Law of the People's Republic of China on Administrative Reconsideration

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Chapter I General Provisions

Article 1 This Law is enacted in accordance with the Constitution for the purpose of preventing and setting right illegal or inappropriate specific administrative acts, protecting the lawful rights and interests of citizens, legal persons and other organizations, and ensuring and supervising the performance of functions and powers by administrative organs' according to law.

Article 2 This Law shall be applicable to cases where citizens, legal persons or other organizations apply to administrative organs for administrative reconsideration when they consider that certain specific administrative acts infringe upon their lawful rights or interests, and where administrative organs accept the applications and make decisions after administrative reconsideration.

Article 3 The administrative organs that perform the function of administrative reconsideration in accordance with this Law are administrative reconsideration organs. When dealing with the specific affairs in respect of administrative reconsideration, the department in charge of legal work under the administrative reconsideration organs shall perform the following functions and responsibilities:

1. accepting applications for administrative reconsideration;

2. conducting investigation among and collecting evidence from organizations and persons concerned, and consulting documents and materials;

3. examining whether the specific administrative act for which administrative reconsideration has been applied is lawful or appropriate, and drafting a decision after administrative reconsideration;

4. dealing with or transmitting applications for examination of the provisions listed under Article 7 of this Law;

5. in accordance with the prescribed limits of authority and procedures, putting forward suggestions for handling acts taken by administrative organs in violation of the provisions of this Law;

6. handling affairs in response to administrative lawsuits brought by the parties who refuse to accept decisions made after administrative reconsideration; and

7. other functions and responsibilities as prescribed by laws and regulations.

Article 4 When performing their functions of administrative reconsideration, administrative reconsideration organs shall follow the principles of legality, impartiality, openness, promptness, and convenience to the people, and shall correct mistakes so as to guarantee the appropriate implementation of laws and regulations.
Article 5 A citizen, legal person or other organization that refuses to accept the decision made after administrative reconsideration may, in accordance with the provisions of the Administrative Procedure Law, bring an administrative lawsuit before a People's Court, with the exception of those decisions that are final as prescribed by law.

Chapter II The Limits of Administrative Reconsideration

Article 6 Citizens, legal persons and other organizations may apply for administrative reconsideration according to this Law, if they:

1. refuse to accept decisions made by administrative organs to impose on them administrative penalties such as disciplinary warning, fine, confiscation of illegal gains, confiscation of unlawful property or things of value, order for suspension of production or business operation, temporary suspension or rescission of permit, temporary suspension or rescission of license, and administrative detention;

2. refuse to accept decisions made by administrative organs to impose on them compulsory administrative measures including restriction of the freedom of person and sealing up, distraining or freezing of property;

3. refuse to accept decisions made by administrative organs concerning alteration, suspension or revocation of such documents as permits, licenses and qualification certificates;

4. refuse to accept decisions made by administrative organs concerning the right of ownership in or the right to the use of natural resources such as land, mineral resources, water, forests, mountains or hills, grassland, wasteland, tidal flats and sea areas;

5. consider that administrative organs infringe upon their lawful decision-making power for operation;

6. consider that administrative organs infringe upon their lawful property rights and rights to receive education upon application;

7. consider that administrative organs illegally raise funds, collect money or things of value, apportion expenses or illegally require them to perform other duties;

8. consider that administrative organs fail to deal with, according to law, their applications for such documents as permits, licenses and qualification certificates, or their applications for examination and approval and registration of affairs concerned, while the applications meet the requirements as prescribed by law;

9. apply to administrative organs requesting them to perform their statutory duties of protecting the rights of the persons, property rights or the right to receive an education, but the said organs fail to do so in accordance with law;
10. apply to administrative organs requesting them to pay, according to law, pensions for the disabled or for the families of the deceased, social insurance money or the guaranteed minimum for living expenses, but the said organs fail to do so in accordance with law; or

11. consider that other specific administrative acts taken by administrative organs infringe upon their lawful rights or interests.

Article 7 If citizens, legal persons or other organizations consider illegal the following provisions, which the administrative organs take as the basis for their specific administrative acts, they may also apply for examination of these provisions when applying for administrative reconsideration of the said acts:

1. provisions formulated by departments under the State Council;

2. provisions formulated by local people's governments at or above the county level and the department under them; and

3. provisions formulate by township or town people's governments.

The provisions listed in the preceding paragraph do not include rules and regulations formulated by the ministries and commissions under the State Council and by local people's governments. The examination of rules and regulations shall be carried out in accordance with laws and administrative regulations.

Article 8 Anyone who refuses to accept administrative sanctions or other decisions concerning personnel affairs made by administrative organs may appeal in accordance with the provisions of relevant laws and administrative regulations.

Anyone whom refuses to accept mediations conducted or other solutions made by administrative organs in civil disputes may, in accordance with law, apply for arbitration or bring a lawsuit before a People's Court.

