

Administrative Penalty Law of the PRC

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Chapter I — General Provisions

Article 1 — This Law is enacted in accordance with the Constitution for the purposes of standardizing the creation and implementation of administrative penalties, ensuring and supervising the effective functioning of administrative authorities, safeguarding public interests and social order, and protecting the legitimate rights and interests of citizens, legal persons, and other organizations.

Article 2 — "Administrative penalty" means an act whereby an administrative authority imposes, in accordance with the law, a sanction for the purpose of punishment on a citizen, legal person, or other organization that violates the administrative order.

Article 3 — Where there is no statutory basis or the statutory procedure has not been observed, an administrative penalty shall be invalid.

Article 4 — Administrative penalties shall be imposed on the basis of facts and shall be commensurate with the facts, nature, circumstances, and degree of social harm of the violation.

Article 5 — Administrative penalties shall adhere to the principle of combining punishment with education, and shall encourage citizens, legal persons, or other organizations to voluntarily comply with the law.

Article 6 — Citizens, legal persons, or other organizations subject to administrative penalties shall have the right to make statements and to defend themselves. Any party who refuses to accept an administrative penalty shall have the right to apply for administrative reconsideration or bring an administrative lawsuit in accordance with the law. Where a party suffers damage as a result of an administrative penalty unlawfully imposed by an administrative authority, the party shall have the right to claim compensation in accordance with the law.

Article 7 — Where a violation of the administrative order constitutes a crime, criminal liability shall be investigated in accordance with the law, and administrative penalties shall not be used as a substitute for criminal punishment.

Chapter II — Types and Creation of Administrative Penalties

Article 8 — Types of administrative penalties shall include: (1) Warning and circulation of criticism; (2) Fines; (3) Confiscation of illegal gains and confiscation of illegal property; (4) Ordering suspension of production or business, ordering closure; (5) Temporarily withholding or revoking permits, temporarily withholding or revoking licenses; (6) Restriction of the right to carry out production or business activities, restriction of employment; (7) Administrative detention; (8) Other administrative penalties prescribed by laws and administrative regulations.

Article 9 — Laws may create various types of administrative penalties. Administrative detention may only be created by law.

Article 10 — Administrative regulations may create administrative penalties other than restriction of personal freedom. Where specific provisions on administrative penalties for violations of the law need to be stipulated by administrative regulations, such provisions shall be stipulated within the scope of the conduct and types and extent of penalties prescribed by the law.

Article 11 — Local regulations may create administrative penalties other than restriction of personal freedom and revocation of business permits or licenses. Where specific provisions on administrative penalties for violations of the law or administrative regulations need to be stipulated by local regulations, such provisions shall be stipulated within the scope of the conduct and types and extent of penalties prescribed by the law or administrative regulations.

Article 12 — Departmental rules of the State Council may, within the scope of the conduct and types and extent of penalties prescribed by laws and administrative regulations, stipulate specific provisions on administrative penalties. Where there is no specific provision in laws or administrative regulations, departmental rules of the State Council may create administrative penalties of warning, circulation of criticism, or fines. The maximum amount of a fine shall be prescribed by the State Council.

Article 13 — Rules of local governments may create administrative penalties of warning, circulation of criticism, or fines within the scope of the conduct and types and extent of penalties prescribed by laws and regulations. The maximum amount of a fine shall be prescribed by the standing committees of the people's

congresses of provinces, autonomous regions, or centrally-administered municipalities.

Article 14 — No administrative penalty of any kind may be created by any other regulatory document other than those provided for in Articles 9, 10, 11, 12, and 13 of this Law.

Chapter III — Organs Implementing Administrative Penalties

Article 15 — Administrative penalties shall be imposed by administrative authorities having the power to impose administrative penalties within the scope of their statutory functions and powers.

Article 16 — The State Council or the people's government of a province, autonomous region, or centrally-administered municipality authorized by the State Council may decide that an administrative authority shall exercise the power to impose administrative penalties of other relevant administrative authorities. The power to impose administrative penalties involving restriction of personal freedom may only be exercised by the public security authorities.

Article 17 — Organizations authorized by laws or regulations to administer public affairs may impose administrative penalties within the scope of their statutory authorization.

Article 18 — In accordance with the provisions of laws, regulations, or rules, an administrative authority may, within the scope of its statutory authority, entrust an organization meeting the conditions prescribed in Article 19 of this Law to implement administrative penalties. The administrative authority shall not entrust the implementation of administrative penalties to any other organization or individual. The entrusting administrative authority shall be responsible for supervising the implementation of administrative penalties by the entrusted organization within the scope of entrustment, and shall bear legal responsibility for the consequences of such implementation. The entrusted organization shall implement administrative penalties within the scope of entrustment in the name of the entrusting administrative authority, and shall not re-entrust the entrustment to any other organization or individual.

Article 19 — An entrusted organization shall meet the following conditions: (1) Being a public institution established in accordance with the law; (2) Having staff familiar with relevant laws, regulations, rules, and business operations; (3) Where technical examination or technical evaluation is required, having the conditions to organize such examination or evaluation.

