Administrative Litigation Law of the People’s Republic of China

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Chapter I — General Provisions

Article 1 — This Law is enacted in accordance with the Constitution for the purposes of ensuring the correct and timely trial of administrative cases by the people's courts, protecting the lawful rights and interests of citizens, legal persons, and other organizations, and supervising the exercise of administrative powers by administrative organs in accordance with law.

Article 2 — Where a citizen, legal person, or other organization considers that a specific administrative act of an administrative organ or its functionary has infringed upon its lawful rights and interests, it shall have the right to institute legal proceedings in a people's court in accordance with this Law. The term "specific administrative act" as used in the preceding paragraph includes administrative acts undertaken by organizations authorized by laws, regulations, or rules.

Article 3 — The people's courts shall independently exercise the judicial power in trying administrative cases and shall not be subject to interference by administrative organs, social organizations, or individuals. The people's courts shall establish administrative divisions to try administrative cases.

Article 4 — The people's courts shall try administrative cases on the basis of facts and in accordance with law.

Article 5 — In trying administrative cases, the people's courts shall examine the legality of specific administrative acts.

Article 6 — In trying administrative cases, the people's courts shall apply the collegial panel system, the challenge system, the public trial system, and the two-tier trial system in accordance with law.

Article 7 — Parties to administrative proceedings shall have equal legal status.

Article 8 — Citizens of all ethnic groups shall have the right to use their own spoken and written languages in administrative proceedings. In areas where people of ethnic minorities live in concentrated communities or where multiple ethnic groups live together, the people's courts shall conduct trials and issue legal documents in the locally commonly used spoken and written languages. The people's courts shall provide interpretation for participants in proceedings who are not familiar with the locally commonly used spoken and written languages.

Article 9 — 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.

Chapter II — Scope of Accepting Cases

Article 11 — The people's courts shall accept suits brought by citizens, legal persons, or other organizations against any of the following specific administrative acts: an administrative penalty such as detention, a fine, revocation of a permit or license, order to suspend production or business operations, or confiscation of property; a compulsory administrative measure such as restriction of personal freedom or sealing up, seizing, or freezing of property; an administrative organ's infringement upon the operational decision-making power prescribed by law; an administrative organ's refusal to issue or its failure to respond to an application for a permit or license that the applicant considers itself to be legally qualified to receive; an administrative

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organ's refusal to perform or its failure to respond to an application for performance of the statutory duty of protecting personal rights and property rights; an administrative organ's failure to pay pensions in accordance with law; an administrative organ's illegal demand for the performance of obligations; an administrative organ's infringement upon the personal rights or property rights of others; or other specific administrative acts that are actionable by law or regulations.

Article 12 — The people's courts shall not accept suits brought by citizens, legal persons, or other organizations against the following matters: acts of the State in the area of national defense or foreign affairs; administrative regulations, rules, or decisions or orders with general binding force formulated or published by administrative organs; decisions on administrative sanctions or decisions on appointment or dismissal made by administrative organs for their staff members; and specific administrative acts that are by law to be finally decided by administrative organs.

Chapter III — Jurisdiction

Article 13 — The basic people's courts shall have jurisdiction as courts of first instance over administrative cases.

Article 14 — The intermediate people's courts shall have jurisdiction over the following administrative cases of first instance: cases where the department of the State Council or the people's government of a county or above is the defendant; cases involving the customs; major or complicated cases within their respective jurisdictions; and other cases over which intermediate people's courts have jurisdiction under this Law.

Article 15 — The higher people's courts shall have jurisdiction over major or complicated administrative cases of first instance within their respective jurisdictions.

Article 16 — The Supreme People's Court shall have jurisdiction over major or complicated administrative cases of first instance nationwide.

Article 17 — An administrative case shall be under the jurisdiction of the people's court at the place where the defendant administrative organ is situated. Administrative cases that have been reviewed by an administrative reconsideration organ and where the reconsideration organ has modified the original specific administrative act may also be under the jurisdiction of the people's court at the place where the reconsideration organ is situated.

