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 resolving administrative disputes.

Article 2 — Where citizens, legal persons, or other organizations consider that specific administrative acts of administrative organs have infringed upon their lawful rights and interests, they may file applications for administrative reconsideration with administrative organs in accordance with this Law.

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Article 3 — The administrative reconsideration organ shall perform its reconsideration duties in accordance with the law and shall adhere to the principles of legality, fairness, openness, timeliness, and convenience for the people, and shall adhere to the correction of mistakes to ensure the correct implementation of laws and regulations.

Article 4 — People's governments at or above the county level and other state organs shall, in accordance with the provisions of this Law, perform their respective administrative reconsideration duties. The administrative reconsideration institution of the administrative reconsideration organ shall be responsible for handling reconsideration matters.

Article 5 — The administrative reconsideration organ shall, when conducting administrative reconsideration, apply the system of collective deliberation. The administrative reconsideration institution shall be composed of three or more persons for deliberation.

Chapter II — Scope of Administrative Reconsideration

Article 6 — Under any of the following circumstances, citizens, legal persons, or other organizations may apply for administrative reconsideration in accordance with this Law: (1) refusal to accept an administrative penalty decision made by an administrative organ; (2) refusal to accept a decision on administrative compulsory measures made by an administrative organ; (3) refusal to accept a decision of an administrative organ to modify, suspend, or revoke a permit, license, qualification certificate, or other administrative license; (4) refusal to accept a decision of an administrative organ on the confirmation of the ownership or right of use of natural resources such as land, mineral resources, water, forests, and grasslands; (5) considering that an administrative organ has infringed upon lawful business autonomy; (6) considering that an administrative organ has modified or rescinded an agricultural contract in violation of the law; (7) considering that an administrative organ has illegally raised funds, collected property, apportioned expenses, or illegally required the performance of other obligations; (8) considering that an administrative organ that should issue a permit, license, or qualification certificate in accordance with the law has refused to issue, or failed to respond within the statutory period; (9) applying to an administrative organ for the performance of its statutory duties to protect personal rights, property rights, or the right to education, and the administrative organ has failed to perform; (10) applying to an administrative organ for the payment of pensions, social insurance benefits, or minimum subsistence guarantees in accordance with the law, and the administrative organ has failed to pay; (11) considering that other specific administrative acts of an administrative organ have infringed upon lawful rights and interests.

Article 7 — Where citizens, legal persons, or other organizations consider that the basis on which a specific administrative act of an administrative organ is based is illegal, they may, when applying for administrative reconsideration against the specific administrative act, simultaneously apply for review of the basis to the administrative reconsideration organ. The basis for review as mentioned in the preceding paragraph includes: (1) provisions of departments under the State Council; (2) provisions of local people's governments at or above the county level and their departments; and (3) provisions of people's governments of townships and towns. The preceding paragraph shall not apply to rules and regulations of departments and commissions under the State Council and local people's governments.

Chapter III — Application for Administrative Reconsideration

Article 8 — Citizens, legal persons, or other organizations that consider that specific administrative acts have infringed upon their lawful rights and interests may, within 60 days from the date of knowledge of the specific administrative act, file an application for administrative reconsideration, unless the time limit prescribed by law exceeds 60 days. Where the time limit is delayed due to force majeure or other justifiable reasons, the time limit shall be calculated continuously from the date when the obstacle is removed.

Article 9 — Citizens, legal persons, or other organizations that have applied for administrative reconsideration in accordance with the law and the administrative reconsideration organ has accepted the application in accordance with the law shall not bring an administrative lawsuit with the people's court during the statutory administrative reconsideration period. Where citizens, legal persons, or other organizations have brought an administrative lawsuit with the people's court and the people's court has accepted the case in accordance with the law, they shall not apply for administrative reconsideration.

Article 10 — An applicant applying for administrative reconsideration may submit the application in writing or orally. Where an application is made orally, the administrative reconsideration organ shall record the basic information of the applicant, the claims for administrative reconsideration, and the main facts, grounds, and time of the application for administrative reconsideration on the spot.

Article 11 — Where an applicant applies for administrative reconsideration against 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 to the people's government at the same level or to the competent department at the next higher level.

Where an applicant applies for administrative reconsideration against a specific administrative act of a state security organ, taxation authority, or foreign exchange administration authority, the applicant shall apply to the competent department at the next higher level.

Where an applicant applies for administrative reconsideration against a specific administrative act of a local people's government at any level, the applicant shall apply to the local people's government at the next higher level.

Article 12 — An application for administrative reconsideration may be withdrawn before the administrative reconsideration decision is made. Where an applicant withdraws the application for administrative reconsideration, the administrative reconsideration shall be terminated.

Chapter IV — Acceptance of Administrative Reconsideration

Article 13 — The administrative reconsideration organ shall, within five days from the date of receiving the application for administrative reconsideration, conduct a review. Where the application does not comply with the provisions of this Law, the administrative reconsideration organ shall decide not to accept it and notify the applicant in writing. For applications that comply with the provisions of this Law but do not fall within the scope of acceptance by the organ, the applicant shall be informed to apply to the relevant administrative reconsideration organ.

