

THE Law of the People's Republic of China on Administrative Punishments

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Chapter I General Provisions

Article 1 This Law is enacted in pursuance of the Constitution to regulate the establishment and implementation of administrative punishments, to ensure and supervise the effective exercise of administration by the administrative organs, to safeguard public interests and social order, to protect lawful rights and interests of the citizens, legal persons or other organizations.

Article 2 This Law applies to the establishment and implementation of administrative punishments.

Article 3 Administrative punishments which shall be imposed on citizens, legal persons or other organizations for the acts committed in violation of administrative order shall be stipulated by laws, regulations or rules in accordance with this law, and shall be implemented by administrative organs in accordance with the procedure stipulated by this Law.

Administrative punishments shall be null and void, if they are inflicted without legal basis or without the observation of the legal procedure.

Article 4 Administrative punishments shall abide by the principles of being fair and just and open to the public.

The establishment and implementation of administrative punishments must take facts as the base and correspond to the facts, nature and seriousness of the illegal acts as well as to the extent of the harm thereby caused to the society.

Stipulations on imposing administrative punishments for illegal acts must be promulgated and if not, shall not serve as the legal basis for administrative punishments.

Article 5 Implementing administrative punishments and checking illegal acts shall adhere to the combination of punishments and education, in order to educate citizens, legal persons or other organizations to observe the law of their own accord.

Article 6 Citizens, legal persons or other organizations have the right to state their cases and defend themselves in respect of the administrative punishments imposed on them, and if they refuse to accept the administrative punishments, shall have the right, according to law, to apply for administrative reconsideration or institute an administrative law suit.

Citizens, legal persons or other organizations who have sustained damage on account of administrative punishments imposed on them in violation of law, have the right to lodge their claims.

Article 7 Citizens, legal persons or other organizations, being imposed on administrative punishments for illegal acts, who have thereby caused damage to other people, shall bear civil responsibility according to law.

In case illegal act has constituted a crime, criminal responsibility shall be investigated according to law, and criminal punishment shall not be substituted by administrative punishments.

Chapter II Classification and Establishment of Administrative Punishments

Article 8 Classification of Administrative Punishments:

- (1) Warning;
- (2) Fine;
- (3) Forfeiture of illegal earnings, forfeiture of illegal property;
- (4) Order to stop production and business;
- (5) Suspension or withdrawal of permits, suspension or withdrawal of licenses;
- (6) Administrative detention; and
- (7) Other administrative punishments as stipulated by law or administrative regulations.

Article 9 Various administrative punishments can be established by law.

Administrative punishment which restrains personal liberty can only be established by law.

Article 10 Administrative regulations can establish whatever administrative punishments except those restraining personal liberty.

Where stipulations are already formulated by law on administrative punishments for illegal acts, specific stipulations to be formulated by administrative regulations must come within the scope of acts, classification and extent stipulated by law for imposing administrative punishments.

Article 11 Local regulations can establish administrative punishments except those restraining personal liberty and withdrawing enterprises' business licenses.

Where stipulations are already formulated by law or administrative regulations on administrative punishments for illegal acts, specific stipulations to be formulated by local regulations must come within the scope of acts, classification and extent stipulated by law or administrative regulations on imposing administrative punishments.

Article 12 Rules formulated by Ministries and Commissions under the State Council may incorporate specific stipulations on administrative punishments within the scope of acts, classification and extent stipulated by law or administrative regulations.

Where law and administrative regulations have not been formulated, the rules formulated by the Ministries and Commissions under the State Council referred to in the preceding paragraph, may establish administrative punishments as warning and fine for acts violating administrative order. And the limits of fines shall be stipulated by the State Council.

The State Council may authorize the organs directly under the State Council charged with the right to inflict administrative punishments to stipulate administrative punishments in accordance with the stipulations of the preceding paragraphs 1 and 2 of this Article.

Article 13 Rules formulated by the people's governments of provinces, autonomous regions and municipalities directly under the central government, the people's governments of the cities where the people's governments of provinces and autonomous regions are seated, and the people's governments of large cities approved by the State Council, can incorporate specific stipulations on administrative punishments within the scope of acts, classification and extent stipulated by law or regulations.

Where law and regulations have not been formulated, the rules formulated by the people's governments referred to in the preceding paragraph may establish administrative punishments as warning and fine for acts violating administrative order. And the limits for fines shall be stipulated by the standing committees of the People's Congress of the provinces, autonomous regions and municipalities directly under the central government.

