State Compensation Law of the People’s Republic of China

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Chapter I — General Provisions

Article 1 — This Law is enacted in accordance with the Constitution to safeguard the right of citizens, legal persons and other organizations to obtain state compensation in accordance with the law, and to promote the exercise of functions and powers by state organs in accordance with the law.

Article 2 — Where state organs and their functionaries, in exercising their functions and powers, infringe upon the lawful rights and interests of citizens, legal persons and other organizations and cause damage as provided for in this Law, the victims shall have the right to obtain state compensation in accordance with this Law. The obligations of state compensation provided for in this Law shall be performed by organs obligated to pay compensation in accordance with the provisions of this Law.

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Chapter II — Administrative Compensation

Section 1: Scope of Compensation

Article 3 — Where an administrative organ and its functionaries, in exercising their administrative functions and powers, commit any of the following acts infringing upon personal rights, the victim shall have the right to obtain compensation: (1) unlawful detention or unlawfully taking compulsory administrative measures restricting personal freedom; (2) unlawful custody or otherwise unlawfully depriving a citizen of personal freedom; (3) battery, abetting others to commit battery, or other acts of violence causing bodily injury or death to a citizen; (4) unlawful use of weapons or police instruments causing bodily injury or death to a citizen; or (5) other unlawful acts causing bodily injury or death to a citizen.

Article 4 — Where an administrative organ and its functionaries, in exercising their administrative functions and powers, commit any of the following acts infringing upon property rights, the victim shall have the right to obtain compensation: (1) unlawfully imposing fines, revoking permits or licenses, ordering suspension of production or business operation, or confiscating property; (2) unlawfully taking compulsory measures such as sealing up, distraining, or freezing of property; (3) unlawfully expropriating or requisitioning property; or (4) other unlawful acts causing damage to property.

Article 5 — The State shall not be liable for compensation under any of the following circumstances: (1) where the functionary of an administrative organ commits an act unrelated to the exercise of administrative functions and powers; (2) where damage is caused by a citizen, legal person or other organization through its own acts; or (3) other circumstances provided for by law.

Section 2: Claimants for Compensation and Organs Obligated to Pay Compensation

Article 6 — The aggrieved citizen, legal person or other organization shall be entitled to claim compensation. Where the aggrieved citizen is deceased, his successors shall be entitled to claim compensation. Where the aggrieved legal person or other organization is terminated, the entities succeeding to its rights shall be entitled to claim compensation.

Article 7 — Where an administrative organ and its functionaries, in exercising their administrative functions and powers, infringe upon the lawful rights and interests of a citizen, legal person or other organization and cause damage, such administrative organ shall be the organ obligated to pay compensation. Where two or more administrative organs jointly commit an infringement, the administrative organs jointly involved shall be the organs jointly obligated to pay compensation. Where an organization authorized by laws or regulations to exercise administrative powers commits an infringement in exercising such powers, the authorizing organization shall be the organ obligated to pay compensation. Where an organization or individual entrusted by an administrative organ exercises the entrusted administrative powers and commits an infringement, the entrusting administrative organ shall be the organ obligated to pay compensation. Where an organ obligated to pay compensation has been abolished, the administrative organ that continues to exercise its functions and powers shall be the organ obligated to pay compensation; where there is no administrative organ continuing to exercise its functions and powers, the administrative organ that abolished the said organ shall be the organ obligated to pay compensation.

Article 8 — Where a case that has been reconsidered by an administrative organ causes aggravated damage, the administrative organ that initially committed the infringement shall be the organ obligated to pay compensation; however, the reconsideration organ shall be liable for the aggravated portion of damage if the reconsideration decision aggravated the damage.

Section 3: Compensation Procedures

Article 9 — An organ obligated to pay compensation shall pay compensation within two months from the date of receiving a claim for compensation. Where the organ obligated to pay compensation fails to pay compensation within the prescribed time limit, or where the claimant disagrees with the amount of

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compensation, the claimant may, within three months from the expiry of the time limit, institute an action in a people's court.

Article 10 — A claimant for compensation may claim compensation from any one of the organs jointly obligated to pay compensation, and such organ shall first pay compensation.