Article 14 — During the period of administrative reconsideration, the execution of the specific administrative act shall not be suspended, except under any of the following circumstances: (1) the respondent considers it necessary to suspend execution; (2) the administrative reconsideration organ considers it necessary to suspend execution; (3) the applicant applies for suspension of execution and the administrative reconsideration organ considers the request reasonable and decides to suspend execution; or (4) suspension is required by law.

Article 15 — 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 record of the oral application for administrative reconsideration to the respondent. The respondent shall, within 10 days from the date of receiving the copy of the application for administrative reconsideration or the copy of the record of the oral application, submit a written reply and submit the evidence and basis on which the specific administrative act was made and other relevant materials.

Chapter V — Administrative Reconsideration Decision

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Article 16 — The administrative reconsideration organ shall conduct the review on the basis of the law. The administrative reconsideration organ shall have the authority to consult the relevant materials from the respondent and to investigate and collect evidence from relevant organizations and personnel. The applicant and third party shall have the right to consult the respondent's written reply, the evidence and basis on which the specific administrative act was made, and other relevant materials, except for those involving state secrets, commercial secrets, or personal privacy.

Article 17 — The administrative reconsideration organ shall, within 60 days from the date of acceptance of the application, make an administrative reconsideration decision, unless the time limit prescribed by law for administrative reconsideration is less than 60 days. Where the circumstances are complicated and the decision cannot be made within the prescribed time limit, the time limit may be appropriately extended with the approval of the person in charge of the administrative reconsideration organ, and the applicant and the respondent shall be notified, but the extension shall not exceed 30 days at most.

Article 18 — After the administrative reconsideration institution of the administrative reconsideration organ has reviewed the specific administrative act of the respondent, it shall submit its opinion to the person in charge of the administrative reconsideration organ or to the collective discussion for decision. The administrative reconsideration organ shall make an administrative reconsideration decision in accordance with the following provisions: (1) where the determination of facts is clear, the evidence is conclusive, the basis is correct, the procedure is lawful, and the content is appropriate, the specific administrative act shall be upheld; (2) where the respondent fails to perform its statutory duties, the respondent shall be ordered to perform within a certain time limit; (3) where the main facts are unclear and the evidence is insufficient, the basis is incorrect, the statutory procedure has been violated, the authority has been exceeded or the power has been abused, or the specific administrative act is obviously improper, the specific administrative act shall be revoked, modified, or confirmed as illegal; and (4) where the respondent fails to submit a written reply or fails to submit the evidence and basis on which the specific administrative act was made and other relevant materials within the prescribed time limit, the specific administrative act shall be deemed to have no evidence and basis, and the administrative reconsideration decision shall revoke the specific administrative act.

Article 19 — Where the administrative reconsideration organ orders the respondent to perform a new specific administrative act, the respondent shall not re-perform a specific administrative act identical or essentially identical to the original specific administrative act on the basis of the same facts and grounds.

Article 20 — Where an applicant refuses to accept an administrative reconsideration decision, the applicant may bring an administrative lawsuit with the people's court in accordance with the provisions of the Administrative Litigation Law within 15 days from the date of receiving the administrative reconsideration decision, unless otherwise provided by law.

Chapter VI — Legal Liability

Article 21 — Where a respondent violates the provisions of this Law by failing to submit a written reply or failing to submit the evidence and basis on which the specific administrative act was made and other relevant materials, or by obstructing or preventing, in disguised form, citizens, legal persons, or other organizations from applying for administrative reconsideration in accordance with the law, the administrative reconsideration organ or the relevant superior administrative organ shall order it to make corrections and may give an administrative sanction to the directly responsible person in charge and other directly responsible persons in accordance with the law.

Article 22 — Where an administrative reconsideration organ violates the provisions of this Law by refusing to accept without justifiable reasons an application for administrative reconsideration that should be accepted in accordance with the law, failing to make an administrative reconsideration decision within the prescribed time limit, engaging in malpractices for personal gain or other acts of dereliction of duty, the directly

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responsible person in charge and other directly responsible persons shall be given administrative sanctions in accordance with the law; where the circumstances are serious and a crime is constituted, criminal liability shall be investigated in accordance with the law.

Chapter VII — Supplementary Provisions

Article 23 — The administrative reconsideration organ shall not charge any fees to the applicant for accepting an application for administrative reconsideration. Funds required for administrative reconsideration activities shall be included in the administrative budget of the organ and shall be guaranteed by the finance department at the same level.

Article 24 — The calculation of periods and the service of administrative reconsideration documents shall be governed by the relevant provisions of the Civil Procedure Law of the People's Republic of China regarding periods and service. The provisions of this Law on "five days" and "seven days" in respect of administrative reconsideration periods refer to working days, excluding statutory holidays.

Article 25 — This Law shall come into force on January 1, 2024.

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