Article 14 Any other documents of a regulative character other than those provided in Articles 9, 10, 11, 12 and 13 shall not establish administrative punishments.

Chapter III The Organs for Implementing Administrative Punishments

Article 15 Administrative punishments shall be implemented by the authorized administrative organs within the scope of their functions and powers.

Article 16 The State Council or the people's governments of provinces, autonomous regions and municipalities directly under the central government authorized by the State Council may determine whether an administrative organ

has the right to exercise relevant administrative punishments, but the right to exercise administrative punishments restraining personal liberty can only be performed by the public security organs.

Article 17 Functional organizations empowered by law or regulations in charge of the administration over public affairs may implement administrative punishments within the scope of the lawful authorization.

Article 18 Administrative organs may, according to law, regulations and rules and within their lawful authorization, entrust the organizations qualified for the conditions stipulated in Article 19 of this Law to implement administrative punishments, and the administrative organs shall not entrust another organization or person to implement the administrative punishments.

The entrusting administrative organ shall be responsible for the supervision over the acts of the entrusted organization to implement the administrative punishments, and shall bear legal responsibilities consequent upon such acts.

The entrusted organization shall, within its authorization, implement administrative punishments in the name of the entrusting administrative organ, and shall not entrust another organization or person to implement same administrative punishments.

Article 19 The entrusted organization must be qualified for the following conditions:

(1) Organizations formed according to law and in charge of public affairs;

(2) Manned with personnels well-informed of related law, regulations, rules and business; and

(3) Where technical tests or technical appraisal are required, shall have the means to conduct such tests and appraisal.

Chapter IV Jurisdiction and Application of Administrative Punishments

Article 20 Administrative punishments come under the jurisdiction of the administrative organs with the right to make administrative punishments of the people's governments at county level and above in the place where illegal acts have taken place, unless otherwise provided by law or administrative regulations.

Article 21 Dispute over jurisdiction shall be referred to an administrative organ common to the disputing organs at a higher level which will determine the jurisdiction.

Article 22 Where the illegal acts constitute crimes, the administrative organs must transfer the case to judicial organs for investigation of criminal responsibility according to law.

Article 23 Administrative organs, when implementing administrative punishments, shall order the parties to make, or within a specified period of time to make corrections to their illegal acts.

Article 24 A party shall be subjected to no more than one fine for the same illegal act as administrative punishment.

Article 25 Persons under the age of 14, having committed illegal acts, shall not be imposed on administrative punishments, but their guardians shall be ordered to discipline them; persons at the age of 14 but under 18 committing illegal acts shall be imposed on either light or mitigated administrative punishments.

Article 26 Mental patients committing illegal acts when unable to determine or control their acts, shall not be imposed on administrative punishments, but the guardians shall be ordered to look after them. Patients suffering intermittent mental disorder committing illegal acts when in normal mental order, shall be imposed on administrative punishments.

Article 27 Parties shall be imposed on administrative punishments, either light or mitigated, subject to one of the following instances:

- (1) Take initiative in removing or minimizing the consequential damage;
- (2) Commit illegal acts on account of being coerced by others;
- (3) Contribute in cooperation with administrative organs to investigation into and handling with illegal acts; or
- (4) Any other instances for which administrative punishments can be light or mitigated according to law.

No administrative punishment shall be imposed for trifling illegal acts which have been timely checked without causing consequent damage.

Article 28 Where the illegal acts constitute an offense for which criminal detention or fixed-term imprisonment has been rendered by the people's court, the administrative detention imposed on the party by the administrative organ shall, according to law, be deducted from the period of criminal detention or imprisonment.

Where the illegal acts constitute an offense for which fine is imposed by the people's court, the fine inflicted on the party by the administrative organ shall be set off.

Article 29 No administrative punishment shall be given for illegal acts which have not been discovered within two years, unless otherwise provided by law.

The time limit in the preceding paragraph shall be computed from the day of the occurrence of the illegal acts, or from the day of the termination of continuous or consecutive illegal acts.

Chapter V Decision on Administrative Punishments

Article 30 Where citizens, legal persons or other organizations shall according to law be given administrative punishments for acts violating administrative order, the administrative organ must ascertain the facts; no administrative punishments shall be imposed if facts about the illegal acts remain unclear.

Article 31 Administrative organs, before making a decision on administrative punishments, shall inform the party of the facts, causes and legal basis for making such a decision, and advise the party of the rights which the law confers on him.

