Law on Administrative Compulsion of the PRC

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Adopted at the 21st Session of the Standing Committee of the 11th National People's Congress on June 30, 2011
Effective: January 1, 2012

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Chapter I — General Provisions

Article 1 — This Law is enacted for the purpose of regulating the establishment and implementation of administrative compulsion, safeguarding and supervising administrative organs in the lawful performance of their duties, protecting the lawful rights and interests of citizens, legal persons and other organizations, and maintaining the public interest and social order.

Article 2 — The term "administrative compulsion" as used in this Law includes administrative compulsory measures and administrative compulsory enforcement.

The term "administrative compulsory measures" means measures temporarily restricting the personal freedom of citizens or temporarily controlling the property of citizens, legal persons or other organizations taken by an administrative organ in the course of administration in accordance with the law for the purpose of

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stopping illegal acts, preventing damage, controlling risks and expanding dangers.

The term "administrative compulsory enforcement" means the compulsory performance of obligations by an administrative organ or an application by an administrative organ to a people's court for compulsory performance of obligations in accordance with the law against citizens, legal persons or other organizations that fail to perform administrative decisions in accordance with the law.

Article 3 — The establishment and implementation of administrative compulsion shall be governed by this Law. Where administrative compulsory measures are taken in response to the occurrence or imminent occurrence of public emergencies, such as natural disasters, accidental disasters, public health incidents and social security incidents, or emergency measures or temporary measures are taken in accordance with relevant laws and administrative regulations, such measures shall be governed by the provisions of relevant laws and administrative regulations.

Article 4 — The establishment and implementation of administrative compulsion shall be in accordance with the statutory powers, scope, conditions and procedures.

Article 5 — The establishment and implementation of administrative compulsion shall be appropriate. Where non-compulsory means can achieve the purpose of administration, administrative compulsion shall not be established or implemented.

Article 6 — When implementing administrative compulsion, administrative organs shall adhere to the principle of combining education with compulsion.

Article 7 — Administrative organs and their staff members shall not seek benefits by taking advantage of administrative compulsion.

Article 8 — Citizens, legal persons and other organizations shall have the right to make statements and defenses in accordance with the law in respect of administrative compulsion implemented by administrative organs; they shall have the right to apply for administrative reconsideration or bring administrative lawsuits in accordance with the law; and where their lawful rights and interests are damaged as a result of illegal administrative compulsion by an administrative organ, they shall have the right to claim compensation in accordance with the law.

Chapter II — Types and Establishment of Administrative Compulsion

Article 9 — The types of administrative compulsory measures are as follows:

(1) Restricting personal freedom;

(2) Sealing up premises, facilities or property;

(3) Seizing property;

(4) Freezing deposits or remittances;

(5) Other administrative compulsory measures.

Article 10 — Administrative compulsory measures shall be established by law. Where matters have not been provided for by law and are within the purview of the State Council in respect of administrative management, administrative regulations may, in addition to the provisions of items (1) and (4) of Article 9 of this Law, establish administrative compulsory measures for such matters. Where matters have not been provided for by laws or administrative regulations and are local in nature, local regulations may establish administrative compulsory measures of the types provided for in items (2) and (3) of Article 9 of this Law. No administrative compulsory measures may be established by normative documents other than laws and regulations.

Article 11 — Where laws have already provided for the establishment of administrative compulsory measures for a matter, administrative regulations and local regulations may only make specific provisions on

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the implementation thereof and shall not expand the types of administrative compulsory measures. Where no administrative compulsory measures have been established by law, in principle, no administrative compulsory measures shall be established by administrative regulations or local regulations.

Article 12 — The types of administrative compulsory enforcement are as follows:

(1) Imposing fines or late payment surcharges;

(2) Allocating deposits or remittances;

(3) Auctioning or disposing of legally sealed up or seized premises, facilities or property in accordance with the law;

(4) Removing obstructions or restoring to the original state;

(5) Performing on behalf of the obligated party;

(6) Other means of compulsory enforcement.

Article 13 — Administrative compulsory enforcement shall be established by law. Where no administrative compulsory enforcement has been established by law, no administrative compulsory enforcement shall be established by administrative regulations or local regulations.