Chapter III Application for Administrative Reconsideration

Article 9 Citizens, legal persons and other organizations that consider that certain specific administrative acts infringe upon their lawful rights or interests may apply for administrative reconsideration within 60 days from the date when they come to know such administrative acts, except where the time limit for application is more than 60 days as prescribed by law.

In case of delay in applying within the statutory time limit occasioned by force majeure or for other justifiable reasons, the counting of the days shall be resumed from the date when the obstacle is removed.
Article 10 Citizens, legal persons and other organizations that apply for administrative reconsideration in accordance with this Law are the applicants.

Where the citizen who has the right to apply for administrative reconsideration deceases, his or her close relatives may apply for administrative reconsideration. Where the citizen who has the right to apply for administrative reconsideration has no capacity or has only limited capacity for civil conduct, his or her legal representative may apply for administrative reconsideration on his or her behalf. If the legal person or other organization that has the right to apply for administrative reconsideration ceases to exist, the legal person or other organization that succeeds to its rights may apply for administrative reconsideration.

Other citizens, legal persons or other organizations that have interests in the specific administrative acts on which administrative reconsideration has been applied may take part in administrative reconsideration as a third party.

When a citizen, legal person or other organization refuses to accept a certain specific administrative act taken by an administrative organ and applies for administrative reconsideration, the said administrative organ is the defending party to the application.

The applicant and the third party may entrust their representatives to take part in the administrative reconsideration on their behalf.

Article 11 The applicant may apply for administrative reconsideration in a written or oral form; in case of oral application, the administrative reconsideration organ shall record on the spot the basic particulars about the applicant, the requests for administrative reconsideration, and the main facts, reasons and time of the application for administrative reconsideration.

Article 12 When refusing to accept a specific administrative act taken by the department of a people's government at or above the county level, the applicant may choose to apply to the people's government at the same level or to the competent department at a higher level for administrative reconsideration.

When refusing to accept a specific administrative act taken by the administrative organ that exercises vertical leadership over the Customs, banking, national tax and foreign exchange administration or by a State security organs, the applicant shall apply to the competent department at a higher level for administrative reconsideration.

Article 13 When refusing to accept a specific administrative act taken by a local people's government at any level, the applicant shall apply to the local people's government at a higher level for administrative reconsideration.

When refusing to accept a specific administrative act taken by a local people's government at the county level under the organ dispatched by a people's government of a province or autonomous region, the applicant shall apply to the said organ for administrative
Article 14 When refusing to accept a specific administrative act taken by a department under the State Council or by the people's government of a province, autonomous region or municipality directly under the Central Government, the applicant shall apply to the said departments or people's government for administrative reconsideration. When refusing to accept a decision made after administrative reconsideration, the applicant may bring an administrative lawsuit before a People's Court, or apply to the State Council for arbitration, which shall give a final ruling in accordance with the provisions of this Law.

Article 15 When refusing to accept a specific administrative act taken by other administrative organs or organizations than those mentioned in Articles 12, 13 and 14 of this Law, the applicant shall apply for administrative reconsideration in accordance with the following provisions:

1. When refusing to accept a specific administrative act taken by an organ dispatched, in accordance with law, by a local people's government at or above the county level, the applicant shall apply to the said people's government for administrative reconsideration;

2. When refusing to accept a specific administrative act taken, in its own name and in accordance with the provisions of laws, rules and regulations, by an organ dispatched, in accordance with law, a governmental working department, the applicant shall apply to the said department or to the local people's government at the same level as the said department;

3. When refusing to accept a specific administrative act taken by an organization authorized by laws and regulations, the applicant shall apply for administrative reconsideration to the local people's government, the department of the local people's government or the department under the State Council that directly administers the said organization;

4. When refusing to accept a specific administrative act taken jointly by two or more administrative organs in their names, the applicant shall apply for administrative reconsideration to their common administrative organ at a higher level; and

5. When refusing to accept a specific administrative act taken by an administrative organ before it is abolished, the applicant shall apply for administrative reconsideration to the administrative organ at a level higher than one that carries on the exercise of the functions and powers of the abolished organ.

In any of the cases mentioned in the preceding paragraph, the applicant may also apply for administration reconsideration to the people's government at the county level in the place where the specific administrative act is taken. The said people's government, having accepted the application, shall deal with it in accordance with the provisions in article 18 of this Law.
Article 16 Where citizens, legal persons or other organizations have applied for administrative reconsideration and the administrative reconsideration organs have already accepted the applications according to law, or where laws or regulations stipulate that they apply for administrative reconsideration to the administrative reconsideration organs before they can bring administrative lawsuits before the People's Courts when they refuse to accept the decisions made after administrative reconsideration, the said citizens, legal persons or other organizations may not bring administrative lawsuits before the People's Courts before the expiration of the statutory time limit set for administrative reconsideration.

