Administrative Reconsideration 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 preventing and correcting illegal or improper specific administrative acts, protecting the lawful rights and interests of citizens, legal persons and other organizations, safeguarding and supervising the exercise of administrative powers by administrative organs in accordance with the law, and ensuring the proper implementation of laws and regulations.

Article 2 — Where a citizen, legal person or other organization considers that a specific administrative act of an administrative organ has infringed upon his or its lawful rights and interests, he or it may file an application for administrative reconsideration with an administrative organ in accordance with this Law.

Article 3 — The administrative reconsideration organ shall perform its duties of administrative reconsideration in accordance with this Law. The administrative reconsideration organ shall be responsible for legal affairs and shall specifically handle administrative reconsideration matters and perform the following duties: (1) accepting applications for administrative reconsideration; (2) conducting investigations and

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collecting evidence from the relevant organizations and personnel, and accessing documents and materials; (3) examining whether the specific administrative act under application for administrative reconsideration is lawful and appropriate, and drafting a decision on administrative reconsideration; (4) handling or referring for handling applications for the review of the provisions specified in Article 7 of this Law; (5) proposing suggestions for the handling of violations of this Law by administrative organs in accordance with the prescribed authority and procedures; (6) handling matters relating to administrative litigation in response to a lawsuit against a decision on administrative reconsideration; and (7) other duties prescribed by laws and regulations. Where an administrative organ does not have a body responsible for legal affairs, the specific matters relating to administrative reconsideration shall be handled by its office.

Article 4 — When performing its duties of administrative reconsideration, the administrative reconsideration organ shall follow the principles of legality, fairness, openness, timeliness and convenience for the people, adhere to correcting mistakes, and ensure the proper implementation of laws and regulations.

Article 5 — Where a citizen, legal person or other organization is dissatisfied with a decision on administrative reconsideration, he or it may file an administrative lawsuit with a people's court in accordance with the provisions of the Administrative Litigation Law, except where the decision on administrative reconsideration is final as provided by law. Where a party applies for administrative reconsideration and the administrative reconsideration organ refuses to accept the application in accordance with the law, or fails to make a reply within the time limit for administrative reconsideration after accepting the application, the party may, within 15 days from the date of receipt of the notice of refusal to accept the application or from the expiration of the time limit for administrative reconsideration, file an administrative lawsuit with a people's court in accordance with the law.

Chapter II — Scope of Administrative Reconsideration

Article 6 — Under any of the following circumstances, a citizen, legal person or other organization may apply for administrative reconsideration in accordance with this Law: (1) being dissatisfied with an administrative penalty decision made by an administrative organ, such as a warning, fine, confiscation of illegal gains, confiscation of illegal property, order to suspend production or business operation, temporary suspension or revocation of a permit, temporary suspension or revocation of a license, or administrative detention; (2) being dissatisfied with a decision made by an administrative organ to restrict personal freedom or to seal up, seize or freeze property or other administrative compulsory measures; (3) being dissatisfied with a decision made by an administrative organ to alter, suspend or revoke a permit, license, qualification certificate or other certification document; (4) being dissatisfied with a decision made by an administrative organ on the ownership or right to use natural resources such as land, mineral resources, water, forests, mountains, grasslands, wasteland, tidal flats and sea areas; (5) considering that an administrative organ has infringed upon his or its lawful operational autonomy; (6) considering that an administrative organ has altered or abolished an agricultural contract, infringing upon his or its lawful rights and interests; (7) considering that an administrative organ has illegally raised funds, collected property, apportioned expenses or illegally required performance of other obligations; (8) considering that an administrative organ that should issue a permit, license, qualification certificate or other certification document in accordance with the law has failed to issue such document, or has refused to issue such document, or has failed to make a reply; (9) applying to an administrative organ for performance of the statutory duty of protecting personal rights, property rights or the right to education, and the administrative organ has failed to perform such duty in accordance with the law; (10) applying to an administrative organ for the payment of a pension, social insurance benefits or minimum living allowance in accordance with the law, and the administrative organ has failed to pay such amount in accordance with the law; (11) considering that other specific administrative acts of an administrative organ have infringed upon his or its lawful rights and interests; or (12) considering that other specific administrative acts of an administrative organ have infringed upon his or its lawful rights and interests.

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Article 7 — Where a citizen, legal person or other organization considers that the basis on which a specific administrative act of an administrative organ is made, namely the following provisions, is illegal, he or it may, when filing an application for administrative reconsideration against the specific administrative act, simultaneously file an application for review of such provisions: (1) provisions of the departments of the State Council; (2) provisions of the local people's governments at or above the county level and their working departments; or (3) provisions of the people's governments of townships or towns. The provisions specified in the preceding paragraph do not include rules and regulations formulated by the departments and commissions of the State Council or the local people's governments. Applications for review of regulations shall be handled in accordance with the laws and administrative regulations on the archival filing and review of regulations.