Article 14 — When drafting draft laws or regulations, the organ that drafts the draft shall hear opinions through hearings, discussion meetings and other means. Where the establishment of administrative compulsion is involved, the drafting organ shall explain the necessity of establishing such administrative compulsion, the possible impact, and the opinions heard and adopted.

Article 15 — Administrative organs shall periodically evaluate the administrative compulsion they have implemented and the administrative compulsion established shall, where it is no longer necessary, be promptly modified or abolished in accordance with the statutory procedures. Citizens, legal persons and other organizations may submit opinions and suggestions to the organ that established the administrative compulsion and the organ that implemented the administrative compulsion on the establishment and implementation of administrative compulsion. The relevant organs shall earnestly study and respond in an appropriate manner.

Chapter III — Procedures for Administrative Compulsory Measures

Article 16 — Administrative compulsory measures may be taken by an administrative organ only when it performs its duties in accordance with the law and it is necessary to do so for the purpose of stopping illegal acts, preventing damage, controlling risks and expanding dangers. Administrative compulsory measures that are not related or necessary to the facts of an illegal act shall not be taken.

Article 17 — Administrative compulsory measures shall be implemented by the staff members of the administrative organ qualified for administrative law enforcement as prescribed by laws or regulations. No other staff members shall implement administrative compulsory measures.

Article 18 — When an administrative organ implements administrative compulsory measures, it shall comply with the following provisions:

(1) Report to the responsible person of the administrative organ for approval before implementation;

(2) The implementation shall be carried out by two or more staff members qualified for administrative law enforcement;

(3) Show the law enforcement identity documents;

(4) Notify the party of the reasons and basis for the compulsory measures and the rights enjoyed by the party in accordance with the law;

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(5) Hear the statements and defenses of the party;

(6) Make an on-site record;

(7) The on-site record shall be signed or sealed by the party and the administrative law enforcement personnel; if the party refuses to do so, this shall be noted in the on-site record;

(8) If the party is not present, the administrative law enforcement personnel shall invite a witness to be present, and the witness and the administrative law enforcement personnel shall sign or seal the on-site record;

(9) Other procedures prescribed by laws or regulations.

Article 19 — Where it is necessary to take administrative compulsory measures on the spot due to urgent circumstances, the administrative law enforcement personnel shall report to the responsible person of the administrative organ and complete the approval formalities within 24 hours. If the responsible person of the administrative organ considers that compulsory measures should not be taken, they shall be immediately lifted.

Article 20 — Where administrative compulsory measures restricting personal freedom are taken in accordance with the provisions of the law, in addition to performing the procedures prescribed in Article 18 of this Law, the following provisions shall also be complied with:

(1) Promptly notify the family of the party of the organ implementing the administrative compulsory measures and the place where the measures are implemented;

(2) Complete the implementation within the statutory period; the period for restricting personal freedom shall not be extended unless otherwise provided for by law;

(3) After the purpose of the administrative compulsory measures has been achieved or when the conditions for implementation no longer exist, immediately lift the administrative compulsory measures;

(4) Other procedures prescribed by laws or regulations.

Article 21 — Where the circumstances or facts of an illegal act are suspected of constituting a crime, the administrative organ shall transfer the seized or sealed-up property together with the case file to the judicial organ. The period of administrative compulsory measures restricting personal freedom shall be deducted from the criminal detention period.

Article 22 — Sealing up or seizing shall be limited to premises, facilities or property involved in the case. Citizens' personal necessities and the living expenses necessary for the family members they support shall not be sealed up or seized.

Article 23 — The administrative organ shall not seal up or seize premises, facilities or property of citizens, legal persons or other organizations that are not involved in the illegal acts; it shall not seal up or seize the means of production necessary for the daily life of citizens.

Article 24 — Where an administrative organ decides to implement sealing up or seizing, it shall perform the procedures prescribed in Article 18 of this Law, make and deliver a written decision on sealing up or seizing and a list thereof. The written decision on sealing up or seizing shall specify the following:

(1) The name and address of the party;

(2) The reasons, basis and time limit for sealing up or seizing;

(3) The name and quantity of the sealed up or seized property;

(4) The organ that applied for administrative reconsideration or the court where an administrative lawsuit shall be brought and the time limit;

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(5) The name and seal of the administrative organ and the date.