Article 11 — A claimant for compensation may, in accordance with the different types of damage suffered, simultaneously claim several items of compensation.

Article 12 — A claim for compensation shall be made by submitting a written application. The application shall state the following: (1) name, gender, age, work unit and domicile of the victim; where the victim is a legal person or other organization, its name, domicile and the name and position of its legal representative or principal responsible person; (2) specific claims, factual grounds and reasons; and (3) the date of the application.

Article 13 — The organ obligated to pay compensation shall, within two months from the date of receiving the application, make a decision on whether to pay compensation. In making the decision on compensation, the organ obligated to pay compensation shall fully consider the opinions of the claimant for compensation and may negotiate with the claimant on the method, items and amount of compensation in accordance with the provisions of Chapter IV of this Law.

Article 14 — Where the organ obligated to pay compensation fails to make a decision on compensation within the prescribed time limit, or the claimant disagrees with the decision on compensation, the claimant may, within three months from the expiry of the time limit, institute an action in a people's court.

Article 15 — The people's court shall accept and hear an administrative compensation case in accordance with the law. A claimant for compensation shall adduce evidence to prove the facts of the damage. Where the organ obligated to pay compensation takes compulsory administrative measures restricting personal freedom, causing death or loss of capacity of the person whose personal freedom is restricted, the organ obligated to pay compensation shall bear the burden of proof with respect to the causal relationship between its act and the death or loss of capacity.

Article 16 — After an organ obligated to pay compensation has paid compensation, it shall recover part or all of the compensation from its functionaries who committed intentional acts or gross negligence.

Chapter III — Criminal Compensation

Section 1: Scope of Compensation

Article 17 — Where an organ exercising investigatory, procuratorial, adjudicatory, or custodial functions, or any of its functionaries, commits any of the following acts infringing upon personal rights in exercising its functions and powers, the victim shall have the right to obtain compensation: (1) wrongfully detaining a citizen who has not committed a criminal offense or where there is no evidence of a criminal offense in accordance with the provisions of the Criminal Procedure Law; (2) taking a compulsory measure such as arrest against a citizen who has not committed a criminal offense and who is subsequently decided by a people's procuratorate not to be prosecuted or by a people's court to be not guilty and where the decision has become final; (3) where a judgment of not guilty has become final upon retrial in accordance with the trial supervision procedure, and the original sentence of criminal punishment has already been executed; (4) extorting a confession by torture, or battery, abetting others to commit battery, or other acts of violence causing bodily injury or death to a citizen; (5) unlawful use of weapons or police instruments causing bodily injury or death to a citizen.

Article 18 — Where an organ exercising investigatory, procuratorial, adjudicatory, or custodial functions, or any of its functionaries, commits any of the following acts infringing upon property rights in exercising its functions and powers, the victim shall have the right to obtain compensation: (1) unlawfully taking measures

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such as sealing up, distraining, freezing, or recovery of property; or (2) where the citizen involved has been adjudicated not guilty upon retrial in accordance with the trial supervision procedure and the original sentence of a criminal fine or confiscation of property has already been executed.

Article 19 — The State shall not be liable for compensation under any of the following circumstances: (1) where a citizen is placed in custody due to his own intentional false statements or fabrication of evidence of guilt; (2) where a person who is not required to bear criminal responsibility in accordance with the Criminal Law is placed in custody; (3) where a person who is not prosecuted for a criminal offense is placed in custody; (4) where an act is committed by a functionary of a state organ unrelated to the exercise of his functions and powers; (5) where damage is caused by a citizen's own intentional acts such as self-inflicted injury or suicide; or (6) other circumstances provided for by law.

Section 2: Claimants for Compensation and Organs Obligated to Pay Compensation

Article 20 — The provisions of Articles 6 and 7 of this Law shall apply to the determination of claimants for compensation and organs obligated to pay compensation for criminal compensation.

Article 21 — Where a citizen is wrongfully detained, the organ that made the decision to detain such citizen shall be the organ obligated to pay compensation. Where a citizen is wrongfully arrested, the organ that made the decision to arrest such citizen shall be the organ obligated to pay compensation. Where a person is adjudicated not guilty upon retrial, the people's court that rendered the original effective judgment shall be the organ obligated to pay compensation. Where a person is adjudicated not guilty upon second instance trial or upon retrial in accordance with the trial supervision procedure, and the original first instance trial court or the original trial court has rendered a judgment of guilt, such first instance trial court or original trial court shall be the organ obligated to pay compensation.

