

State Compensation Law of the PRC

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

Article 1 — This Law is enacted in accordance with the Constitution for the purposes of safeguarding the right of citizens, legal persons, and other organizations to obtain state compensation in accordance with the law when their lawful rights and interests are infringed upon by state organs and their functionaries in the exercise of their functions and powers, and promoting state organs to exercise their functions and powers in accordance with the law.

Article 2 — Where a state organ or any of its functionaries, in the exercise of its functions and powers, infringes upon the lawful rights and interests of a citizen, legal person, or other organization as provided for in this Law and causes damage, the victim shall have the right to obtain state compensation in accordance with this Law. The organ obligated to pay compensation as provided for in this Law shall perform its obligation to pay compensation in a timely manner in accordance with this Law.

Chapter II — Administrative Compensation

Section 1 — Scope of Compensation

Article 3 — A victim shall have the right to compensation where an administrative organ or its functionary, in the exercise of its administrative functions and powers, commits any of the following acts infringing upon personal rights: (1) illegally detaining a citizen or illegally adopting compulsory administrative measures that restrict the personal freedom of a citizen; (2) illegally depriving a citizen of his or her personal freedom by means of detention or otherwise; (3) causing bodily injury to or the death of a citizen by means of battery or abetting or indulging in battery by another person, or by illegally using weapons or police instruments; or (4) other illegal acts that cause bodily injury to or the death of a citizen.

Article 4 — A victim shall have the right to compensation where an administrative organ or its functionary, in the exercise of its administrative functions and powers, commits any of the following acts infringing upon property rights: (1) illegally imposing administrative penalties such as fines, revocation of permits or licenses, orders to suspend production or business operations, or confiscation of property; (2) illegally adopting compulsory measures that involve property, such as sealing up, seizing, or freezing; (3) illegally expropriating or requisitioning property; or (4) other illegal acts that cause damage to property.

Article 5 — The state shall not be liable for compensation under any of the following circumstances: (1) the personal act of a functionary of an administrative organ that is not related to the exercise of his or her functions and powers; (2) damage caused by an act of a citizen, legal person, or other organization itself; or (3) other circumstances provided for by law.

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

Article 6 — A victim citizen, legal person, or other organization shall have the right to claim compensation. Where a victim citizen dies, his or her successor or other relatives with a dependency relationship shall have the right to claim compensation. Where a victim legal person or other organization terminates its existence, the entity that succeeds to its rights shall have the right to claim compensation.

Article 7 — Where an administrative organ or its functionary, in the exercise of its administrative functions and powers, infringes upon the lawful rights and interests of a citizen, legal person, or other organization and causes damage, that administrative organ shall be the organ obligated to pay compensation. Where two or more administrative organs jointly exercise their administrative functions and powers and cause damage, the administrative organs that jointly exercised their administrative functions and powers shall be the organs jointly obligated to pay compensation.

Article 8 — Where damage is caused by an organization authorized by laws or regulations to exercise administrative powers in the exercise of its authorized powers, the authorized organization shall be the organ obligated to pay compensation. Where damage is caused by an organization or individual entrusted by an administrative organ to exercise administrative powers, the entrusting administrative organ shall be the

organ obligated to pay compensation.

Section 3 — Compensation Procedures

Article 9 — The organ obligated to pay compensation shall, after any of the circumstances provided for in Articles 3 and 4 of this Law is confirmed in accordance with the law, pay compensation. A claimant for compensation shall first apply to the organ obligated to pay compensation, and may also raise the claim for compensation together with an application for administrative reconsideration or an administrative lawsuit.

Article 10 — A claimant for compensation may claim compensation from any of the organs jointly obligated to pay compensation, and the organ that receives the claim shall first pay the compensation. The organ that first paid the compensation shall have the right to recover from the other organs jointly obligated to pay compensation the portion of compensation they should bear.

Article 11 — A claimant for compensation shall, based on the different damage suffered, simultaneously lodge several claims for compensation. The organ obligated to pay compensation or the people's court shall handle the same in accordance with the law. The amount of compensation shall be calculated in accordance with the provisions of Chapter IV of this Law.

Article 12 — A claimant for compensation shall submit an application, which shall contain the following particulars: (1) the name, gender, age, work unit, and domicile of the victim; (2) the specific claim, the factual basis, and the reasons; and (3) the date of application. A claimant for compensation shall provide evidentiary materials in accordance with the law.

Chapter III — Criminal Compensation

Section 1 — Scope of Compensation

Article 13 — A victim shall have the right to compensation where an organ that exercises the functions of investigation, procuratorate, trial, or prison administration and its functionaries, in the exercise of their functions and powers, infringe upon personal rights under any of the following circumstances: (1) a citizen is detained in violation of the provisions of the Criminal Procedure Law, or a citizen is detained in accordance with the conditions and procedures provided for in the Criminal Procedure Law but the detention period exceeds the time limit provided for in the Criminal Procedure Law, and the decision to withdraw the case, not to initiate prosecution, or a judgment of acquittal has been subsequently made to terminate the pursuit of criminal liability; (2) a citizen is arrested, and subsequently a decision to withdraw the case, not to initiate prosecution, or a judgment of acquittal has been made to terminate the pursuit of criminal liability; (3) a citizen's personal freedom is restricted under a retrial procedure in accordance with the procedure for trial supervision, where the original conviction and sentence have been revised to acquittal; (4) bodily injury to or the death of a citizen is caused by extortion of a confession through torture, or by battery, or abetting or indulging in battery by another person; or (5) bodily injury to or the death of a citizen is caused by the illegal use of weapons or police instruments.