Article 32 The party has the right to state the case and defend himself. The administrative organ must hear in full the party's opinions, and shall review and examine the facts, causes and evidence submitted by the party. The administrative organ shall adopt the facts, causes and evidence submitted by the party if they are sustainable.

The administrative organ shall not aggravate punishments on account of the party's statements or defense.

Section 1 Summary Procedure

Article 33 A decision on administrative punishments of a fine less than fifty renminbi yuan on citizens or less than a thousand renminbi yuan on legal persons or other organizations, or a warning, can be made on the spot for confirmed illegal acts with sound legal basis, and the party shall execute said administrative punishments according to Articles 46, 47 and 48 of this Law.

Article 34 Law administering personnels making a decision on administrative punishments on the spot, shall show to the party the identification certificates for administering law, and fill in the official printed form and the statement of decision on administrative punishments with serial number on it. The statement of decision on administrative punishment shall be given to the party on the spot.

The statement of decision on administrative punishment in the preceding paragraph shall carry the illegal acts done by the party, legal basis for the administrative punishment, sum of the fine, time and place, name of the administrative organ, and shall be signed or stamped by the law administering personnels.

The decision on administrative punishment, made by the law administering personnels on the spot, must be filed with their administrative organ.

Article 35 The party who refuses to accept the decision on administrative punishment made on the spot, may according to law apply for administrative reconsideration or lodge an administrative law suit.

Section 2 General Procedure

Article 36 Except the case, stipulated in Article 33, where the administrative punishment may be given on spot, the administrative organ, finding that administrative punishment shall according to law be inflicted on a citizen, legal person or other organization for their acts, must conduct an overall, objective, fair and just investigation, collect relevant evidence, or may conduct, when necessary, an inspection according to law or regulations.

Article 37 No less than two law administering personnels shall be present on the scene when the administrative organ conducts investigation or inspection, and shall show their certificates to the party or related persons who should give truthful reply to inquiries and cooperate in the investigation or inspection, without obstructing the process. Written records shall be made of the inquiries or inspection.

The administrative organ, when collecting evidence, may take evidence by random sampling and, when evidence may possibly be lost or collected with difficulty at a later time, may preserve them with registrations being made,

subject to the approval by the responsible person of the administrative organ. Decision on the disposal shall be timely made within seven days during which period the party or related persons shall not destroy or transfer such evidence.

Law administering personnels, having direct concern therein with the party concerned, shall withdraw.

Article 38 Following the conclusion of the investigation, responsible persons of the administrative organ shall examine the findings of the investigation and according to various circumstances of the case, make the following decisions respectively:

(1) Decision on administrative punishment shall be made according to the seriousness and particulars of the case if there are illegal acts for which administrative punishment should be imposed;

(2) Administrative punishment shall not be inflicted if illegal acts are minor ones for which administrative punishments may not be inflicted according to law;

(3) No administrative punishment shall be imposed if illegal acts are not sustainable; and

(4) Illegal acts which constitute a crime shall be transferred to the judicial organ.

Where serious administrative punishment shall be imposed for complicated or major illegal acts, the decision shall be made through collective consideration by the responsible persons of the administrative organ.

Article 39 The administrative organ, inflicting administrative punishment according to Article 38 of this Law, shall draw up a statement of decision on administrative punishment. The statement of decision on the administrative punishment shall carry the following items:

(1) The name or title of the party and address;

(2) The facts and evidence concerning the violation of law, regulations or rules;

(3) Classification and legal basis of the administrative punishment;

(4) Method and time limit for executing the administrative punishment;

(5) Avenue and time limit for application for administrative reconsideration and for the institution of an administrative law suit, if the party refuses to accept the administrative punishment; and

(6) The name of the administrative organ making such punishment and the date of the decision.

Decision on administrative punishment must carry the official stamp of the administrative organ making the administrative punishment.

Article 40 The statement of decision on administrative punishment shall be delivered to the party on spot after pronouncement, and in absence of the party, the administrative organ shall, according to Civil Procedure Law,

serve within seven days the statement of the decision to the party.

Article 41 In case the administrative organ and its law administering personnels fail, before making the decision on administrative punishment, to inform the party of the facts, causes and legal basis for making such a decision, or refuse to hear the party's presentation of the case and defense, as stipulated in Articles 31 and 32 of this Law, the administrative punishment can not be established, unless the party has waived his right to the presentation and defense.