Article 8 — Dissatisfaction with an administrative sanction or other personnel handling decision made by an administrative organ shall not be subject to administrative reconsideration, and an appeal shall be filed in accordance with the relevant laws and administrative regulations. Dissatisfaction with the mediation or handling of civil disputes by an administrative organ shall not be subject to administrative reconsideration, and an application for arbitration or a lawsuit shall be filed with a people's court in accordance with the law.

Chapter III — Application for Administrative Reconsideration

Article 9 — A citizen, legal person or other organization that considers that a specific administrative act has infringed upon his or its lawful rights and interests may, within 60 days from the date on which he or it became aware of the specific administrative act, file an application for administrative reconsideration, unless the time limit prescribed by law exceeds 60 days. Where the statutory time limit for filing an application is delayed due to force majeure or other legitimate reasons, the time limit shall continue to run from the date on which the impediment is removed.

Article 10 — A citizen, legal person or other organization that applies for administrative reconsideration in accordance with this Law shall be the applicant. Where a citizen who has the right to apply for administrative reconsideration dies, his or her close relatives may apply for administrative reconsideration. Where a citizen who has the right to apply for administrative reconsideration is a person without civil capacity or with limited civil capacity, his or her legal representative may apply for administrative reconsideration on his or her behalf. Where a legal person or other organization that has the right to apply for administrative reconsideration is terminated, the legal person or other organization that succeeds to its rights may apply for administrative reconsideration. Other citizens, legal persons or organizations that have an interest in the specific administrative act under application for administrative reconsideration may participate in the administrative reconsideration as a third party.

Article 11 — An applicant may apply for administrative reconsideration in writing or orally. Where an applicant applies orally, the administrative reconsideration organ shall record on the spot the basic information of the applicant, the claim for administrative reconsideration, the main facts, reasons and time for filing the application for administrative reconsideration.

Article 12 — Where a citizen, legal person or other organization is dissatisfied with a specific administrative act of a working department of a local people's government at or above the county level, the applicant may choose to apply for administrative reconsideration to the people's government at the same level, or to the competent authority at the next higher level. Where a citizen, legal person or other organization is dissatisfied with a specific administrative act of a state security organ, the applicant shall apply for administrative reconsideration to the competent authority at the next higher level. Where a citizen, legal person or other organization is dissatisfied with a specific administrative act of an administrative organ exercising vertical leadership, such as a customs authority, financial authority, state tax authority or foreign exchange control authority, the applicant shall apply for administrative reconsideration to the competent authority at the next higher level.

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Article 13 — Where a citizen, legal person or other organization is dissatisfied with a specific administrative act of a local people's government at any level, the applicant shall apply for administrative reconsideration to the local people's government at the next higher level. Where a citizen, legal person or other organization is dissatisfied with a specific administrative act of a dispatched agency of a local people's government at the county level or above established in accordance with the law, the applicant shall apply for administrative reconsideration to the people's government that established the dispatched agency.

Article 14 — Where a citizen, legal person or other organization is dissatisfied with a specific administrative act of a department of the State Council or the people's government of a province, autonomous region or municipality directly under the Central Government, the applicant shall apply for administrative reconsideration to the department of the State Council or the people's government of the province, autonomous region or municipality directly under the Central Government that performed the specific administrative act. Where a citizen, legal person or other organization is dissatisfied with a decision on administrative reconsideration, he or it may file an administrative lawsuit with a people's court, or may apply to the State Council for a ruling, and the State Council shall make a final ruling in accordance with the provisions of this Law.

Article 15 — Where a citizen, legal person or other organization is dissatisfied with a specific administrative act of an organization authorized by laws or regulations, the applicant shall apply for administrative reconsideration to the local people's government, the working department of the local people's government or the department of the State Council that directly administers the organization. Where a citizen, legal person or other organization is dissatisfied with a specific administrative act of two or more administrative organs jointly performing the specific administrative act, the applicant shall apply for administrative reconsideration to their common superior administrative organ. Where a citizen, legal person or other organization is dissatisfied with a specific administrative act of a dispatched agency of an administrative organ, the applicant shall apply for administrative reconsideration to the administrative organ that established the dispatched agency.