Article 25 — The time limit for sealing up or seizing shall not exceed 30 days; where the circumstances are complicated, it may be extended with the approval of the responsible person of the administrative organ, but the extended period shall not exceed 30 days. Where otherwise provided for by laws or administrative regulations, such provisions shall prevail. Where the time limit for sealing up or seizing needs to be extended, a written notice shall be given to the party in a timely manner with reasons stated. Where it is necessary to conduct testing, inspection, quarantine or technical appraisal of an item, the time required for testing, inspection, quarantine or technical appraisal shall not be included in the time limit for sealing up or seizing. The expenses for testing, inspection, quarantine or technical appraisal shall be borne by the administrative organ.

Article 26 — The administrative organ shall keep the sealed up or seized premises, facilities or property in proper custody and shall not use or damage them; if damage or loss is caused, compensation shall be made. The administrative organ may entrust a third party to keep the sealed up premises, facilities or property in custody. The third party shall not damage or transfer, dispose of or damage the sealed up premises, facilities or property without authorization. If the third party causes any loss, the administrative organ shall first pay compensation and then seek recovery from the third party.

Article 27 — Where an administrative organ seals up or seizes premises, facilities or property, it shall make a decision on handling within the statutory period. Under any of the following circumstances, the administrative organ shall promptly make a decision to lift the sealing up or seizing:

(1) The party has no illegal act;

(2) The sealed up or seized premises, facilities or property have nothing to do with the illegal act;

(3) The administrative organ has made a decision on handling the illegal act and it is no longer necessary to keep the premises, facilities or property sealed up or seized;

(4) The time limit for sealing up or seizing has expired;

(5) Other circumstances where sealing up or seizing is no longer required.

Where sealing up or seizing is lifted, the property shall be returned immediately; if the property has been auctioned or sold, the proceeds from the auction or sale shall be returned; if the sale price is clearly lower than the market price, compensation shall be made for the difference.

Article 28 — Where freezing of deposits or remittances is involved, the administrative organ shall apply to a financial institution for freezing. Financial institutions shall immediately lift the freezing when the statutory circumstances for lifting the freezing arise. Where the deposits or remittances frozen by the administrative organ have been pledged in accordance with the law, the pledge shall not be affected.

Article 29 — The time limit for freezing deposits or remittances shall not exceed 30 days; where the circumstances are complicated, it may be extended with the approval of the responsible person of the administrative organ, but the extended period shall not exceed 30 days. Where otherwise provided for by laws or administrative regulations, such provisions shall prevail.

Article 30 — Where an administrative organ lifts freezing, it shall promptly notify the financial institution and the party. If the financial institution receives the notice of lifting the freezing, it shall immediately lift the freezing.

Article 31 — Where administrative compulsory measures are taken in accordance with the provisions of laws and administrative regulations, the administrative organ shall not charge fees unless otherwise provided for by laws or administrative regulations.

Article 32 — Where an administrative organ deems it necessary to take administrative compulsory measures in accordance with the law at the stage of administrative investigation or inspection, it shall handle the matter in accordance with the procedures prescribed in this Chapter.

Article 33 — Where an administrative organ takes administrative compulsory measures, it shall not exceed the statutory authority, scope or time limit; it shall not seal up, seize or freeze property unrelated to the case; and it shall not abuse administrative compulsory measures to infringe upon the lawful rights and interests of the party.

Chapter IV — Procedures for Administrative Compulsory Enforcement by Administrative Organs

Article 34 — Where an administrative organ has the power of administrative compulsory enforcement in accordance with the law, it may enforce the relevant administrative decision in accordance with the provisions of this Chapter without applying to a people's court.

Article 35 — Before the administrative organ makes a decision on administrative compulsory enforcement, it shall first urge the party to perform its obligations by giving a written notice. The notice of urging shall specify the method of performance, the time limit for performance and the party's right to make statements and defenses.