Article 18 — An administrative case involving restriction of personal freedom shall be under the jurisdiction of the people's court at the place where the defendant is situated or at the place where the plaintiff is situated.

Article 19 — An administrative case involving real property shall be under the jurisdiction of the people's court at the place where the real property is situated.

Article 20 — Where two or more people's courts have jurisdiction over a case, the plaintiff may choose to institute the action in one of the people's courts. Where the plaintiff institutes actions in two or more people's courts with jurisdiction, the people's court that first accepts the case shall have jurisdiction.

Article 21 — Where a people's court discovers that a case accepted does not fall within its jurisdiction, it shall transfer the case to the people's court with jurisdiction, and the people's court to which the case is transferred shall accept the case. Where the people's court to which the case is transferred considers that the transferred case does not fall within its jurisdiction according to the relevant provisions, it shall request the people's court at a higher level to designate jurisdiction and shall not transfer the case on its own.

Article 22 — Where a dispute over jurisdiction arises between people's courts, the dispute shall be resolved through consultation between the disputing parties. Where consultation fails, they shall request their common people's court at the next higher level to designate jurisdiction.

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Article 23 — The people's court at the higher level shall have the right to try administrative cases of first instance that are under the jurisdiction of the people's court at the lower level, and may also transfer administrative cases of first instance that are under its own jurisdiction to the people's court at the lower level for trial. Where the people's court at the lower level considers that an administrative case of first instance under its jurisdiction needs to be tried by the people's court at the higher level, it may request the people's court at the higher level to decide on the transfer.

Chapter IV — Participants in Proceedings

Article 24 — A citizen, legal person, or other organization that institutes legal proceedings in accordance with this Law shall be the plaintiff. Where a citizen who has the right to institute legal proceedings dies, his close relative may institute the proceedings. Where a legal person or other organization that has the right to institute legal proceedings is terminated, the legal person or other organization that succeeds to its rights may institute the proceedings.

Article 25 — The administrative organ that has undertaken the specific administrative act shall be the defendant. Where a case has been reviewed by an administrative reconsideration organ and the reconsideration organ decides to uphold the original specific administrative act, the administrative organ that originally undertook the specific administrative act shall be the defendant. Where the reconsideration organ has modified the original specific administrative act, the reconsideration organ shall be the defendant. Where two or more administrative organs have jointly undertaken a specific administrative act, the administrative organs that jointly undertook the act shall be the joint defendants. Where a specific administrative act has been undertaken by an organization authorized by laws or regulations, the organization shall be the defendant. Where a specific administrative act has been undertaken by an organization entrusted by an administrative organ, the entrusting administrative organ shall be the defendant. Where the administrative organ that has been the defendant is abolished or its functions and powers are modified, the administrative organ succeeding to its functions and powers shall be the defendant.

Article 26 — Where another citizen, legal person, or other organization institutes legal proceedings together with the plaintiff, it shall be a joint plaintiff. Where several citizens, legal persons, or other organizations institute legal proceedings against the same specific administrative act, they shall be joint plaintiffs. Where several citizens, legal persons, or other organizations institute legal proceedings against specific administrative acts of the same nature undertaken by the same administrative organ, the people's court may, upon its deeming it appropriate, consolidate the trial of the cases.

Article 27 — Any other citizen, legal person, or other organization that has an interest in the specific administrative act in a case that has been instituted may apply to participate in the proceedings as a third party, or may be notified by the people's court to participate in the proceedings.

Article 28 — A party that is incapable of participating in proceedings may entrust an agent to do so. A party, the legal representative of a legal person, or the legal representative of other organizations may entrust one or two persons as agents ad litem. The following persons may be entrusted as agents ad litem: lawyers and grassroots legal service workers; close relatives or staff members of the party; and citizens recommended by the community, the unit to which the party belongs, or relevant social organizations.

Article 29 — A lawyer acting as an agent ad litem may consult materials relating to the case and investigate among organizations and citizens in accordance with relevant provisions. The agents ad litem other than lawyers, with the permission of the people's court, may consult the case materials, except for those involving State secrets and personal privacy. All agents shall have the obligation to keep confidential the State secrets and personal privacy of the parties learned in the course of handling the case. The parties and other agents ad litem shall have the right to investigate and collect evidence, and to consult materials relating to the case.