Section 3: Compensation Procedures

Article 22 — An organ obligated to pay compensation shall, within two months from the date of receiving a claim for compensation, make a decision on whether to pay compensation. Where the organ obligated to pay compensation fails to make a decision on compensation within the prescribed time limit, or the claimant disagrees with the decision on compensation, the claimant may, within 30 days from the expiry of the time limit, apply to the competent authority at the next higher level for reconsideration.

Article 23 — The organ obligated to pay compensation shall fully consider the opinions of the claimant for compensation and may negotiate with the claimant on the method, items and amount of compensation in accordance with the provisions of Chapter IV of this Law. The organ obligated to pay compensation shall make a written decision on compensation, which shall state the facts, reasons and legal basis for the decision, and shall state the method, items and amount of compensation.

Article 24 — Where the organ obligated to pay compensation fails to make a decision on whether to pay compensation within the prescribed time limit, the claimant for compensation may, within 30 days from the expiry of the time limit, apply to the organ at the next higher level for reconsideration. Where the claimant for compensation disagrees with the compensation method, items or amount determined by the organ obligated to pay compensation, or where the organ obligated to pay compensation makes a decision not to pay compensation, the claimant for compensation may, within 30 days from the date of receiving the written decision of the organ obligated to pay compensation, apply to the organ at the next higher level for reconsideration. The people's procuratorate at the next higher level shall be the reconsideration organ where the people's procuratorate at a lower level is the organ obligated to pay compensation.

Article 25 — The reconsideration organ shall, within two months from the date of receiving the application for reconsideration, make a reconsideration decision. Where the reconsideration organ fails to make a reconsideration decision within the prescribed time limit, or the claimant for compensation disagrees with the reconsideration decision, the claimant for compensation may, within 30 days from the expiry of the time limit,

apply to the compensation committee of the people's court at the same level as the reconsideration organ for a compensation decision.

Article 26 — The compensation committee of a people's court shall make its compensation decision within three months. If the decision cannot be made within three months due to the complexity of the case, the time limit may be extended upon approval of the president of the court. Where the claimant for compensation disagrees with the decision of the compensation committee of the people's court, the claimant may apply to the compensation committee of the people's court at the next higher level for reconsideration within 30 days from the date of receiving the decision.

Article 27 — The compensation committee of a people's court shall handle compensation cases by applying the provisions of the Civil Procedure Law on trial organization, recusal, and certain other procedural matters.

Article 28 — Where a state organ and its functionaries exercise their functions and powers in violation of the law, causing mental distress to a person, the organ obligated to pay compensation shall eliminate the adverse effects, restore reputation and make an apology at the place within the scope of the infringement; where serious consequences are caused, the organ obligated to pay compensation shall pay corresponding solatium for mental distress.

Article 29 — The expenses for compensation shall be listed in the fiscal budget at each level, and the specific measures shall be prescribed by the State Council. Where an organ obligated to pay compensation should withdraw funds from the fiscal budget to pay compensation, it shall apply to the relevant finance department within seven days from the date when the compensation decision becomes effective or from the date when it receives the compensation decision; the finance department shall appropriate the funds within 15 days from the date of receiving the application for payment of compensation.

Chapter IV — Compensation Methods and Calculation Standards

Article 30 — State compensation shall be made primarily by payment of compensation. Where property can be returned or restored to its original condition, the property shall be returned or restored to its original condition.

Article 31 — Where personal freedom of a citizen is infringed upon, the daily compensation amount shall be calculated in accordance with the average daily wage of the employees in the preceding year nationwide. The average daily wage of the employees in the preceding year nationwide shall be published by the National Bureau of Statistics.

