Administrative Litigation Law of the People’s Republic of China – Full English Translation (2017 Amendment)

Dan Young Business Consultancy — www.danyoungcpa.com

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

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The Administrative Litigation Law of the People’s Republic of China was adopted at the Second Session of the Seventh National People’s Congress on April 4, 1989, and took effect on October 1, 1990. It was first amended on November 1, 2014, and further amended at the Twenty-Eighth Meeting of the Standing Committee of the Twelfth National People’s Congress on June 27, 2017. The law establishes the legal framework for citizens, legal persons and other organizations to bring lawsuits against administrative organs and their personnel in the people’s courts. For foreign investors, this law provides the ultimate judicial remedy against government actions that adversely affect their business interests in China —including licensing, penalties, tax assessments, and property rights determinations. The 2014/2017 amendments substantially expanded standing, scope of review, and procedural protections.

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Chapter I — General Provisions

Article 1. This Law is enacted in accordance with the Constitution for the purpose of ensuring the fair and timely trial of administrative cases by the people’s courts, resolving administrative disputes, protecting the legitimate rights and interests of citizens, legal persons and other organizations, and supervising the exercise of functions and powers by administrative organs in accordance with the law.

Article 2. Where a citizen, legal person or other organization considers that an administrative act of an administrative organ or any of its personnel has infringed upon its legitimate rights and interests, it shall have

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the right to institute an action in a people's court in accordance with this Law. For the purpose of the preceding paragraph, "administrative act" shall include any administrative act performed by an organization authorized by law, regulation or rule to administer public affairs.

Article 3. The people's courts shall independently exercise judicial power over administrative cases in accordance with the law, free from interference by administrative organs, public organizations and individuals. The people's courts shall establish administrative divisions to try administrative cases.

Article 4. The people's courts shall, in trying administrative cases, take facts as the basis and law as the criterion.

Article 5. The people's courts shall, in trying administrative cases, examine the legality of the administrative act.

Article 6. The people's courts shall, in trying administrative cases, apply a system of final adjudication by two instances and public trial, and apply the systems of challenge, jury and debate in accordance with the law.

Article 7. The parties to administrative proceedings shall have equal legal status.

Article 8. Citizens of all nationalities shall have the right to use their own spoken and written languages in administrative proceedings. In a people's court located in a region inhabited by a minority nationality or by several nationalities living together, the proceedings shall be conducted in the spoken and written language commonly used in that locality. The people's court shall provide interpretation for any participant in the proceedings who does not have a command of the spoken or written language commonly used in that locality.

Article 9. The parties to administrative proceedings shall have the right to debate.

Article 10. The people's procuratorates shall have the right to exercise legal supervision over administrative proceedings.

Article 11. Citizens, legal persons and other organizations shall have the right to obtain compensation in accordance with the law where their lawful rights and interests have been infringed upon by administrative organs or their personnel. Where compensation is claimed, the provisions of the State Compensation Law of the People's Republic of China shall apply.

Chapter II — Scope of Acceptance of Cases

Article 12. The people's courts shall accept lawsuits brought by citizens, legal persons or other organizations in respect of any of the following administrative acts: (1) refusal to accept an administrative penalty, such as administrative detention, temporary seizure or revocation of permits and licenses, order to suspend production or business, confiscation of illegal gains, confiscation of illegal property, fine and warning; (2) refusal to accept administrative compulsory measures or administrative compulsory enforcement; (3) refusal to accept a decision of an administrative organ on the granting or refusal of an administrative license, or refusal to accept a decision on modification, suspension or revocation of an administrative license by an administrative organ; (4) refusal to accept a decision made by an administrative organ confirming the ownership of, or the right to use natural resources such as land, mineral resources, waters, forests, mountains, grasslands, unreclaimed land, mudflats and sea areas; (5) refusal to accept a decision on administrative expropriation or requisition or a decision on compensation; (6) application to an administrative organ for performing its statutory duties to protect personal rights, property rights and other legitimate rights and interests, and refusal by the administrative organ to perform or respond; (7) a person who considers that an administrative organ has infringed upon his right to autonomous business operations; (8) a person who considers that an administrative organ has abused its administrative power to exclude or restrict competition; (9) a person who considers that an administrative organ has illegally raised funds, apportioned expenses or required the performance of other obligations in violation of the law; (10) a person who considers that an

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administrative organ has failed to pay pensions, minimum subsistence security benefits or social insurance benefits in accordance with the law; (11) a person who considers that an administrative organ has failed to perform an administrative agreement entered into, or illegally modified or rescinded an administrative agreement entered into in accordance with the law; and (12) a person who considers that an administrative organ has infringed upon his personal rights, property rights and other legitimate rights and interests in any other way.

Article 13. The people's courts shall not accept lawsuits brought by citizens, legal persons or other organizations in respect of: (1) acts of state in the areas of national defense and foreign affairs; (2) administrative regulations, rules or generally binding decisions or orders formulated or issued by administrative organs; (3) decisions of administrative organs on awards and punishments of their own personnel, or decisions on appointment and removal of their own personnel; and (4) final decisions made by administrative organs in accordance with the law.