Section 3 Hearing Procedure

Article 42 The administrative organ before making a decision on the administrative punishment such as ordering to stop production and business, withdrawing the permit or license, or large sum of fine, shall advise the party of the right to hearing. And the administrative organ at the request of the party shall organize hearing, and the party shall not bear the expenses for the hearing. Hearing shall be organized in the following manner:

- (1) The party shall, within 3 days after being informed by the administrative organ, notify them of the party's request for hearing;
- (2) The administrative organ shall notify the party of the time and place of the hearing seven days before it;
- (3) Hearing shall be held in public, with the exception that the state's or commercial secret or personal privacy is involved;
- (4) Hearing shall be presided over by the personnel appointed by the administrative organ other than the investigators of the case and the party, submitting that the presider has direct interest in the case, have the right to apply for the withdrawal;
- (5) The party may attend in person or appoint one or two agents to the hearing;
- (6) At hearing the investigators state the facts of the illegal acts done by the party, present the evidence and make suggestion on administrative punishment; the party may make defense and question the evidence; and
- (7) Written records on the hearing shall be made which shall be examined to see no error with it, and signed or stamped by the party.

The party who takes objection to administrative punishment on restraint of personal liberty, shall act according to the Regulations on Administrative Penalties for Public Security.

Article 43 Following the hearing, the administrative organ shall make the decision in accordance with the provisions of Article 38 of this Law.
Chapter VI Execution of Administrative Punishment

Article 44 After the decision on administrative punishment is made in accordance with law, the party shall execute the decision within the time limit prescribed in the decision.

Article 45 The execution of the administrative punishment shall not be suspended when the party refuses to accept the decision and applies for administrative reconsideration or lodge an administrative law suit, unless

otherwise provided by law.

Article 46 The administrative organ making the decision on fine shall be separated from the collecting agency of the fine.

The administrative organ making the decision on administrative punishments and its law administering personnels shall not collect fines on their own authority, with the exception of the fines collected on spot in accordance with Articles 47 and 48.

The party shall, within fifteen days from the day of receiving the statement of decision on administrative punishment, pay the fines to the appointed bank. The bank shall, after receipt of the fines, hand them directly to the state treasury.

Article 47 In case a decision is made on administrative punishment on spot in accordance with the provisions of Article 33 of this Law, the law administering personnels may collect fines on spot, subject to one of the following instances:

- (1) A fine less than twenty renminbi yuan imposed according to law; or
- (2) Fines, if not collected on spot, shall be hardly executed.

Article 48 Administrative organs and their law administering personnels, having made the decisions on fines in accordance with Articles 33 and 38, may collect them on spot at the request of the parties, provided the parties in remote border areas, or on waters, or in area's with inconvenient traffic, have difficulties when paying the fines to the appointed banks.

Article 49 Administrative organs and their law administering personnels collecting fines on spot, must issue to the parties the uniform receipt for fines printed and issued by the financial departments of provinces, autonomous regions and municipalities directly under the central government, and without issuing the uniform receipts for fines printed and issued by the financial departments, parties have the right to refuse the payment of fines.

Article 50 Law administering personnels collecting fines on spot shall, within two days from the day of fine, hand the fines over to the administrative organs; fines collected on spot on waters shall be handed over to the administrative organs within two days from the day of disembarkation. Administrative organs shall within two days hand the fines over to the appointed banks.

Article 51 In case of failure by the party to execute the decision on administrative punishment within the prescribed time limit, the administrative organ making the decision on the punishment may take the following measures:

- (1) In case of failure to pay the fine in time, an additional fine shall be imposed amounting to three per cent of the original fine on a daily rate basis;
- (2) In accordance with law, the sealed up or seized property can be put to auction to pay, or appropriation of the frozen bank deposit can be made for payment of, the fine; or
- (3) Apply to the people's court for enforcement.

Article 52 At the request of the party assuredly in economic difficulty, payment of fine may be postponed or made in installments, subject to the approval by the administrative organ.

Article 53 Illegal property which has been confiscated with the exception of those to be destroyed according to law, must be auctioned publicly or otherwise disposed of according to relevant stipulations of the state.

Fines, confiscated illegal earnings or proceeds of the illegal property by auction must be handed over in its entirety to the state treasury, and shall not be withheld or shared privately and secretly in any manner by any administrative organs or individuals. Financial departments shall not return in any forms to administrative organs making decisions on administrative punishments, the fines, confiscated illegal earnings or proceeds by auction of the confiscated illegal property.

Article 54 Administrative organs shall establish and complete the system of supervision over administrative punishments. And people's governments at county level and above shall strengthen the supervision and inspection over administrative punishments.