Chapter V — Evidence

Article 30 — Evidence shall be classified as follows: documentary evidence; physical evidence; audio-visual materials; electronic data; witness testimony; statements of the parties; expert opinions; and transcripts of inquests and on-site records. The above evidence must be verified by the court before it can serve as the basis for deciding a case.

Article 31 — The defendant shall bear the burden of proof for the specific administrative act, and shall provide the evidence and the normative documents on which the specific administrative act is based. Where the defendant fails to provide evidence or provides evidence beyond the time limit without justified reasons, the defendant shall be deemed to have no corresponding evidence. However, evidence relating to the procedural rights of a third party in a case where the specific administrative act involves a third party's lawful rights and interests shall be excluded.

Article 32 — In the course of proceedings, the defendant shall not collect evidence from the plaintiff, the witness, or a third party on its own. However, this shall not apply where the defendant collects evidence with the permission of the people's court.

Article 33 — The people's courts shall have the right to obtain evidence from the relevant administrative organ, other organizations, or citizens. In the course of proceedings, where the people's court considers it necessary to conduct an expert evaluation of a specialized issue, it shall submit the issue to a statutory expert evaluation department; where there is no statutory expert evaluation department, the people's court shall designate an expert evaluation department. The people's court may, upon application by a party or ex officio, order the parties to produce or supplement evidence.

Article 34 — During the proceedings, where the evidence may be lost or difficult to obtain in the future, the participants 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 of Proceedings

Article 35 — Where laws or regulations provide that administrative reconsideration is a prerequisite for instituting legal proceedings, the provisions of such laws or regulations shall apply.

Article 36 — A citizen, legal person, or other organization that institutes legal proceedings directly in a people's court shall do so within six months from the date on which it knows or should have known that the specific administrative act was undertaken, except as otherwise provided by law. Where an administrative organ, in undertaking a specific administrative act, fails to inform a citizen, legal person, or other organization of the right to institute legal proceedings or the time limit for instituting legal proceedings, the time limit for instituting legal proceedings shall be one year from the date on which the citizen, legal person, or other organization knows or should have known the time limit for instituting legal proceedings, but shall not exceed two years from the date on which the citizen, legal person, or other organization knows or should have known the content of the specific administrative act. The maximum time limit for instituting legal proceedings involving real property shall be twenty years from the date on which the specific administrative act was undertaken, and the maximum time limit for other cases shall be five years from the date on which the specific administrative act was undertaken. Where a citizen, legal person, or other organization files a lawsuit within the statutory time limit due to force majeure or other special reasons beyond its control, the people's court shall extend the time limit upon application. Where the time limit for instituting legal proceedings is delayed due to personal freedom being restricted, the delayed time shall not be included in the time limit for instituting legal proceedings.

Article 37 — Where a citizen, legal person, or other organization is dissatisfied with a specific administrative act and applies for administrative reconsideration to the administrative organ, the administrative reconsideration organ shall make a decision on the reconsideration within two months from the date of receipt of the application, except as otherwise provided by laws or regulations. Where the applicant is

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dissatisfied with the reconsideration decision, it may institute legal proceedings in the people's court within fifteen days from the date of receipt of the reconsideration decision. Where the reconsideration organ fails to make a decision within the time limit, the applicant may institute legal proceedings in the people's court within fifteen days from the date of expiration of the reconsideration period, except as otherwise provided by law.

Article 38 — Where a citizen, legal person, or other organization applies to an administrative organ for performance of its statutory duty of protecting personal rights and property rights, and the administrative organ refuses to perform or fails to respond within two months from the date of receipt of the application, the citizen, legal person, or other organization may institute legal proceedings in the people's court, except as otherwise provided by laws or regulations. In emergencies where failure to immediately apply for the performance of the duty would cause irreparable damage to the citizen, legal person, or other organization, the time limit specified in the preceding paragraph shall not apply.