Where a citizen, legal person or other organization has brought an administrative lawsuit before a People's Court and the People's Court has accepted the case according to law, he or it may not apply for administrative reconsideration.

Chapter IV Acceptance of Applications for Administrative Reconsideration

Article 17 Having received an application for administrative reconsideration, the administrative reconsideration organ shall examine the application within five days; when it finds that the application does not conform to the provisions of this Law, it shall decide not to accept the application and shall inform the applicant of the decision in writing; when if finds that the application conforms to the provisions of this Law but does not come under its jurisdiction, it shall inform the applicant to apply to the administrative reconsideration organ concerned.

With the exception of the provisions in the preceding paragraph, an application for administrative reconsideration is considered accepted on the date when the department in charge of legal work under the administrative reconsideration organ receives it.

Article 18 The local people's government at the county level that accepts an application for administrative reconsideration in accordance with the provisions in Paragraph 2 of Article 15 of this Law shall, within seven days from the date it receives the said application, transmit the application that comes under the jurisdiction of another administrative reconsideration organ in accordance with the provisions in Paragraph 1 of Article 15 of this law and inform the applicant of the matter. The administrative reconsideration organ that accepts the transmitted application shall deal with it in accordance with the provisions in Article 17 of this Law.

Article 19 In cases where laws or regulations stipulate that citizens, legal persons or other organizations apply for administrative reconsideration to the administrative reconsideration organs before they can bring administrative lawsuits before the people's courts when they refuse to accept the decisions made after administrative reconsideration, if the administrative reconsideration organs decide not to accept the applications or fail to reply within the time limit for administrative reconsideration after they accept the applications, the citizens, legal persons or other organizations may bring administrative lawsuits before the people's courts according to law from the date they receive the notice.
that the administrative reconsideration organs decide not to accept their applications or within 15 days from the date the time limit for administrative reconsideration expires.

Article 20 When an administrative reconsideration organ refuses, without justifiable reasons, to accept the application for administrative reconsideration submitted by a citizen, legal person or other organization in accordance with law, the administrative organ at a higher level shall order it to accept the application; or, when necessary, the administrative organ at a higher level may accept the application directly.

Article 21 Specific administrative acts shall not be suspended during the period of administrative reconsideration; however, they may be suspended under the following circumstances:

1. The defending party to an application deems it necessary to suspend the action;
2. The administrative reconsideration organ deems it necessary to suspend the action;
3. The applicant apply for suspension of the action and the administrative reconsideration organ deems the application reasonable and decides to suspend the action; and
4. The law stipulates that the act be suspended

Chapter V Decision Made After Administrative Reconsideration

Article 22 In principle, administrative reconsideration shall take the form of written examination; however, when the applicant requests or the departments in charge of legal work under an administrative reconsideration organ deems it necessary, investigation may be conducted among the organizations and persons concerned and the opinions of the applicant, the defending party to the application and the third party heeded.

Article 23 The department in charge of legal work under an administrative reconsideration organ shall, within seven days from the date it accepts an application for administrative reconsideration, transmit to the defending party a duplicate of the application, or a copy of the written record of an oral application for administrative reconsideration. The defending party shall, within 10 days from the date it receives the duplicate of the application or the copy of the written record of the oral application, submit a written reply, and the basis and other relevant materials on the strength of which it took the specific administrative act.

The applicant and the third party may have access to the written reply, the evidence, basis and other relevant materials supporting the specific administrative acts submitted by the defending party, and the administrative reconsideration organ may not refuse to show them unless the reply, evidence, basis or other relevant materials involve State secrets, commercial secrets or personal privacy.

Article 24 In the process of administrative reconsideration, the defending party to an
application may not, of his own, collect evidence from the applicant or from other organizations or individuals concerned.

Article 25 The applicant may withdraw his application before a decision is made after administrative reconsideration and after the applicant gives the reasons for the withdrawal. The process of administrative reconsideration shall be terminated when the application is withdrawn.

Article 26 When an applicant applies for administrative reconsideration, and at the same time for examination of the provisions listed in Article 7 of this Law, which comes under the jurisdiction of an administrative reconsideration organ, the said organ shall, within 30 days, handle the application according to law. Otherwise, the same organ shall, within seven days and according to statutory procedures, transmit the application to the administrative organ that has the authority to deal with it according to law, and the latter shall, within 60 days, handle it according to law. During the period in which the application is being handled, examination of a specific administrative act shall be suspended.

Article 27 If, when examining the specific administrative acts taken by the defending party to an application, the administrative reconsideration organ considers the basis of such acts illegitimate and if it has the authority to deal with the case, it shall do so within 30 days in accordance with law; if it does not have the authority to deal with the case, it shall, within seven days and according to statutory procedures, transmit the case to the State organ which has the authority to deal with the case in accordance with law. During the period in which the case is being handled, examination of the specific administrative acts shall be suspended.