Citizens, legal persons and other organizations have the right to lodge their complaints or make report on the punishments imposed by the administrative organs. Administrative organs shall make conscientious examinations and take initiative in correction if anything is found wrong with the administrative punishments.

Chapter VII Legal Responsibility

Article 55 Where administrative organs implement administrative punishments in one of the following instances, superior administrative organs or other related departments shall order said administrative organs to make correction and may give disciplinary sanctions according to law to personnels in charge, and other personnels, bearing direct responsibility:

- (1) No legal basis for imposing administrative punishments;
- (2) Alterations made on one's own authority in classification and extent of administrative punishments;
- (3) Violations of the legal procedure for administrative punishments; or
- (4) Violations of Article 18 of this Law on entrustment of implementing punishments.

Article 56 If administrative organs implementing punishments on parties do not use documents and receipts specially designed for, or use those documents and receipts which are not printed and issued by lawfully appointed departments for, fines and confiscated property, the parties have the right to reject the punishments and make report thereon. Superior administrative organs or other related departments shall collect the illegal documents and receipts for destruction, and impose disciplinary sanctions on the personnels in charge, and other personnels, bearing direct responsibility.

Article 57 Where administrative organs collect fines on their own authority in violation of Article 46 of this Law or financial departments return to administrative organs fines or proceeds of auction in violation of Article 53 of this Law, superior administrative organs or related departments

shall order said administrative organs or financial departments to make corrections and impose disciplinary sanctions on the personnels in charge, and other personnels, bearing direct responsibility.

Article 58 Fines, confiscated illegal earnings or property which have been withheld or shared privately or secretly in any manner by the administrative organs, shall be recovered by financial departments or other related departments and disciplinary sanctions shall be imposed on the personnels in charge, and other personnels, bearing direct responsibility, or if the case is so serious as to constitute a crime, criminal responsibility shall be investigated.

Law administering personnels abusing their authority to demand or accept and take into their possession other's property or collected fines, shall be charged with criminal responsibility if the such acts constituted an offense; and disciplinary sanctions shall be imposed on them if the acts are minor ones not sufficient for a crime.

Article 59 Administrative organs using or damaging the property held in custody, thereby causing loss or damage to the party, shall make compensation according to law, and disciplinary sanctions shall be imposed on the personnels in charge, and other personnels, bearing direct responsibility.

Article 60 Administrative organs implementing inspective or executive measures in violation of law, thereby causing personal or property damage to citizens, or causing loss to legal persons or other organizations, shall make compensation according to law, and disciplinary sanctions shall be imposed on the personnels in charge, and other personnels, bearing direct responsibility; criminal responsibility shall be investigated according to law if the case is so serious as to constitute a crime.

Article 61 Where administrative organs seek private interest for the units themselves by withholding cases which should be transferred to judicial organs according to law for determination of criminal responsibility and substitute administrative punishments for criminal punishments, superior administrative organs or other related departments shall order said administrative organs to make corrections, or otherwise impose disciplinary sanctions on the personnels in charge bearing direct responsibility, if they refuse to correct themselves. Those who play favouritism and protect illegal acts shall be charged with criminal responsibility by applying mutatis mutandis the provisions of Article 188 of the Criminal Law.

Article 62 Where law administering personnels who have neglected their duties resulting in failure to check or punish illegal acts which should be checked or punished, have caused damage to lawful rights of citizens, legal persons or other organizations, to public interest and social order, the personnels in charge, and other personnels, bearing direct responsibility shall be imposed on disciplinary sanctions according to law, and if the cases are so serious as to constitute crimes, criminal responsibility shall be investigated according to law.

Chapter VIII Supplementary Provisions

Article 63 The State Council shall formulate specific implementing measures on the separation of the decisions on fines from collection of the fines.

Article 64 This Law shall enter into force as of October 1, 1996.

In case any stipulations on administrative punishments in the legislations and rules formulated prior to the promulgation of this Law are not in conformity with this Law, amendments shall be made in accordance with this Law from the day when this Law is promulgated, and said amendments shall be completed before December 31, 1997.

Appendix: Relevant Article of the Criminal Law

Article 188 Judicial personnels who play favoritism and commit irregularity, allow with knowledge an innocent person to undergo prosecution, protect with knowledge a guilty person free from being prosecuted, or intentionally make a wrong judgment by confusing the right and the wrong, shall be sentenced to a fixed-term imprisonment less than five years, criminal detention or shall be deprived of political rights, and if the case is even more serious, shall be sentenced to more than five-year imprisonment.