Article 36 — Where the party makes statements and defenses after receiving the notice of urging performance, the administrative organ shall fully hear the opinions of the party, record and verify the facts, reasons and evidence proposed by the party. Where the facts, reasons or evidence proposed by the party are valid, the administrative organ shall adopt them.

Article 37 — Where, after the service of the notice of urging performance, the party fails to perform its obligations within the time limit and there are no justifiable reasons, the administrative organ may make a written decision on administrative compulsory enforcement. The written decision on administrative compulsory enforcement shall specify the following:

(1) The name and address of the party;

(2) The reasons and basis for compulsory enforcement;

(3) The method and time of compulsory enforcement;

(4) The organ that shall accept applications for administrative reconsideration and the court where administrative lawsuits shall be brought and the time limit;

(5) The name and seal of the administrative organ and the date.

The written decision on administrative compulsory enforcement shall be served directly on the party.

Article 38 — Where the party is no longer able to perform its obligations due to the death of a natural person or the termination of a legal person or other organization, the administrative organ shall not enforce the decision.

Article 39 — Under any of the following circumstances, enforcement may be suspended:

(1) Where the party has genuine difficulty in performing and a suspension of enforcement will not cause harm to the public interest;

(2) Where a third party claims a right to the subject matter of enforcement and has reasonable grounds;

(3) Where the administrative organ deems it necessary to suspend enforcement for other reasons.

Where the circumstances for suspension cease to exist, the administrative organ shall resume enforcement.

Article 40 — Under any of the following circumstances, enforcement shall be terminated:

(1) Where the death of a citizen leaves no estate for enforcement and there is no obligor;

(2) Where the legal person or other organization is terminated and has no property to be enforced, and there is no successor in rights and obligations;

(3) Where the subject matter of enforcement is extinguished;

(4) Where the administrative decision on which the enforcement is based has been revoked;

(5) Where the administrative organ deems it necessary to terminate enforcement for other reasons.

Article 41 — Where enforcement is carried out by means of removal of obstructions or restoration to the original state, the administrative organ may decide to perform the obligation on behalf of the party and the party shall bear the expenses. Where an administrative organ performs an obligation on behalf of the party in accordance with the law, it may do so by itself or entrust a third party without an interest in the matter. The administrative organ shall generally not perform on behalf of the party where the obligation to be performed does not relate to personal obligations. The expenses for performance on behalf of the party shall be reasonably determined by the administrative organ on the basis of the costs, and a written decision shall be made on the expenses for performance on behalf of the party before enforcement.

Article 42 — When implementing administrative compulsory enforcement, the administrative organ may reach an enforcement agreement with the party under the condition that the public interest and the lawful rights and interests of others are not harmed. The enforcement agreement may provide for payment in installments; where the party takes remedial measures, the administrative organ may reduce the fines or late payment surcharges imposed on the party. The enforcement agreement shall be performed; if the party fails to perform the enforcement agreement, the administrative organ shall resume enforcement.

Article 43 — At night or on statutory holidays, administrative compulsory enforcement shall not be implemented. However, this shall not apply where otherwise agreed with the party or where there is an urgent situation. No administrative organ shall coerce a party to perform relevant administrative decisions by stopping the supply of water, electricity, heat or gas to residents.

Article 44 — For illegal structures, objects and facilities, etc. that require compulsory demolition, the administrative organ shall make an announcement to urge the party to demolish them by itself within the time limit. Where the party does not apply for administrative reconsideration or bring an administrative lawsuit within the statutory period and does not demolish them, the administrative organ may compulsorily demolish them in accordance with the law.

Article 45 — Where an administrative organ imposes a fine or late payment surcharge in accordance with the law, it shall inform the party of the amount of the fine or late payment surcharge. The amount of the fine or late payment surcharge shall not exceed the amount of the original obligation to pay. Where the administrative organ implements administrative compulsory enforcement other than the imposition of fines or late payment surcharges, it shall not charge fees unless otherwise provided for by law.