Article 16 — Where a citizen, legal person or other organization that has applied for administrative reconsideration and the administrative reconsideration organ has accepted the application in accordance with the law, or where the law or regulation provides that an application for administrative reconsideration shall be filed with the administrative reconsideration organ before an administrative lawsuit can be filed, the applicant shall not file an administrative lawsuit with a people's court during the period of administrative reconsideration. Where a citizen, legal person or other organization has filed an administrative lawsuit with a people's court and the people's court has accepted the case in accordance with the law, the applicant shall not apply for administrative reconsideration.

Chapter IV — Acceptance of Administrative Reconsideration

Article 17 — The administrative reconsideration organ shall, within five days from the date of receipt of the application for administrative reconsideration, conduct an examination. Where the application does not comply with the provisions of this Law, the administrative reconsideration organ shall decide not to accept the application and notify the applicant in writing. Where the application complies with the provisions of this Law but does not fall under the acceptance scope of the administrative reconsideration organ, the administrative reconsideration organ shall notify the applicant of the administrative reconsideration organ that should accept the application. Except for the circumstances specified in the preceding paragraph, an application for administrative reconsideration shall be deemed to have been accepted on the date of receipt by the body responsible for legal affairs of the administrative reconsideration organ.

Article 18 — Where the departments of the State Council or the people's governments of provinces, autonomous regions or municipalities directly under the Central Government are responsible for administrative reconsideration, in addition to the provisions of this Law, the specific acceptance and handling

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procedures shall be formulated by the relevant departments of the State Council or the people's governments of provinces, autonomous regions or municipalities directly under the Central Government.

Article 19 — Where laws or regulations provide that an application for administrative reconsideration shall be filed with the administrative reconsideration organ before an administrative lawsuit can be filed, and the administrative reconsideration organ decides not to accept the application, or fails to make a reply within the time limit for administrative reconsideration after accepting the application, the citizen, legal person or other organization may, within 15 days from the date of receipt of the notice of refusal to accept the application or from the expiration of the time limit for administrative reconsideration, file an administrative lawsuit with a people's court in accordance with the law.

Article 20 — Where a citizen, legal person or other organization applies for administrative reconsideration in accordance with the law, and the administrative reconsideration organ refuses to accept the application without legitimate reasons, the superior administrative organ shall order it to accept the application. When necessary, the superior administrative organ may also directly accept the application.

Chapter V — Decision on Administrative Reconsideration

Article 21 — During the period of administrative reconsideration, the execution of the specific administrative act shall not be suspended, except under any of the following circumstances, in which case the execution may be suspended: (1) the respondent considers it necessary to suspend the execution; (2) the administrative reconsideration organ considers it necessary to suspend the execution; (3) the applicant applies for suspension of execution and the administrative reconsideration organ considers the application reasonable and decides to suspend the execution; or (4) the law provides for suspension of execution.

Article 22 — Administrative reconsideration shall in principle be conducted by written examination. Provided, however, that when the applicant so requests, or when the body responsible for legal affairs of the administrative reconsideration organ considers it necessary, an investigation may be conducted to collect evidence from the relevant organizations and personnel, and the opinions of the applicant, the respondent and a third party may be heard.

Article 23 — The body responsible for legal affairs of the administrative reconsideration organ shall, within seven days from the date of acceptance of the application for administrative reconsideration, send a copy of the application for administrative reconsideration or a copy of the written record of the application for administrative reconsideration to the respondent. The respondent shall, within 10 days from the date of receipt of the copy of the application or the copy of the written record of the application, submit a written reply and produce the evidence and basis on which the specific administrative act was made and other relevant materials. Where the applicant or a third party may access the written reply submitted by the respondent and the evidence, basis and other relevant materials on which the specific administrative act was made, the administrative reconsideration organ shall not refuse, except where state secrets, commercial secrets or personal privacy are involved.

Article 24 — During the process of administrative reconsideration, the respondent shall not collect evidence from the applicant or other relevant organizations or individuals on its own. Where the respondent fails to submit the written reply or produce the evidence and basis on which the specific administrative act was made in accordance with the provisions of Article 23 of this Law, the specific administrative act shall be deemed to have been made without evidence or basis, and the administrative reconsideration organ shall decide to revoke the specific administrative act.

Article 25 — Before a decision on administrative reconsideration is made, the applicant may withdraw the application for administrative reconsideration upon stating the reasons. Withdrawal of the application for administrative reconsideration may also be made upon explanation of the situation. Where the application for administrative reconsideration is withdrawn, the administrative reconsideration shall be terminated.