Article 39 — Conditions for instituting legal proceedings shall include: the plaintiff is a citizen, legal person, or other organization that considers a specific administrative act to have infringed upon its lawful rights and interests; there is a clear defendant; there are specific claims and factual basis; and the case falls within the scope of acceptance of the people's court and the specific jurisdiction of the people's court receiving the lawsuit.

Article 40 — The people's court shall, upon receipt of the statement of complaint, decide whether to accept the case within seven days upon examination. Where the plaintiff is dissatisfied with the ruling not to accept the case, the plaintiff may file an appeal.

Chapter VII — Trial and Judgment

Article 41 — The people's court shall send a copy of the statement of complaint to the defendant within five days from the date of acceptance of the case. The defendant shall, within fifteen days from the date of receipt of the copy of the statement of complaint, submit a statement of defense and the materials relating to the specific administrative act undertaken to the people's court. The people's court shall send a copy of the statement of defense to the plaintiff within five days from the date of receipt of the statement of defense. Where the defendant fails to submit a statement of defense, the trial of the case by the people's court shall not be affected.

Article 42 — During the proceedings, the enforcement of the specific administrative act shall not be suspended. However, enforcement may be suspended under any of the following circumstances: the defendant considers it necessary to suspend enforcement; the plaintiff applies for suspension of enforcement, and the people's court considers that the enforcement of the specific administrative act would cause irreparable damage and that the suspension of enforcement would not harm the public interest; or the law or regulations provide for suspension of enforcement.

Article 43 — In trying administrative cases, the people's courts shall apply mediation in accordance with law. However, mediation shall not apply to cases where the legality of the specific administrative act is to be reviewed. In administrative compensation cases, mediation may be applied. Where an agreement is reached through mediation, the people's court shall prepare a mediation statement. The mediation statement shall be legally effective upon service after being signed by both parties. Where no agreement is reached through mediation, or where one party retracts before the service of the mediation statement, the people's court shall render a timely judgment.

Article 44 — A people's court shall render a judgment of first instance within six months from the date of acceptance of the case. Under special circumstances where an extension is necessary, an extension of six months may be granted with the approval of a higher people's court; where a further extension is necessary, it shall be submitted to the Supreme People's Court for approval.

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Article 45 — The people's court shall make the following judgments according to the different circumstances: where the specific administrative act is supported by conclusive evidence and correct application of laws and regulations, the specific administrative act shall be upheld; where the specific administrative act falls under any of the following circumstances, the specific administrative act shall be revoked or partially revoked, and the defendant may be ordered to undertake a new specific administrative act: the main evidence is insufficient; the application of laws and regulations is erroneous; the statutory procedures are violated; the authority is exceeded; or the power is abused; where the defendant fails to perform or delays performance of its statutory duties, the defendant shall be ordered to perform its duties within a specified time limit; where the administrative penalty is manifestly unfair, the judgment may modify the penalty; and where the defendant fails to perform the terms of an administrative agreement, the defendant shall be ordered to perform.

Article 46 — A party who is dissatisfied with the judgment of first instance of a people's court shall have the right to file an appeal with the people's court at the next higher level within fifteen days from the date of service of the written judgment. A party who is dissatisfied with the ruling of first instance of a people's court shall have the right to file an appeal with the people's court at the next higher level within ten days from the date of service of the written ruling. Where an appeal is not filed within the time limit, the judgment or ruling of first instance of the people's court shall become legally effective.

Article 47 — The people's courts shall try appeal cases by a collegial panel. Where the collegial panel considers that the facts are clear, it may try the case without a court hearing. When a people's court tries an appeal case, it shall make a final judgment within three months from the date of receipt of the appeal. Under special circumstances where an extension is necessary, it may be extended with the approval of a higher people's court.