Chapter III — Jurisdiction

Article 14. The basic people's courts shall have jurisdiction over administrative cases of first instance, except as otherwise provided for by this Law.

Article 15. The intermediate people's courts shall have jurisdiction over the following administrative cases of first instance: (1) cases in which a suit is brought against an administrative act performed by a department under the State Council or a people's government at or above the county level; (2) cases involving trademark right, patent right and other intellectual property rights handled by customs; (3) major and complicated cases within their respective jurisdictions; and (4) other cases over which the intermediate people's courts shall exercise jurisdiction as provided for by this Law.

Article 16. The higher people's courts shall have jurisdiction over major and complicated administrative cases of first instance within their respective jurisdictions.

Article 17. The Supreme People's Court shall have jurisdiction over major and complicated administrative cases of first instance nationwide.

Article 18. An administrative case shall be under the jurisdiction of the people's court at the place where the administrative organ that originally performed the administrative act is located. A case that has undergone administrative reconsideration may also be under the jurisdiction of the people's court at the place where the administrative reconsideration organ is located. With the approval of the Supreme People's Court, the higher people's courts may, based on the actual circumstances of trial, designate several people's courts to exercise cross-regional jurisdiction over administrative cases.

Article 19. An administrative case concerning compulsory personal restraint measures shall be under the jurisdiction of the people's court at the place where the defendant or the plaintiff is located.

Article 20. An administrative case concerning immovable property shall be under the jurisdiction of the people's court at the place where the immovable property is located.

Article 21. Where two or more people's courts have jurisdiction over the same case, the plaintiff may choose to institute an action in any one of them. Where the plaintiff brings the action in two or more people's courts with jurisdiction, the case shall be under the jurisdiction of the people's court that first places the case on file.

Article 22. Where a people's court discovers that a case accepted by it is not within its jurisdiction, it shall transfer the case to the people's court with jurisdiction. The court to which the case has been transferred shall accept it. Where the court to which the case has been transferred considers that the transferred case does not fall within its jurisdiction in accordance with the relevant provisions, it shall request a higher people's court to designate jurisdiction and shall not transfer the case on its own initiative.

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Article 23. Where a people's court with jurisdiction is unable to exercise jurisdiction due to special reasons, the higher people's court shall designate jurisdiction. In the event of a dispute over jurisdiction between two people's courts, the dispute shall be resolved by the parties to the dispute through consultation; where consultation fails, the dispute shall be submitted to their common higher people's court for designation of jurisdiction.

Article 24. A people's court at a higher level shall have the authority to try administrative cases of first instance over which a people's court at a lower level has jurisdiction. A people's court at a lower level may request that administrative cases of first instance over which it has jurisdiction be tried by a people's court at a higher level.

Chapter IV — Participants in Proceedings

Article 25. Citizens, legal persons and other organizations whose lawful rights and interests have been infringed upon by administrative acts shall have the right to institute proceedings. Where a citizen who has the right to institute an action is deceased, his close relatives may institute the action. Where a legal person or other organization that has the right to institute an action is terminated, the legal person or other organization that succeeds to its rights may institute the action. Where the people's procuratorate, in the performance of its functions, discovers that an administrative organ assumes the responsibility for supervision and administration in such areas as the protection of ecological environment and resources, food and drug safety, state-owned property and the transfer of the right to use state-owned land, but has illegally exercised its functions and powers or failed to perform its functions and powers, thereby infringing upon the national interest or public interest, it shall file a procuratorial proposal with the administrative organ, urging it to perform its duties in accordance with the law. Where the administrative organ fails to perform its duties in accordance with the law, the people's procuratorate shall institute an action in the people's court.

Article 26. The administrative organ that performed the administrative act shall be the defendant in the case. Where the case has undergone administrative reconsideration and the reconsideration organ has upheld the original administrative act, the administrative organ that performed the original administrative act shall be the defendant; where the reconsideration organ has modified the original administrative act, the reconsideration organ shall be the defendant. Where the reconsideration organ fails to make a reconsideration decision within the statutory time limit, and the citizen, legal person or other organization institutes an action against the original administrative act, the administrative organ that performed the original administrative act shall be the defendant; where the action is instituted against the reconsideration organ's failure to act, the reconsideration organ shall be the defendant. Where two or more administrative organs performed the same administrative act, the administrative organs that jointly performed the administrative act shall be the joint defendants. Where an administrative act has been performed by an organization authorized by an administrative organ, that organization shall be the defendant. Where an administrative act has been performed by an organization entrusted by an administrative organ, the entrusting organ shall be the defendant. Where an administrative organ has been abolished or its functions and powers have been modified, the administrative organ that continues to exercise its functions and powers shall be the defendant.