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Article 26 — Where an applicant simultaneously files an application for review of the relevant provisions in accordance with Article 7 of this Law, and the administrative reconsideration organ has the authority to handle the provisions, the administrative reconsideration organ shall handle the provisions within 30 days in accordance with the law. Where the administrative reconsideration organ does not have the authority to handle the provisions, the administrative reconsideration organ shall refer the provisions to the administrative organ that has the authority to handle them within seven days in accordance with the statutory procedures, and the administrative organ that has the authority to handle the provisions shall handle them within 60 days in accordance with the law. During the period of handling the provisions, the examination of the specific administrative act shall be suspended.

Article 27 — Where the administrative reconsideration organ, during the examination of a specific administrative act of the respondent, considers that the basis on which the specific administrative act is made is illegal, and the administrative reconsideration organ has the authority to handle the basis, the administrative reconsideration organ shall handle the basis within 30 days in accordance with the law. Where the administrative reconsideration organ does not have the authority to handle the basis, the administrative reconsideration organ shall refer the basis to the state organ that has the authority to handle the basis in accordance with the statutory procedures. During the period of handling the basis, the examination of the specific administrative act shall be suspended.

Article 28 — The body responsible for legal affairs of the administrative reconsideration organ shall examine the specific administrative act of the respondent and submit its opinions. After the opinions are approved by the responsible person of the administrative reconsideration organ or discussed and approved by a collective meeting, a decision on administrative reconsideration shall be made in accordance with the following provisions: (1) where the specific administrative act is made with clear facts, conclusive evidence, correct application of the basis, lawful procedures and appropriate content, the specific administrative act shall be upheld; (2) where the respondent fails to perform its statutory duties, the respondent shall be ordered to perform its duties within a certain time limit; (3) where the specific administrative act is under any of the following circumstances, the decision shall be made to revoke, alter or confirm that the specific administrative act is illegal. Where the decision is made to revoke or confirm that the specific administrative act is illegal, the respondent may be ordered to re-make the specific administrative act within a certain time limit: (a) the main facts are not clear and the evidence is insufficient; (b) the application of the basis is erroneous; (c) the statutory procedures are violated; (d) the act exceeds or abuses its authority; or (e) the specific administrative act is clearly improper; or (4) where the respondent fails to submit a written reply or produce the evidence and basis on which the specific administrative act was made in accordance with the provisions of Article 23 of this Law, it shall be deemed that the specific administrative act was made without evidence or basis, and the decision shall be made to revoke the specific administrative act. Where the administrative reconsideration organ orders the respondent to re-make the specific administrative act, the respondent shall not re-make the same or substantially the same specific administrative act on the basis of the same facts and reasons.

Article 29 — Where the applicant, when applying for administrative reconsideration, simultaneously makes a claim for administrative compensation, and the administrative reconsideration organ, when deciding to revoke or alter the specific administrative act or confirming that the specific administrative act is illegal, shall simultaneously decide that the respondent shall make compensation in accordance with the law. Where the applicant, when applying for administrative reconsideration, does not make a claim for administrative compensation, the administrative reconsideration organ, when deciding to revoke or alter the fine, confiscate property, or seal up, seize or freeze property, or when deciding to revoke or alter the apportionment of expenses, shall simultaneously order the respondent to return the property, lift the compulsory measures for sealing up, seizing or freezing the property, or compensate the corresponding amount.

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Article 30 — Where a citizen, legal person or other organization considers that a specific administrative act of an administrative organ has infringed upon his or its lawful rights and interests in respect of the ownership or right to use natural resources such as land, mineral resources, water, forests, mountains, grasslands, wasteland, tidal flats and sea areas, the citizen, legal person or other organization shall first apply for administrative reconsideration. Where the citizen, legal person or other organization is dissatisfied with the decision on administrative reconsideration, he or it may file an administrative lawsuit with a people's court in accordance with the law. In accordance with the provisions of the State Council or the people's governments of provinces, autonomous regions or municipalities directly under the Central Government on the survey and delimitation of administrative areas or the adjustment and expropriation of land, the decisions of the people's governments of provinces, autonomous regions or municipalities directly under the Central Government on confirming the ownership or right to use natural resources such as land, mineral resources, water, forests, mountains, grasslands, wasteland, tidal flats and sea areas shall be final.

Article 31 — The administrative reconsideration organ shall make a decision on administrative reconsideration within 60 days from the date of acceptance of the application, unless the time limit prescribed by law for administrative reconsideration is less than 60 days. Where the circumstances are complex and the decision cannot be made within the prescribed time limit, the time limit may be appropriately extended with the approval of the responsible person of the administrative reconsideration organ, and the applicant and the respondent shall be notified. Provided, however, that the extension shall not exceed 30 days. When the administrative reconsideration organ makes a decision on administrative reconsideration, it shall prepare a written decision on administrative reconsideration and serve the decision with its official seal.