Article 48 — When a people's court tries an appeal case, it shall handle the case in accordance with the following circumstances: where the original judgment is supported by conclusive evidence and correct application of laws and regulations, the appeal shall be rejected and the original judgment upheld; where the original judgment is supported by conclusive evidence but the application of laws and regulations is erroneous, the judgment shall be modified in accordance with law; where the main evidence in the original judgment is insufficient, or the statutory procedures are violated and may have affected the correctness of the judgment, the original judgment shall be revoked and remanded to the people's court that originally tried the case for retrial, or the facts shall be ascertained and the judgment modified; where the original judgment is seriously unclear as to the facts, or the evidence is insufficient, the original judgment shall be revoked and remanded to the people's court that originally tried the case for retrial. Where the parties raise new claims or facts in the appeal case, mediation may be conducted; if mediation is not possible, the parties shall be notified to file a new lawsuit.

Chapter VIII — Execution

Article 49 — The parties shall perform the legally effective judgments, rulings, or mediation statements of the people's courts. Where a citizen, legal person, or other organization refuses to perform a judgment, ruling, or mediation statement, the administrative organ may apply to the people's court of first instance for compulsory execution, or enforce the judgment, ruling, or mediation statement in accordance with law. Where an administrative organ refuses to perform a judgment, ruling, or mediation statement, the people's court of first instance may take the following measures: notify the bank to transfer the amount from the account of the administrative organ; impose a fine of RMB fifty to one hundred per day on the administrative organ; make a judicial proposal to the supervisory organ of the administrative organ or the administrative organ at the next higher level; and where the circumstances are serious and a crime is constituted, pursue the criminal liability of the person in charge or the person directly responsible in accordance with law.

Article 50 — A citizen, legal person, or other organization that is not satisfied with a specific administrative act and neither institutes legal proceedings nor performs within the statutory time limit, the administrative organ may apply to the people's court for compulsory execution or enforce the specific administrative act in accordance with law.

Chapter IX — Liability for Infringement of Rights

Article 51 — Where the lawful rights and interests of a citizen, legal person, or other organization are infringed upon by a specific administrative act of an administrative organ or its functionary, the citizen, legal person, or other organization shall have the right to claim compensation. Where a citizen, legal person, or other organization claims compensation solely for damage, it shall first make the claim to the administrative organ. A party dissatisfied with the handling by the administrative organ may institute legal proceedings in the people's court. Administrative compensation cases may be mediated.

Article 52 — Where an administrative organ or its functionary, in undertaking a specific administrative act, infringes upon the lawful rights and interests of a citizen, legal person, or other organization and causes damage, the administrative organ or the administrative organ to which the functionary belongs shall be responsible for compensation. After making compensation, the administrative organ shall order the functionary who committed intentional or gross negligence to bear part or all of the compensation expenses. The people's governments at various levels may order the responsible administrative organs to bear part or all of the compensation expenses. The specific measures shall be prescribed by the State Council.

Chapter X — Administrative Litigation Involving Foreign Interests

Article 53 — Where a foreigner, stateless person, or foreign organization institutes legal proceedings in the People's Republic of China, the provisions of this Law shall apply, except as otherwise provided by law.

Article 54 — Foreigners, stateless persons, and foreign organizations shall have the same procedural rights and obligations as citizens, legal persons, or other organizations of the People's Republic of China in instituting legal proceedings in the people's courts. Where the courts of a foreign country impose restrictions on the procedural rights of citizens, legal persons, or other organizations of the People's Republic of China, the people's courts of the People's Republic of China shall apply the principle of reciprocity to the procedural rights of citizens, legal persons, or other organizations of that country.

Article 55 — Where an international treaty concluded or acceded to by the People's Republic of China contains provisions different from this Law, the provisions of the international treaty shall apply, except for those provisions on which the People's Republic of China has declared reservations.

Article 56 — Where a foreigner, stateless person, or foreign organization entrusts a lawyer to act as its agent ad litem in instituting legal proceedings in the people's courts of the People's Republic of China, the person shall entrust a lawyer of the People's Republic of China.

Chapter XI — Supplementary Provisions

Article 57 — The people's courts shall charge litigation fees for trying administrative cases. The litigation fees shall be borne by the losing party, and both parties shall bear the fees if both are at fault. The specific measures for the collection of litigation fees shall be prescribed separately.

Article 58 — This Law shall take effect as of October 1, 1990.

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