Article 27. Where one or more parties to an administrative case have common claims or rights in respect of the same administrative act, or where one or more parties to the case have common claims or rights in respect of separate administrative acts of the same kind, and the people's court considers that the cases may be tried together, they shall be treated as joint actions with the consent of the parties.

Article 28. Where one party to a joint action has a large number of parties, the parties may nominate representatives from among themselves to participate in the proceedings. The acts of the representatives in the proceedings shall be binding on the parties they represent, except that any modification or waiver of claims or admission of the claims of the opposing party shall require the consent of the parties represented.

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Article 29. Any citizen, legal person or other organization that has a material interest in the administrative act at issue or in the outcome of the case, but has not instituted an action, may apply to participate in the proceedings as a third party, or the people's court may notify it to participate in the proceedings. A third party shall have the right to make statements, claim rights and raise defenses in relation to the judgment, ruling or mediation agreement of the people's court. Where a people's court renders a judgment that a third party shall bear obligations or impairs the rights and interests of a third party, the third party shall have the right to file an appeal or apply for a retrial in accordance with the law.

Article 30. Where citizens without capacity for civil conduct or with limited capacity for civil conduct, or legal persons or other organizations whose statutory representative is deceased, cannot participate in proceedings, their guardians or successors in title shall participate in the proceedings as their representatives ad litem in accordance with the law. The parties and their legal representatives may each entrust one or two persons to act as their representatives ad litem.

Article 31. The following persons may be entrusted as representatives ad litem: (1) lawyers and basic-level legal service workers; (2) close relatives or staff members of the party; and (3) citizens recommended by the community where the party is located, by the entity where the party works or by the relevant social organization.

Article 32. A lawyer acting as a representative ad litem shall have the right, in accordance with the relevant provisions, to access and copy materials related to the case, and to investigate and collect evidence from the relevant organizations and citizens. Lawyers acting as representatives ad litem shall have the right to consult, extract and copy materials relating to state secrets, commercial secrets and personal privacy involved in the case, and shall keep such information confidential in accordance with the provisions of the law. The parties and other representatives ad litem shall have the right, in accordance with the relevant provisions, to consult and copy the trial materials of the case, but shall not consult or copy materials involving state secrets, commercial secrets or personal privacy.

Article 33. The litigant participants or other persons shall have the obligation to cooperate with the people's court in accordance with the law in the trial of administrative cases.

Chapter V — Evidence

Article 34. The defendant shall bear the burden of proof for the administrative act performed and shall provide the evidence on the basis of which the administrative act was performed and the regulatory documents on which it was based. Where the defendant fails to provide evidence or provides evidence without justified reasons beyond the statutory time limit, it shall be deemed that there is no evidence, except that the evidence for which the third party bears the burden of proof shall be provided by the third party.

Article 35. In the course of proceedings, the defendant and its representative ad litem shall not collect evidence from the plaintiff, the third party or witnesses on their own initiative.

Article 36. Where the defendant has collected evidence in accordance with statutory procedures when performing an administrative act, but is unable to provide such evidence due to force majeure or other justifiable reasons, the defendant may provide such evidence within a reasonable time after applying to the people's court for an extension with the approval of the people's court. Where the plaintiff or the third party raises any reason or evidence for the first time in the course of proceedings that was not raised during the administrative procedure, the defendant may, with the permission of the people's court, provide supplementary evidence.

Article 37. The plaintiff may provide evidence to prove the illegality of the administrative act. Where the evidence provided by the plaintiff is insufficient to establish the claim, the defendant shall not be exempted from the burden of proof.

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Article 38. In an action against the defendant's failure to perform its statutory duties, the plaintiff shall provide evidence that it has applied to the defendant. However, this shall not apply under either of the following circumstances: (1) where the defendant shall perform its duties ex officio in accordance with the provisions of laws and regulations; or (2) where the plaintiff is unable to provide evidence for justifiable reasons. In an action for administrative compensation or administrative agreement dispute, the plaintiff shall provide evidence of the damage suffered as a result of the administrative act. Where the plaintiff is unable to provide evidence due to the defendant, the defendant shall bear the burden of proof.

Article 39. The people's court shall have the authority to require the parties to provide or supplement evidence.

Article 40. The people's court shall have the authority to obtain evidence from the relevant administrative organs, other organizations and citizens, but shall not collect evidence for the purpose of proving the legality of the administrative act. The people's court shall not, in trying an administrative agreement dispute, collect evidence for the purpose of proving the legality of the administrative agreement.

Article 41. In any of the following circumstances, the people's court may collect evidence on its own initiative: (1) where the facts involved are related to the national interest or public interest; or (2) where the facts involved are relevant to procedural matters such as the addition of parties, suspension of proceedings, termination of proceedings, or withdrawal.

Article 42. In any of the following circumstances, the people's court may collect evidence upon application by the plaintiff or a third party: (1) where the evidence is preserved by the relevant state organ and must be accessed by the people's court ex officio; (2) where the evidence involves state secrets, commercial secrets or personal privacy; or (3) where the plaintiff or the third party is unable to collect the evidence on its own for other objective reasons.