Chapter IV — Jurisdiction and Application

Article 20 — Administrative penalties shall be under the jurisdiction of the administrative authorities of the local people's governments at or above the county level in the place where the violation occurs, unless otherwise provided for by laws, administrative regulations, or departmental rules.

Article 21 — Where two or more administrative authorities have jurisdiction over the same violation, the administrative authority that first initiates the case shall have jurisdiction. Where jurisdiction is unclear or there is a dispute over jurisdiction, the matter shall be resolved through consultation; where consultation fails, the common superior administrative authority at the next higher level shall designate jurisdiction.

Article 22 — Where an administrative authority finds that a violation constitutes a crime, it shall promptly transfer the case to the judicial authorities for investigation of criminal liability in accordance with the law.

Article 23 — Where a party is subject to an administrative penalty due to a violation, and the administrative authority orders the party to make corrections or to rectify within a prescribed time limit, the administrative penalty shall not be a substitute for such correction or rectification.

Article 24 — No more than one fine shall be imposed on a party for the same violation. Where a violation involves two or more provisions of laws, regulations, or rules, and the various provisions provide for fines, the fine shall be imposed in accordance with the provision stipulating a higher amount.

Article 25> — Where the facts of a violation cannot be established, no administrative penalty shall be imposed.

Article 26 — The standard of proof for an administrative penalty shall be the standard of clear and convincing evidence. Where the facts of a violation are not supported by clear and convincing evidence, no administrative penalty shall be imposed.

Article 27 — Where a violation of the administrative order is minor and corrected in a timely manner, causing no harmful consequences, no administrative penalty shall be imposed. Where a party has evidence to prove that there is no subjective fault, no administrative penalty shall be imposed, unless otherwise provided for by laws or administrative regulations.

Article 28 — A person under the age of 14 who commits a violation shall not be subject to an administrative penalty, and the guardian shall be ordered to discipline the person. A person who has reached the age of 14 but not the age of 18 who commits a violation shall be subject to a lighter or mitigated administrative penalty.

Article 29 — Where a mentally ill person or a person with intellectual disability commits a violation at a time when he is unable to recognize or control his conduct, no administrative penalty shall be imposed, but his guardian shall be ordered to keep him under control and provide treatment. An administrative penalty shall be imposed on an intermittently mentally ill person who commits a violation at a time when he is mentally lucid.

Article 30 — A party shall be subject to a lighter or mitigated administrative penalty under any of the following circumstances: (1) Voluntarily eliminating or mitigating the harmful consequences of the violation; (2) Being coerced or induced by another person to commit the violation; (3) Voluntarily confessing the facts of the violation unknown to the administrative authority; (4) Performing meritorious service; (5) Other circumstances where a lighter or mitigated penalty should be imposed in accordance with the law.

Article 31 — Where the same violation of the administrative order by a party violates provisions of laws, regulations, or rules and should be subject to an administrative penalty, the penalty shall be imposed in accordance with the provision stipulating the more severe penalty, provided that one penalty is sufficient to meet the punitive purpose. The specific measures shall be prescribed by the State Council.

Article 32 — Where a violation constitutes a crime and a people's court sentences the party to criminal detention or a fixed-term imprisonment, and the administrative authority has already imposed administrative detention on the party, the period of such detention shall be deducted from the corresponding sentence in accordance with the law. Where a violation constitutes a crime and a people's court imposes a fine on the party, and the administrative authority has already imposed a fine on the party, the amount of such fine shall be deducted from the corresponding fine. Where an administrative authority has not yet imposed an administrative penalty on a party, and the matter involves a crime for which the judicial authorities have already decided not to prosecute or have exempted the party from criminal punishment, the administrative authority may still impose an administrative penalty.

Chapter V — Decision on Administrative Penalties

Article 33 — Before making a decision on an administrative penalty, an administrative authority shall inform the party of the content, facts, reasons, and basis of the penalty to be imposed, and shall inform the party of the rights to make statements, to defend itself, and to request a hearing, and other rights enjoyed in accordance with the law. The administrative authority shall not impose a heavier penalty as a result of the party's exercise of its rights.

Article 34 — A party shall have the right to make statements and to defend itself. An administrative authority shall fully hear the opinions of the party and shall review the facts, reasons, and evidence adduced by the party. Where the facts, reasons, or evidence adduced by the party are sustained, the administrative authority

shall adopt them. An administrative authority shall not impose a heavier penalty as a result of the party making statements or defending itself.

Article 35 — The collection of evidence for administrative penalties may be conducted through methods such as inspection, examination, testing, and technical monitoring. Evidence that has been collected by illegal means shall not be used as the basis for determining the facts of a violation. Where evidence is collected through secret investigations or other means, the collection shall be conducted in accordance with the provisions of laws and regulations.

