make a public announcement and hold a hearing.

Article 25 — Where an administrative license directly involves a material interest between the applicant and another person, the administrative organ shall inform the applicant and the interested party of the right to request a hearing. The applicant or interested party shall have the right to make statements and the right to a defense. Where the applicant or interested party requests a hearing within five days from the date of being informed, the administrative organ shall organize a hearing within 20 days.

Chapter V — Fees for Administrative Licenses

Article 26 — When implementing administrative licenses and conducting supervision and inspection, administrative organs shall not charge any fees, unless otherwise provided for by laws or administrative regulations. Where fees are charged in accordance with the law, the fee items and rates shall be published. Administrative organs shall not collect fees beyond the published fee items and rate standards.

Article 27 — Administrative organs shall not demand the purchase of designated commodities or services from organizations or individuals through the implementation of administrative licenses.

Chapter VI — Supervision and Inspection

Article 28 — Administrative organs at higher levels shall strengthen supervision over administrative organs at lower levels in the implementation of administrative licenses, and promptly correct any illegal act in the implementation of administrative licenses.

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Article 29 — An administrative organ shall establish and improve a supervision system, and shall supervise and inspect the activities of the administrative licensee engaging in the administrative licensing matters by means of verification of the relevant materials or on-site inspection. The administrative organ shall record the supervision and inspection and the results of its disposition, and shall have them signed by the inspectors and filed.

Article 30 — An administrative organ may, in accordance with the law, conduct spot checks, inspections, tests, and verifications of the products produced or operated by the administrative licensee. Where an administrative organ conducts spot checks, inspections, tests, or verifications, it shall not charge any fees.

Chapter VII — Legal Liability

Article 31 — Where an administrative organ and its staff members commit any of the following acts in violation of this Law, the administrative organ at a higher level or the supervisory organ shall order them to make correction; where the circumstances are serious, sanctions shall be imposed on the person directly in charge and other persons directly responsible in accordance with the law: (1) granting an administrative license to an applicant that does not meet the statutory conditions; (2) failing to perform its duty of supervision and inspection of the licensed activities; or (3) charging fees in violation of the statutory fee items or standards.

Article 32 — Where an administrative licensee commits any of the following acts, the administrative organ shall impose an administrative penalty in accordance with the law; where a crime is constituted, criminal liability shall be pursued: (1) altering, reselling, leasing, or lending an administrative license certificate, or transferring an administrative license by any other illegal means; (2) conducting activities beyond the scope of the administrative license; or (3) refusing or obstructing supervision and inspection by the administrative organ.

Article 33 — Where a citizen, legal person, or other organization files a false application to obtain an administrative license by fraudulent means, the administrative organ shall not accept the application or grant the administrative license and shall give a warning; where the application for an administrative license directly involves public safety, personal health, or safety of life and property, the applicant shall not apply for the administrative license again within one year.

Chapter VIII — Supplementary Provisions

Article 34 — This Law shall come into force on July 1, 2004.

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