Article 43. Evidence shall be presented in court and cross-examined by the parties. Evidence involving state secrets, commercial secrets and personal privacy shall be kept confidential in accordance with the law and shall not be presented in open court. The people's court shall examine evidence in accordance with statutory procedures and comprehensively, and shall exclude illegally obtained evidence as the basis for determining the facts of the case. Evidence illegally obtained by means of serious violation of lawful procedures, such as torture, violence, threat or enticement and deception, shall not be used as the basis for determining the facts of the case.

Article 44. Where evidence may be lost or become difficult to obtain at a later date, a participant in the proceedings may apply to the people's court for preservation of evidence, and the people's court may also take preservation measures on its own initiative.

Chapter VI — Institution and Acceptance

Article 45. Where a citizen, legal person or other organization refuses to accept an administrative reconsideration decision, it may institute an action in a people's court within 15 days from the date of receipt of the reconsideration decision. Where the reconsideration organ fails to make a decision within the prescribed time limit, the applicant may institute an action in a people's court within 15 days from the date of expiry of the reconsideration period, unless otherwise provided for by law.

Article 46. Where a citizen, legal person or other organization directly institutes an action in the people's court, it shall do so within six months from the date on which it knew or should have known that the administrative act had been performed, unless otherwise provided for by law. The limitation period for bringing an action against an administrative act concerning immovable property shall be 20 years from the date on which the administrative act was performed; for other cases, it shall be five years from the date on which the administrative act was performed.

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Article 47. Where a citizen, legal person or other organization applies to an administrative organ for the performance of its statutory duties to protect personal rights, property rights and other legitimate rights and interests, and the administrative organ fails to perform its duties within two months from the date of receipt of the application, the citizen, legal person or other organization may institute an action in the people's court. Where laws and regulations provide otherwise for the time limit for performance of duties by an administrative organ, such provisions shall apply. Under emergency circumstances, where a citizen, legal person or other organization applies to an administrative organ for the protection of his personal rights or property rights, and the administrative organ fails to perform its duties, the time limit for institution of an action specified in the preceding paragraph shall not apply.

Article 48. Where a citizen, legal person or other organization is unable to institute an action within the time limit due to force majeure or other justifiable reasons, the time delayed shall not be counted in the limitation period. Where a citizen, legal person or other organization is unable to institute an action within the time limit due to the occurrence of any of the circumstances specified in the preceding paragraph, it may apply for an extension of the time limit within 10 days after the obstacle is removed, and the people's court shall decide whether to grant the extension.

Article 49. The following conditions shall be satisfied for the institution of an action: (1) the plaintiff is a citizen, legal person or other organization that is a party to the administrative act; (2) there is a clear defendant; (3) there are specific claims and facts in support thereof; and (4) the case falls within the scope of acceptance of the people's court and the jurisdiction of the people's court to which the action is brought.

Article 50. The institution of an action shall be made by submitting a written complaint to the people's court, along with copies of the complaint corresponding to the number of defendants. Where it is genuinely difficult to write a complaint, the complaint may be made orally, in which case the people's court shall enter it in the record, produce a dated written statement and inform the opposing party.

Article 51. When the people's court receives a written complaint, and the complaint satisfies the conditions for bringing an action as prescribed by this Law, the people's court shall register and place it on file. Where the people's court is unable to determine on the spot whether the conditions for institution of an action are satisfied, it shall accept the written complaint, issue a written receipt indicating the date of receipt, and decide whether to place the case on file within seven days. Where the conditions for institution of an action are not satisfied, a ruling shall be made declining to accept the case. The written ruling shall state the reasons therefor. Where the plaintiff refuses to accept the ruling, he may file an appeal. Where the content of the written complaint is incomplete or there are other errors, the people's court shall provide guidance and explanation, and shall inform the party in one instance of all the contents that need to be supplemented and corrected. The people's court shall not refuse to accept a written complaint or ruling without justifiable reasons. The people's court shall be responsible for any adverse consequences caused by failure to produce a receipt, failure to produce a receipt for the complaint materials, or failure to indicate the date of receipt.

Article 52. Where the people's court fails to decide whether to place the case on file or to decline to accept the case within seven days, or issues no ruling, the parties may file an appeal with the people's court at a higher level. The people's court at a higher level may, if it considers that the conditions for institution of an action are satisfied, try the case itself or designate another people's court at a lower level to place the case on file and try it.

Article 53. Where a citizen, legal person or other organization considers that the basis of an administrative act is a regulatory document formulated by a department under the State Council or by a local people's government and its department, and such regulatory document is unlawful, it may, when instituting an action against the administrative act, concurrently apply for review of the regulatory document. The regulatory document specified in the preceding paragraph shall not include rules.

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Chapter VII — Trial and Judgment

Article 54. The people's courts shall try administrative cases in open court, except for cases involving state secrets, personal privacy, or cases otherwise provided for by law. Cases involving trade secrets may be tried in camera upon application by the parties.