Article 32 — Once a written decision on administrative reconsideration is served, it shall become legally effective. The respondent shall perform the decision on administrative reconsideration. Where the respondent fails to perform or delays in performing the decision on administrative reconsideration without legitimate reasons, the administrative reconsideration organ or the relevant superior administrative organ shall order it to perform within a time limit.

Article 33 — Where the applicant fails to file a lawsuit within the time limit and fails to perform the decision on administrative reconsideration or fails to perform the final ruling on administrative reconsideration, the following provisions shall apply: (1) where the decision on administrative reconsideration upholds the specific administrative act, the administrative organ that made the specific administrative act shall apply to the people's court for compulsory enforcement, or enforce the decision on its own in accordance with the law; or (2) where the decision on administrative reconsideration alters the specific administrative act, the administrative reconsideration organ shall apply to the people's court for compulsory enforcement, or enforce the decision on its own in accordance with the law.

Chapter VI — Legal Liability

Article 34 — Where an administrative reconsideration organ, in violation of the provisions of this Law, refuses to accept an application for administrative reconsideration that should have been accepted in accordance with the law without legitimate reasons, or fails to refer the application to the administrative organ that has jurisdiction, or fails to make a decision on administrative reconsideration within the statutory time limit after accepting the application, the directly responsible person in charge and other directly responsible persons shall be given administrative sanctions ranging from warning, demerit to serious demerit in accordance with the law. Where the case involves refusal to accept the application after having been ordered to accept it, which causes serious consequences, the directly responsible person in charge and other directly responsible persons shall be given administrative sanctions of demotion, removal from office or dismissal in accordance with the law.

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Article 35 — Where a staff member of an administrative reconsideration organ engages in malpractice for personal gain or other dereliction of duty or malfeasance in the process of administrative reconsideration, the staff member shall be given an administrative sanction ranging from warning, demerit to serious demerit in accordance with the law. Where the circumstances are serious, the staff member shall be given an administrative sanction of demotion, removal from office or dismissal in accordance with the law. Where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 36 — Where a respondent, in violation of the provisions of this Law, fails to submit a written reply or produce the evidence and basis on which the specific administrative act was made and other relevant materials, or obstructs or blocks the applicant or a third party from accessing the written reply and the evidence and basis on which the specific administrative act was made and other relevant materials in accordance with the law, the directly responsible person in charge and other directly responsible persons shall be given an administrative sanction ranging from warning, demerit to serious demerit in accordance with the law. Where the respondent retaliates against the applicant, the directly responsible person in charge and other directly responsible persons shall be given an administrative sanction ranging from warning, demerit to serious demerit in accordance with the law. Where the circumstances are serious, the directly responsible person in charge and other directly responsible persons shall be given an administrative sanction of demotion, removal from office or dismissal in accordance with the law. Where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 37 — Where a respondent fails to perform or delays in performing a decision on administrative reconsideration without legitimate reasons, the directly responsible person in charge and other directly responsible persons shall be given an administrative sanction ranging from warning, demerit to serious demerit in accordance with the law. Where the respondent still refuses to perform after having been ordered to perform, the directly responsible person in charge and other directly responsible persons shall be given an administrative sanction of demotion, removal from office or dismissal in accordance with the law.

Article 38 — Where the body responsible for legal affairs of the administrative reconsideration organ discovers that the respondent has illegal acts and needs to impose sanctions or dispose of the illegal acts, it shall make a suggestion for handling the matter to the relevant administrative organ, and the relevant administrative organ shall handle the matter in accordance with the law and report the result to the administrative reconsideration organ.

Chapter VII — Supplementary Provisions

Article 39 — Administrative reconsideration organs shall not charge any fees to applicants when accepting applications for administrative reconsideration. The expenses for administrative reconsideration activities shall be included in the administrative expenses of the administrative reconsideration organ and shall be guaranteed by the finance department at the corresponding level.

Article 40 — The provisions of the Civil Procedure Law of the People’s Republic of China that are not inconsistent with the nature and characteristics of administrative reconsideration shall apply to the calculation of time periods during administrative reconsideration and the service of documents relating to administrative reconsideration. The provisions of this Law on “five days” and “seven days” in relation to time periods for administrative reconsideration shall refer to working days, excluding statutory holidays.

Article 41 — Foreigners, stateless persons and foreign organizations applying for administrative reconsideration within the territory of the People’s Republic of China shall be governed by this Law.

Article 42 — This Law shall come into force as of October 1, 1999. The amended text (2017 Amendment) shall come into force as of January 1, 2018.

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