Article 46 — Where the administrative organ has the right of administrative compulsory enforcement with respect to a monetary payment obligation, it may directly enforce in accordance with the provisions of this Chapter. Where the party fails to perform an obligation within the time limit prescribed by the administrative decision, the administrative organ with the power of administrative compulsory enforcement shall enforce in accordance with the provisions of this Chapter. Where the administrative organ has no power of administrative compulsory enforcement, it shall apply to a people's court for enforcement.

Article 47 — Where the allocation of deposits or remittances is involved, the administrative organ shall make a decision and notify the financial institution in writing. The financial institution shall allocate the funds upon receipt of the decision of the administrative organ. The decision on the allocation of deposits or remittances shall specify the name of the party, the amount and the receiving account.

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Article 48 — Where the auction of legally sealed up or seized property is involved, the administrative organ shall entrust an auction institution to conduct the auction in accordance with the law. The proceeds from the auction shall be turned over to the State treasury.

Article 49 — When an administrative organ implements administrative compulsory enforcement in accordance with the law, it shall produce the written decision on administrative compulsory enforcement and the administrative law enforcement identity documents.

Article 50 — When an administrative organ implements administrative compulsory enforcement in accordance with the law, it shall notify the party to be present. If the party is not present, the administrative organ shall invite a witness to be present, and the witness and the administrative law enforcement personnel shall sign the enforcement record.

Article 51 — After the completion of administrative compulsory enforcement, the administrative organ shall make an enforcement record, which shall specify the parties, the time and place of enforcement, the basis for enforcement, the content of enforcement, and the results of enforcement. The enforcement record shall be signed or sealed by the party, the administrative law enforcement personnel and the witness. If the party refuses to sign or seal, this shall be noted in the enforcement record.

Article 52 — Where the administrative organ needs to immediately remove obstacles, restore to the original state and other compulsory measures in accordance with the law during the course of administrative management due to urgent circumstances, the administrative organ may take immediate compulsory measures on the spot. The administrative organ shall complete the supplementary formalities within 24 hours after taking the compulsory measures.

Chapter V — Application for Enforcement by People's Courts

Article 53 — Where a party fails to apply for administrative reconsideration or bring an administrative lawsuit within the statutory period and fails to perform the administrative decision, the administrative organ without the power of administrative compulsory enforcement may, within three months from the date of expiration of the time limit, apply to the people's court for compulsory enforcement in accordance with the provisions of this Chapter.

Article 54 — Before applying to the people's court, the administrative organ shall urge the party to perform its obligations by giving a written notice. The notice of urging performance shall be served 10 days before the application to the people's court. If the party still fails to perform after the service of the notice of urging performance, the administrative organ may apply to the people's court with jurisdiction for compulsory enforcement.

Article 55 — When applying to the people's court for compulsory enforcement, the administrative organ shall submit the following materials:

(1) A written application for compulsory enforcement;

(2) The administrative decision and the facts, reasons and basis on which the decision was made;

(3) The opinions of the party and the notice of urging performance served on the administrative organ;

(4) The application for the enforcement of the subject matter;

(5) Other materials that shall be submitted as prescribed by laws and administrative regulations.

Article 56 — Where the people's court receives the application for compulsory enforcement from the administrative organ and finds that the materials specified in Article 55 of this Law are complete, it shall accept the application within five days and make a ruling within 30 days from the date of acceptance. Where the people's court finds that the administrative decision lacks factual basis, does not comply with legal provisions or has other obvious deficiencies, it shall rule not to enforce the decision.

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Article 57 — Where the people's court rules to enforce the administrative decision, enforcement shall be carried out by the people's court.

Article 58 — Where the people's court finds that the circumstances specified in Article 56 of this Law are obviously lacking in factual basis or that there are other obvious deficiencies in the administrative decision, it may, before ruling, hear the opinions of the administrative organ and the party.

Article 59 — Where, due to urgent circumstances, it is necessary for the administrative organ to apply to the people's court for immediate enforcement to protect the public interest, the people's court may, upon the application of the administrative organ, make a ruling on enforcement within five days from the date of acceptance.

Article 60 — Where the administrative organ applies to the people's court for compulsory enforcement, it shall not pay the application fee. The expenses for compulsory enforcement shall be borne by the party against whom enforcement is being carried out. The people's court may designate an auction institution to auction the property sealed up or seized in accordance with the law.