Article 55. A judicial officer shall withdraw from a case, and the parties shall have the right to apply for his withdrawal orally or in writing, under any of the following circumstances: (1) he is a party to the case or a close relative of a party or of a representative ad litem; (2) he has a material interest in the case; or (3) he has any other relationship with a party to the case, which may affect the fair trial of the case. The provisions of the preceding paragraph shall apply to court clerks, interpreters, expert examiners and inspectors. The withdrawal of the president of the court shall be decided by the adjudication committee; the withdrawal of a judicial officer shall be decided by the president of the court; and the withdrawal of other persons shall be decided by the presiding judge. Where a party refuses to accept the decision, it may apply for reconsideration once.

Article 56. During the proceedings, under any of the following circumstances, the people's court shall rule to suspend enforcement of the administrative act upon application by the plaintiff or a third party, or the people's court may rule to suspend enforcement on its own initiative: (1) the defendant considers it necessary to suspend enforcement; (2) the plaintiff or a third party applies for suspension of enforcement, the people's court considers that enforcement of the administrative act would cause irreparable damage and suspension of enforcement would not harm the public interest; (3) the people's court considers that enforcement of the administrative act would cause material damage to the national interest or public interest; or (4) other circumstances where suspension is required by law or regulation. Where the parties refuse to accept a ruling on suspension of enforcement or on refusal to suspend enforcement, they may apply for reconsideration once.

Article 57. After a people's court accepts a case, it shall send a copy of the complaint to the defendant within five days from the date of acceptance. The defendant shall, within 15 days from the date of receipt of the copy of the complaint, submit to the people's court the evidence on the basis of which the administrative act was performed and the regulatory documents on which it was based, and shall submit a statement of defense. The people's court shall send a copy of the statement of defense to the plaintiff within five days from the date of receipt. Where the defendant fails to submit a statement of defense, such failure shall not affect the trial of the case by the people's court.

Article 58. Where the defendant, upon lawful summons by the people's court, refuses to appear in court without justifiable reasons, or leaves the courtroom during the hearing without the permission of the court, the people's court may render a default judgment. Where the plaintiff refuses to appear in court without justifiable reasons or leaves the courtroom during the hearing without the permission of the court, the case may be treated as withdrawn; where the defendant files a counterclaim, a default judgment may be rendered.

Article 59. Where a litigant participant or any other person commits any of the following acts, the people's court may, based on the seriousness of the circumstances, impose a reprimand, order him to sign a statement of repentance, or impose a fine of not more than RMB 10,000 or detention of not more than 15 days; where the act constitutes a criminal offense, criminal liability shall be pursued in accordance with the law: (1) making false representations or providing false evidence by a person obliged to assist in enforcement, thereby obstructing the people's court in the trial of a case; (2) forging, destroying or concealing evidence or obstructing the people's court from collecting evidence in the case; (3) instigating, bribing or coercing others to commit perjury, or threatening or preventing witnesses from giving testimony; (4) concealing, transferring, selling or destroying property that has been sealed up, distrained or frozen; (5) using violence, threat or other means to obstruct the people's court in the performance of its functions, or disrupting the order of the people's court by causing a disturbance or besieging the people's court; (6)

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insulting, slandering, framing, beating or retaliating against judicial officers, litigant participants, persons assisting in enforcement and enforcement officers of the people's court. The people's court may impose a fine or detention on a person who commits any of the acts specified in items (1) to (5) of the preceding paragraph. Where a unit commits any of the acts specified in items (1) to (5) of the preceding paragraph, the people's court may impose a fine on its principal responsible person or directly responsible persons; and may also impose detention on the person. Where the penalty of detention is to be imposed, it shall be subject to the approval of the president of the people's court. Where the party concerned refuses to accept the decision, he may apply for reconsideration once.

Article 60. The people's courts shall not conduct mediation in trying administrative cases, except where the administrative act involves the exercise of discretionary power by an administrative organ or involves administrative compensation or administrative agreement disputes.

Article 61. In an administrative case involving an administrative license, administrative registration, administrative expropriation, administrative requisition or administrative ruling, where the parties apply for resolution of the relevant civil dispute together, the people's court may try the cases together. In administrative proceedings, where the people's court considers that the trial of the administrative case requires a civil dispute to be the basis, it may rule to suspend the administrative proceedings.

Article 62. The people's court shall rule to grant withdrawal where, before the people's court has announced a judgment or ruling, the plaintiff applies for withdrawal, or the defendant modifies the administrative act it has performed and the plaintiff agrees and applies for withdrawal. The people's court shall rule not to grant withdrawal where the defendant modifies the administrative act without the consent of the plaintiff, or otherwise.