Article 36 — An administrative penalty may be imposed through a simplified procedure where the facts of the violation are clearly established, the statutory basis exists, and the penalty is a warning or a fine of not more than RMB 200 on a citizen or a fine of not more than RMB 3,000 on a legal person or other organization. Where the provisions of laws provide otherwise, those provisions shall apply.

Article 37 — Where a violation is not discovered within two years, no administrative penalty shall be imposed. Where the violation involves the safety of citizens' lives or health or financial security and causes harmful consequences, the period specified in the preceding paragraph shall be extended to five years, unless otherwise provided for by laws. The period shall run from the date on which the violation occurs; where the violation is of a continuous or continuing nature, the period shall run from the date on which the violation ceases.

Article 38 — Before making a decision to impose an administrative penalty of ordering suspension of production or business, ordering closure, revoking a permit or license, or imposing a relatively large fine, the administrative authority shall inform the party of the right to request a hearing. Where the party requests a hearing, the administrative authority shall organize a hearing. The party shall not bear the expenses of the hearing organized by the administrative authority.

Article 39 — An administrative penalty decision shall be rendered in writing. The written decision on an administrative penalty shall set forth the following particulars: (1) The name or title and address of the party; (2) The facts and evidence of the violation; (3) The type and basis of the administrative penalty; (4) The manner and time limit for enforcement of the administrative penalty; (5) The means and time limit for applying for administrative reconsideration or bringing an administrative lawsuit against the administrative penalty decision; (6) The name of the administrative authority that made the administrative penalty decision and the date of the decision. The written decision on an administrative penalty shall be sealed by the administrative authority that made the decision.

Article 40 — Where the provisions of this Law on information disclosure, statements and defenses, hearing, service, and other procedures are not complied with, the administrative penalty decision shall be invalid.

Chapter VI — Enforcement of Administrative Penalties

Article 41 — A party shall perform the administrative penalty decision within the prescribed time limit after the decision takes effect. Where the party fails to bring an administrative lawsuit or apply for administrative reconsideration within the statutory time limit and fails to perform the administrative penalty decision, the administrative authority that made the decision may apply to a people's court for compulsory enforcement, or enforce the decision in accordance with the law.

Article 42 — A party shall pay fines to the designated bank within 15 days from the date of receipt of the written administrative penalty decision. The bank shall accept the fines and remit them directly to the state treasury.

Article 43 — Where a party has genuine difficulty in paying a fine on time, the party may, upon application to and approval by the administrative authority, postpone or pay the fine in installments.

Article 44 — Except for fines that should be confiscated on the spot in accordance with the provisions of Articles 47 and 48 of this Law, an administrative authority that makes a decision on an administrative penalty and its law enforcement personnel shall not collect fines themselves. A party shall have the right to refuse to pay a fine to an administrative authority that collects fines in violation of the provisions of this Article.

Article 45 — Where an administrative authority that makes a decision on an administrative penalty collects a fine in accordance with the provisions of Articles 47 and 48 of this Law, it shall issue a receipt for the fine printed and issued by the finance department uniformly. Where a receipt for the fine printed and issued by the finance department uniformly is not issued, the party shall have the right to refuse to pay the fine.

Article 46 — Fines, confiscated illegal gains, or the money derived from the auction of confiscated illegal property shall be handed over to the state treasury in full. No administrative authority or individual may, in any form, retain, privately divide, or secretly dispose of such money or property. The finance department shall not, in any form, return the fines, confiscated illegal gains, or the money derived from the auction of confiscated illegal property to the administrative authority that made the decision.

Chapter VII — Legal Liability

Article 47 — Where an administrative authority imposes an administrative penalty without a statutory basis, or without observing the statutory procedure, or without authorization, the superior administrative authority or the relevant authority shall order it to make corrections and may impose sanctions on the persons directly in charge and other persons directly responsible in accordance with the law.

Article 48 — Where an administrative authority uses fine receipts that are not printed and issued by the finance department uniformly, the superior administrative authority or the relevant authority shall confiscate and destroy the illegal receipts and impose sanctions on the persons directly in charge and other persons directly responsible in accordance with the law.

Article 49 — Where an administrative authority retains or privately divides fines or confiscated property in violation of the provisions of this Law, the finance department or relevant authority shall recover the amount retained or privately divided and impose sanctions on the persons directly in charge and other persons directly responsible in accordance with the law. Where the circumstances are serious and constitute a crime, criminal liability shall be investigated in accordance with the law.

Article 50 — Where a functionary of an administrative authority, taking advantage of his position, accepts or demands property from another person, or accepts property from another person and issues a receipt, and the case constitutes a crime, criminal liability shall be investigated in accordance with the law. Where the circumstances are minor and a crime is not constituted, administrative sanctions shall be imposed in accordance with the law.

Chapter VIII — Supplementary Provisions

Article 51 — This Law shall come into force on July 15, 2021. The Administrative Penalty Law of the People's Republic of China adopted at the 4th Session of the 8th National People's Congress on March 17, 1996, amended on August 27, 2009, and amended on September 1, 2017, shall be repealed simultaneously.

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