Chapter VI — Legal Liability

Article 61 — Where an administrative organ commits any of the following acts when implementing administrative compulsion, the administrative organ at a higher level or the relevant department shall order it to make corrections and may impose sanctions on the directly responsible person in charge and other directly responsible persons in accordance with the law:

(1) Implementing administrative compulsion without basis or by altering the subjects, conditions or methods of administrative compulsion;

(2) Implementing administrative compulsory measures or administrative compulsory enforcement in violation of the statutory procedures;

(3) Taking administrative compulsory measures at night or on statutory holidays in violation of the provisions of this Law, or implementing administrative compulsory enforcement at night or on statutory holidays;

(4) Coercing a party to perform relevant administrative decisions by stopping the supply of water, electricity, heat or gas to residents;

(5) Illegally restricting personal freedom of citizens in violation of the law;

(6) Sealing up or seizing premises, facilities or property of citizens, legal persons or other organizations that are not involved in illegal acts, or sealing up or seizing the means of production necessary for the daily life of citizens;

(7) Damaging or transferring, disposing of sealed up or seized premises, facilities or property without authorization;

(8) Failing to promptly lift the sealing up or seizing when the statutory circumstances arise;

(9) Embezzling, misappropriating, dividing privately or privately distributing sealed up or seized property or the proceeds from the auction or sale thereof in violation of the law;

(10) Other acts in violation of the provisions of this Law.

Article 62 — Where an administrative organ, in violation of the provisions of this Law, transfers the seized, sealed up or frozen property together with the case file without authorization, the administrative organ at a higher level or the relevant department shall order it to make corrections and may impose sanctions on the directly responsible person in charge and other directly responsible persons in accordance with the law.

Article 63 — Where an administrative organ uses or damages sealed up or seized property and causes losses to the party, it shall compensate the party in accordance with the law. Where the administrative organ

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embezzles, misappropriates, divides privately or privately distributes sealed up or seized property or the proceeds from the auction or sale thereof, or where a financial institution transfers the frozen deposits or remittances without authorization, the relevant administrative organ or financial institution shall recover the property or the proceeds.

Article 64 — Where an administrative organ and its staff members take advantage of administrative compulsion to seek benefits for themselves or others, the administrative organ at a higher level or the relevant department shall order them to make corrections and may impose sanctions on the directly responsible person in charge and other directly responsible persons in accordance with the law.

Article 65 — Where, in violation of the provisions of this Law, a financial institution commits any of the following acts, the financial regulatory authority shall order it to make corrections and impose sanctions on the directly responsible person in charge and other directly responsible persons in accordance with the law:

(1) Failing to promptly freeze deposits or remittances in accordance with the notices of the administrative organ within the statutory period;

(2) Failing to promptly lift the freezing of deposits or remittances upon receipt of the notice of the administrative organ to lift the freezing;

(3) Allocating deposits or remittances from the frozen account without authorization;

(4) Failing to promptly allocate deposits or remittances upon receipt of the written decision of the administrative organ to allocate deposits or remittances.

Article 66 — Where the people's court and its staff members illegally implement compulsory enforcement or expand the scope of compulsory enforcement in the course of compulsory enforcement, the party shall have the right to claim compensation in accordance with the law. The people's court and its staff members shall bear compensation liability for their illegal acts in accordance with the Law on State Compensation.

Article 67 — Where a people's court and its staff members, in violation of the provisions of this Law, instruct a financial institution to transfer deposits or remittances from an account frozen by an administrative organ, the party shall have the right to claim compensation in accordance with the law.

Article 68 — Where an act in violation of the provisions of this Law constitutes a crime, criminal liability shall be investigated in accordance with the law.

Chapter VII — Supplementary Provisions

Article 69 — Where the time limit for administrative compulsory measures or administrative compulsory enforcement is 10 days or less, the term "days" as used in this Law means working days, excluding statutory holidays.

Article 70 — Where otherwise provided for by laws or administrative regulations on the procedures for administrative compulsory measures and administrative compulsory enforcement, such provisions shall prevail.

Article 71 — This Law shall come into force on January 1, 2012.

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