Article 63. The people's courts shall try administrative cases in accordance with laws and administrative regulations, and by reference to rules. The people's courts shall try administrative cases in accordance with local regulations; in trying administrative cases in a national autonomous area, the people's courts shall also base their trial on the regulations on autonomy and separate regulations of that area. When trying an administrative case, the people's court shall apply the relevant provisions of laws and administrative regulations by reference to rules. Where there is any discrepancy between rules, or between a rule and a law or administrative regulation, the people's court shall rule on the proper application and submit a report to the Supreme People's Court, which shall then submit the matter to the State Council or the Standing Committee of the National People's Congress for ruling.

Article 64. The people's court shall, in trying administrative cases, consider regulatory documents as the basis for determining the legality of the administrative act. Where the people's court, in trying an administrative case, finds that a regulatory document is unlawful, it shall not use it as the basis for determining the legality of the administrative act and shall provide suggestions to the authority that formulated the document.

Article 65. The people's court shall publicly disclose effective judgments and rulings for the public to consult, except for those involving state secrets, commercial secrets or personal privacy.

Article 66. Where, in the course of hearing an administrative case, the people's court discovers that any personnel of an administrative organ has been grossly negligent or has violated law or discipline, it shall transfer the relevant materials to the supervisory organ or the administrative organ at a higher level, and may provide judicial suggestions; where the personnel is suspected of having committed a crime, the materials shall be transferred to the public security organ or the people's procuratorate.

Article 67. The people's court shall form a collegial panel consisting of three or more judges in odd numbers, or consisting of judges and people's assessors, to try an administrative case of first instance. Where the decision to apply summary procedure is made, the case shall be tried by a single judge. Where an appeal case is to be tried, a collegial panel consisting of judges shall be formed to try the case. Members of the

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collegial panel shall have equal rights.

Article 68. Where the people's court considers that an administrative case is directly under the jurisdiction of, or has been accepted by, an administrative organ or the people's court of another place, it shall register and place the case on file.

Article 69. Where the administrative act is supported by clear evidence, the applicable laws and regulations are correct, and the statutory procedures have been complied with, or the plaintiff's reason for applying to the defendant to perform its statutory duties or obligations in payment is untenable, the people's court shall render a judgment to dismiss the plaintiff's claims.

Article 70. An administrative act shall be revoked or partially revoked, and the defendant may be ordered to perform a new administrative act, under any of the following circumstances: (1) the main evidence is insufficient; (2) the applicable laws or regulations are erroneous; (3) the statutory procedures have been violated; (4) statutory functions and powers have been exceeded; (5) functions and powers have been abused; or (6) the administrative act is clearly improper.

Article 71. After the people's court has rendered a judgment to revoke an administrative act and ordered the defendant to perform a new administrative act, the defendant shall not perform an administrative act that is essentially the same as the original administrative act based on the same facts and reasons.

Article 72. Where the people's court ascertains that the defendant has failed to perform its statutory duties, it shall render a judgment ordering the defendant to perform such duties within a specified time limit.

Article 73. Where the people's court ascertains that the defendant has failed to pay an amount of money in accordance with the law, it shall render a judgment ordering the defendant to make such payment.

Article 74. Under any of the following circumstances, the people's court shall render a judgment confirming the illegality of the administrative act, but shall not revoke the administrative act: (1) where the administrative act shall be revoked in accordance with the law, but revocation would cause material damage to the national interest or public interest; or (2) where the administrative act is of a minor procedural irregularity but does not cause actual impact on the rights of the plaintiff. Under any of the following circumstances, the people's court shall not render a judgment to revoke the administrative act or confirm its illegality: (1) where the administrative act is illegal but not revocable; or (2) where the defendant has modified the original illegal administrative act, but the plaintiff still demands confirmation that the original administrative act was illegal; or (3) where the defendant fails to perform or delays the performance of its statutory duties, and a judgment ordering performance is meaningless.

Article 75. An administrative act shall be void if it is performed by a subject without administrative capacity, or there is no basis therefor, or there is any other material and obvious illegality. Where the plaintiff applies for confirmation that an administrative act is void and the people's court, after examination, determines that the administrative act is void in accordance with the law, it shall render a judgment confirming the invalidity of the administrative act. Where the people's court finds that the administrative act is void, the plaintiff may claim compensation for the damage suffered. Where the plaintiff applies for confirmation that the administrative act is void and the people's court, after examination, determines that the administrative act does not fall within the scope of invalidity, it shall, upon explanation to the plaintiff, render a judgment to dismiss the plaintiff's claims. Where the plaintiff requests modification of his claims for revocation of the administrative act or for other litigation claims, the people's court shall continue the trial.

Article 76. Where a people's court renders a judgment confirming that an administrative act is illegal or void, it may simultaneously order the defendant to take remedial measures; where the plaintiff has suffered damage, the defendant shall bear liability for compensation in accordance with the law.

Article 77. Where an administrative penalty is clearly improper, or the determination or recognition of the amount involved in other administrative acts is erroneous, the people's court may render a judgment to

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modify the administrative act. The people's court shall not, when rendering a judgment to modify an administrative penalty, aggravate the obligations of the plaintiff or impair the rights and interests of the plaintiff, except where the interested party is also the plaintiff and the claims of the interested party are contrary to those of the plaintiff. The provisions of the second paragraph of Article 74 shall apply to any circumstance where an administrative organ fails to perform or delays the performance of its statutory duties.