Article 14 — A victim shall have the right to compensation where an organ that exercises the functions of investigation, procuratorate, trial, or prison administration and its functionaries, in the exercise of their functions and powers, infringe upon property rights under any of the following circumstances: (1) illegally adopting measures against property, such as sealing up, seizing, freezing, or recovering; or (2) a citizen's property is subject to an erroneous criminal pursuit in accordance with the procedure for trial supervision, where the original sentence of a fine or confiscation of property has been executed and subsequently revised.

Article 15 — The state shall not be liable for compensation under any of the following circumstances: (1) a citizen has been placed in custody or sentenced to criminal punishment due to his or her own intentional false statements or fabrication of other evidence of guilt; (2) a person who is not required to bear criminal

liability in accordance with the provisions of the Criminal Law has been placed in custody; (3) a person who is not subject to criminal pursuit of liability in accordance with the provisions of the Criminal Procedure Law has been placed in custody; (4) the personal act of a functionary of an organ that exercises the functions of investigation, procuratorate, trial, or prison administration that is not related to the exercise of his or her functions and powers; (5) damage caused by an act of the victim such as self-inflicted injury or self-mutilation; or (6) other circumstances provided for by law.

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

Article 16 — 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. Where an organ exercising the function of investigation, procuratorate, or prison administration infringes upon the lawful rights and interests of a citizen, legal person, or other organization in the exercise of its functions and powers and causes damage, that organ shall be the organ obligated to pay compensation.

Article 17 — A claimant for compensation shall apply for compensation in accordance with the procedures provided for in this Law. The organ obligated to pay compensation shall make a decision within two months from the date of receipt of the application. Where the organ obligated to pay compensation fails to make a decision within the time limit, the claimant for compensation may, within 30 days from the expiration of the time limit, apply for reconsideration to the organ at the next higher level.

Chapter IV — Standards and Methods of Compensation

Article 18 — State compensation shall be made mainly by the payment of compensation money. Where the property can be returned or restored to its original state, the property shall be returned or restored to its original state. Compensation for infringement upon a citizen's personal freedom shall be calculated on a daily basis, at the rate of the national average daily wage of employees in the previous year.

Article 19 — Compensation for infringement upon the right to life and health shall be calculated in accordance with the following provisions: (1) for bodily injury, compensation shall be paid for medical expenses, nursing expenses, and loss of income due to missed work. The maximum compensation for loss of income due to missed work shall be five times the national average annual wage of employees in the previous year; (2) for partial or total loss of working capacity, compensation shall be paid for medical expenses, nursing expenses, disability living assistance expenses, rehabilitation expenses, and other expenses necessary for continuing treatment, and disability compensation. The maximum disability compensation shall not exceed 20 times the national average annual wage of employees in the previous year; (3) for death, compensation shall be paid for death compensation and funeral expenses. The total amount of death compensation and funeral expenses shall be 20 times the national average annual wage of employees in the previous year.

Article 20 — Compensation for infringement upon the property rights of a citizen, legal person, or other organization shall be made in accordance with the following provisions: (1) where a fine, confiscation, or recovery of property has been imposed, the property shall be returned; (2) where property has been sealed up, seized, or frozen, the restrictive measures shall be lifted; (3) where property has been damaged, the property shall be restored to its original state, or compensation shall be paid based on the degree of damage; (4) where the property has been lost, compensation shall be paid based on the degree of loss; (5) where the property has been auctioned or sold at a reduced price, compensation shall be paid at the price at which the property was auctioned or sold; (6) where a permit or license has been revoked, or an order to suspend production or business operations has been made, compensation shall be paid for the necessary and regular expenses incurred during the period of suspension; and (7) where other damage to property rights has been caused, compensation shall be paid for direct losses.

Chapter V — Other Provisions

Article 21 — Where a people's court in a civil or administrative litigation process illegally adopts coercive measures against obstruction of proceedings, preservative measures, enforcement measures, or causes personal injury or death by battery or other illegal acts, and the victim claims compensation, the provisions of this Law shall apply to the compensation procedures. The claimant for compensation shall first claim compensation from the people's court that caused the damage.

Article 22 — The organ obligated to pay compensation shall refund to the claimant for compensation the relevant taxes and fees that have been collected in accordance with the law. Where the organ obligated to pay compensation, after paying compensation, orders its functionaries, entrusted organizations, or individuals who have committed intentional or grossly negligent acts to bear part or all of the compensation expenses, it shall recover from them the relevant expenses.

Chapter VI — Supplementary Provisions

Article 23 — A claimant for compensation requesting state compensation shall not be required to pay fees. No tax shall be levied on the compensation money obtained by a claimant for compensation.

Article 24 — This Law shall enter into force on January 1, 1995.

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