Article 32 — Where damage is caused to the right to life and health of a citizen, compensation shall be paid in accordance with the following provisions: (1) where bodily injury is caused, medical expenses, nursing expenses, and compensation for loss of income due to missed work shall be paid. The daily compensation for loss of income due to missed work shall be calculated in accordance with the average daily wage of the employees in the preceding year nationwide, and the maximum amount shall be five times the average annual wage of the employees in the preceding year nationwide. (2) where partial or total loss of capacity to work is caused, medical expenses, nursing expenses, expenses for assistive devices for the disabled, compensation for loss of income due to missed work, and disability compensation shall be paid. Where partial loss of capacity to work is caused, the maximum amount of disability compensation shall not exceed 20 times the average annual wage of the employees in the preceding year nationwide. Where total loss of capacity to work is caused, the maximum amount shall not exceed 20 times the average annual wage of the employees in the preceding year nationwide; living expenses shall also be paid to persons supported by the totally disabled person. (3) where death is caused, death compensation and funeral expenses shall be paid, and the total amount shall be 20 times the average annual wage of the employees in the preceding year nationwide. Living expenses shall also be paid to persons supported by the deceased during his lifetime.

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Article 33 — Where damage is caused to property rights of a citizen, legal person or other organization, compensation shall be handled in accordance with the following provisions: (1) fines, penalties, recovery, or confiscation of property: the property shall be returned; (2) sealing up, distraining, or freezing of property: where such measures are lifted, the property shall be restored to its original condition; where the property is damaged or lost, compensation shall be paid in accordance with the provisions of items (3) and (4) of this Article; (3) property that should be returned but is damaged: where the property can be restored to its original condition, it shall be restored to its original condition; where it cannot be restored to its original condition, corresponding compensation shall be paid in accordance with the extent of damage; (4) property that should be returned but is lost: corresponding compensation shall be paid; (5) where property has been auctioned or sold off at a reduced price: compensation shall be paid; (6) where permits or licenses are revoked or production or business operations are ordered to be suspended: compensation shall be paid for the necessary routine expenses incurred during the period of suspension; (7) where other damage is caused to property: compensation shall be paid in accordance with the direct loss.

Article 34 — Where solatium for mental distress is to be paid, the amount shall be determined in accordance with the provisions of Article 28 of this Law.

Article 35 — The compensation expenses provided for in this Law shall not be subject to taxation.

Chapter V — Other Provisions

Article 36 — Where the exercise of functions and powers by a state organ and its functionaries causes damage to the lawful rights and interests of citizens, legal persons and other organizations under circumstances other than those provided for in this Law, compensation shall be made in accordance with the relevant laws.

Article 37 — Where a people's court in civil or administrative proceedings takes compulsory measures such as compulsory measures against obstruction of proceedings, preservative measures, or enforcement measures in violation of the law, causing damage, the provisions of this Law on criminal compensation procedures shall apply to the claim for compensation.

Article 38 — Where a foreigner, foreign enterprise or organization within the territory of the People's Republic of China claims compensation from the People's Republic of China, the provisions of this Law shall apply. Where the state of nationality of a foreigner, foreign enterprise or organization does not protect or restricts the right of a citizen, legal person or other organization of the People's Republic of China to claim compensation from it, the People's Republic of China shall apply the principle of reciprocity to such foreigner, foreign enterprise or organization.

Chapter VI — Supplementary Provisions

Article 39 — The limitation period for claiming state compensation shall be two years, calculated from the date on which the claimant knows or should have known that the exercise of functions and powers by a state organ and its functionaries has infringed upon his personal or property rights. However, the limitation period shall be suspended during the period of restriction of personal freedom such as custody. Where the claimant is unable to exercise his right to claim compensation within the last six months of the limitation period due to force majeure or other obstacles, the limitation period shall be suspended; and the limitation period shall resume from the date when the obstacle is removed.

Article 40 — This Law shall apply to claims for compensation arising from acts that occurred before the implementation of this Law and were not handled or decided at the time of implementation of this Law. This Law shall not apply to claims for compensation arising from acts that occurred before the implementation of this Law and have already been handled or decided, except where the provisions of this Law are more favorable to the claimant for compensation.

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Article 41 — Where the provisions of international treaties or agreements concluded or acceded to by the People's Republic of China differ from the provisions of this Law, the provisions of the international treaties or agreements shall apply, except for those provisions on which the People's Republic of China has declared reservations.

Article 42 — This Law shall come into force on the date of its promulgation.

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