Article 78. Where a defendant fails to perform or fails to perform an administrative agreement in accordance with the agreement, the people's court shall render a judgment ordering the defendant to continue performance, adopt remedial measures, or compensate for losses. Where a defendant modifies or rescinds an administrative agreement in violation of the law, the people's court shall render a judgment ordering the defendant to compensate for losses.

Article 79. Where a plaintiff simultaneously files an action against the defendant for failure to perform its statutory duties and for administrative compensation, the people's court shall try the case together.

Article 80. The people's court shall publicly announce its judgments in administrative cases in accordance with the law. The people's court shall serve a copy of the judgment on the parties within 10 days from the date of announcement of the judgment of an administrative case of first instance. Where a judgment is announced at a fixed date, a copy of the judgment shall be served immediately after announcement.

Article 81. The people's court shall render a judgment of first instance within six months from the date the case is placed on file. Under special circumstances where an extension is necessary, an extension shall be granted with the approval of a higher people's court; where an extension is required for a case tried by a higher people's court as the court of first instance, such extension shall be subject to the approval of the Supreme People's Court.

Article 82. Under any of the following circumstances in a case of first instance, the people's court may apply summary procedure if it considers that the facts are clear, the relationship of rights and obligations is clear and the dispute is minor: (1) where the administrative act involved was performed in accordance with the law on the spot; (2) where the amount involved in the case is not more than RMB 2,000; (3) where the case falls within the category of government information disclosure cases; or (4) where the parties to the case agree to the application of summary procedure. Administrative appeal cases may also be tried under summary procedure upon decision by the people's court. A case tried under summary procedure in a people's court shall be concluded within 45 days from the date of placement on file. The people's court may, during the trial, convert a case from summary procedure to ordinary procedure if it finds the case to be complicated.

Article 83. In the trial of an administrative appeal case, the people's court shall conduct a review of whether the facts of the original judgment or ruling and the applicable law are correct in their entirety.

Article 84. Where a people's court discovers that an administrative organ whose illegal administrative act is not within its jurisdiction, it may transfer the case to the people's court with jurisdiction.

Article 85. Where a party refuses to accept a judgment of first instance of a people's court, he shall have the right to file an appeal with the people's court at the next higher level within 15 days from the date of service of the written judgment. Where a party refuses to accept a ruling of first instance of a people's court, he shall have the right to file an appeal with the people's court at the next higher level within 10 days from the date of service of the written ruling. Failure to file an appeal within the time limit shall render the judgment or ruling of first instance legally effective.

Article 86. The people's court shall form a collegial panel to try an appeal case, open a court session and conduct a hearing. Where the collegial panel considers, upon examination of the case file, investigation and questioning of the parties, that there is no new evidence, the facts are clear and there is no need to open a court session, it may also render a judgment or ruling without opening a court session.

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Article 87. In trying an appeal case, the people's court shall conduct a comprehensive review of the judgment or ruling of first instance and the legality of the administrative act involved.

Article 88. The people's court shall render a final judgment in an appeal case within three months from the date of receipt of the appeal petition. Under special circumstances where an extension is necessary, such extension shall be subject to the approval of a higher people's court.

Article 89. After hearing an appeal case, the people's court shall handle it according to the following circumstances: (1) where both the finding of facts and the application of law and regulations in the original judgment or ruling are correct, the appeal shall be dismissed and the original judgment or ruling shall be upheld; (2) where the original judgment or ruling contains errors in the finding of facts or the application of law or regulations, the judgment or ruling shall be modified, revoked or set aside in accordance with the law; (3) where the basic facts in the original judgment are unclear or the evidence is insufficient, the people's court shall issue a ruling to revoke the original judgment and remand the case to the original people's court for retrial, or modify the judgment after ascertaining the facts; (4) where there has been a serious violation of statutory procedures in the original judgment, such as failure to form a lawful collegial panel, or the withdrawal of a judicial officer who should have withdrawn but failed to do so, or the failure of a party who has no capacity for litigation to be represented by a statutory representative, or a default judgment rendered in violation of the provisions of the law, the ruling shall be made to revoke the original judgment and remand the case to the original people's court for retrial. After the original people's court has rendered a judgment on the case remanded for retrial, where a party files an appeal, the people's court of second instance shall not remand the case for retrial again.

Article 90. Where a party refuses to accept a judgment or ruling that has become legally effective and considers that there is an error therein, he may apply to the people's court at the next higher level for a retrial, but enforcement of the judgment or ruling shall not be suspended.

Article 91. Where a party's application meets any of the following circumstances, the people's court shall retry the case: (1) no retrial has been conducted for failure to place the case on file or to dismiss the prosecution, where there is indeed an error; (2) the main evidence on which the original judgment or ruling was based is forged; (3) the main evidence on which the original judgment or ruling was based has not been cross-examined; (4) the main evidence on which the facts of the original judgment or ruling were found has not been substantiated by the parties; (5) the party who bears the burden of proof in the original judgment or ruling was unable to collect evidence due to objective reasons and applied in writing to the people's court for investigation and collection, but the people's court failed to investigate and collect such evidence; (6) there has been an error in the application of law in the original judgment or ruling; (7) there has been a violation of statutory procedures, which may have affected a fair trial or judgment; (8) the judicial officer who tried the case committed embezzlement, accepted bribes, engaged in malpractice for personal gain or perverted the law in the course of trial; or (9) the evidence on the basis of which the original judgment or ruling was made is sufficient to overturn the original judgment or ruling.

Article 92. Where the president of a people's court at any level finds any error in a legally effective judgment or ruling of his court that requires a retrial, he shall refer the matter to the adjudication committee for deliberation and decision. The Supreme People's Court shall have the right to order a retrial or direct a people's court at a lower level to conduct a retrial if it finds any definite error in a legally effective judgment or ruling of a people's court at any level; and a people's court at a higher level shall have the right to order a retrial or direct a people's court at a lower level to conduct a retrial if it finds any definite error in a legally effective judgment or ruling of a people's court at a lower level.

Article 93. Where the Supreme People's Procuratorate discovers that a legally effective judgment or ruling of a people's court at any level, or a people's procuratorate at a higher level discovers that a legally effective judgment or ruling of a people's court at a lower level falls under any of the circumstances specified in Article 91 of this Law, or finds that the mediation document has harmed the national interest or public interest, it

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shall lodge a protest. Where a local people's procuratorate at any level discovers that a legally effective judgment or ruling of a people's court at the same level falls under any of the circumstances specified in Article 91 of this Law, or finds that the mediation document has harmed the national interest or public interest, it may submit a procuratorial proposal to the people's court at the same level and report the matter to the people's procuratorate at a higher level for the record; or it may request the people's procuratorate at a higher level to lodge a protest with the people's court at the corresponding level. Where a people's procuratorate at any level has the authority to make procuratorial proposals or lodge a protest against the trial activities, enforcement activities, judges and other judicial officers of the people's court at the same level for any violation of the law in adjudication procedures.

Chapter VIII — Enforcement

Article 94. The parties shall perform any legally effective judgment, ruling or mediation document of the people's court.

Article 95. Where a citizen, legal person or other organization refuses to perform a judgment, ruling or mediation document, the administrative organ or a third party may apply to the people's court of first instance for compulsory enforcement, or the administrative organ may conduct compulsory enforcement in accordance with the law.

Article 96. Where an administrative organ refuses to perform a judgment, ruling or mediation document, the people's court of first instance may adopt the following measures: (1) notify the bank to transfer from the account of the administrative organ the amount of the fine that should be returned or the amount of compensation that should be paid; (2) impose a fine of not less than RMB 50 but not more than RMB 100 per day on the administrative organ calculated from the date of expiry of the time limit for performance; (3) notify the administrative organ at a higher level or the supervisory organ of the administrative organ to give a notice of criticism or other measures; (4) where the circumstances are serious and a social impact is caused, the people's court may impose detention on the directly responsible person in charge and other directly responsible persons of the administrative organ; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 97. Where a citizen, legal person or other organization fails to institute an action within the statutory time limit and fails to perform an administrative act, the administrative organ may apply to the people's court for compulsory enforcement, or conduct compulsory enforcement in accordance with the law.

Chapter IX — Foreign-Related Administrative Litigation

Article 98. Foreign nationals, stateless persons and foreign organizations that institute administrative proceedings in the people's courts shall have the same procedural rights and obligations as citizens and organizations of the People's Republic of China, unless otherwise provided by law. Where the courts of a foreign country impose restrictions on the administrative procedural rights of citizens and organizations of the People's Republic of China, the people's courts shall apply the principle of reciprocity in respect of the administrative procedural rights of citizens and organizations of that country.

Article 99. Where a foreign national, stateless person or foreign organization that is a party to an administrative case entrusts a lawyer to act as his representative ad litem, the party shall entrust a lawyer who is a member of a law firm of the People's Republic of China.

Article 100. Foreign nationals, stateless persons and foreign organizations involved in administrative litigation in China must apply the Chinese language and script. Where a party does not have a command of the Chinese language and script, the people's court may provide interpretation at the expense of the party.

Chapter X — Supplementary Provisions

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Article 101. For matters not covered in the administrative procedure provisions of this Law, the relevant provisions of the Civil Procedure Law of the People's Republic of China shall apply.

Article 102. The people's courts shall charge litigation fees for hearing administrative cases. The litigation fees shall be borne by the losing party, or shall be borne by the parties concerned if both parties are responsible for the litigation. The measures for charging litigation fees shall be formulated separately.

Article 103. This Law shall take effect on October 1, 1990. The Administrative Litigation Law of the People's Republic of China (for Trial Implementation) shall be repealed on the same date.

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