Article 28 The department in charge of legal work under an administrative reconsideration organ shall examine the specific administrative acts taken by the defending party to an application and put forward suggestions. After the suggestions are approved by the leading member of the administrative reconsideration organ or adopted after collective discussion, a decision shall be made after administrative reconsideration according to the following provisions:

1. If the facts about the specific administrative acts are clearly established, the evidence is conclusive, the basis used is correct, the legal procedure is complied with, and the acts are appropriate, a decision for affirming the acts shall be made;

2. If the defending party to an application refuses to perform its statutory responsibilities, a decision shall be made for it to perform the responsibilities within a time limit; or

3. If a specific administrative act is taken in one of the following circumstances, a decision shall be made to have it nullified or changed or confirm that it is illegal; in that case, the defending party shall be ordered to take another specific administrative act within a time limit:

   (1) The main facts are not clear and essential evidence is inadequate;
(2) The basis is used incorrectly;

(3) Statutory procedures are violated;

(4) Authority is exceeded or power is abused; or

(5) The act is obviously inappropriate.

4. If the defending party refuses to submit, as required by provisions in Article 23 of this Law, its written reply, or the evidence, basis or other relevant material on the strength of which it took its specific administrative act, the said act shall be considered having no evidence or basis, and a decision shall be made to nullify it.

Where administrative reconsideration organ orders the defending party to take another specific administrative act, it may not take the same or basically the same specific administrative act on the basis of the same facts or reasons.

Article 29 When applying for administrative reconsideration, the applicant may also request administrative compensation. In case the administrative reconsideration organ believes that the request conforms to the provisions of the State Compensation Law and that compensation should be made, when it decides to have the specific administrative act nullified or changed or to confirm that it is illegal, it shall, at the same time, decide that the defending party make the compensation in accordance with law.

If the applicant does not request for administrative compensation when applying for administrative reconsideration, the administrative reconsideration organ while deciding, in accordance with law, to revoke or alter the punishment of a fine, or to revoke the specific administrative acts such as the illegal raising of funds, confiscation or collection of money or things of value, apportion of expenses, and sealing up, distraining, or freezing of property, shall, at the same time, order the defending party to return the property, to revoke such measures as sealing up, distraining, or freezing or property, or to pay an appropriate amount of money as compensation.

Article 30 Where a citizen, legal person or other organization believes that the specific administrative act taken by an administrative organ infringes upon his or its right of ownership in or right to the use of natural resources such as land, mineral resources, waters, forests, mountains or hills, grasslands, wasteland, tidal flats and sea areas, which he or it has acquired according to law, he or it shall first apply for administrative reconsideration; if he or it refuses to accept the decision made after administrative reconsideration, he or it may bring an administrative lawsuit before a People's Court according to law.

The decisions made after administrative reconsideration by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government confirming the right of ownership in or the right to the use of natural resources such as land, mineral resources, waters, forests, mountains or hills, grassland, wasteland, tidal flats and
sea areas, on the basis of the decisions made by the State Council or the people's
governments of provinces, autonomous regions or municipalities directly under the Central
Government regarding the survey, delimitation or readjustment of administrative division
or regarding land requisition, are final.

Article 31 An administrative reconsideration organ shall make a decision after
administrative reconsideration within 60 days from the date it accepts an application,
except where the time limit for administrative reconsideration prescribed by law is less
than 60 days. Where the circumstances are complicated and make it impossible to make a
decision after administrative reconsideration within the prescribed time limit, the time
limit may be extended with the approval by the leading member of the administrative
reconsideration organ, and the applicant and the depending party to the application shall be
informed of the matter; however, the extension may not exceed the maximum of 30 days.

When an administrative reconsideration organ makes a decision after administrative
reconsideration, it shall prepare a written decision after administrative reconsideration,
with an official seal affixed.

Once the written decision made after administrative reconsideration is delivered to the
applicant and the defending party; it shall become legally effective.

Article 32 The defending party to the application shall carry out the decision made after
administrative reconsideration.

Where the defending party refuses to carry out the decision made after administrative
reconsideration or delays the carrying out of the decision without justifiable reasons, the
administrative reconsideration organ or the relevant administrative organ at a higher level
shall order it to carry out the decision within a time limit.

Article 33 Where an applicant neither brings a lawsuit before a People's Court at the
expiration of a time limit nor carries out the decision made after administrative
reconsideration or the final ruling on such a decision, the matter shall be handled in
accordance with the following provisions, as the case may be:

1. A decision made after administrative reconsideration for affirming a specific
administrative act shall be enforced according to law by the administrative organ that has
the said act, or an application shall be made to a People's Court for enforcement; or

2. A decision made after administrative reconsideration for having a specific
administrative act changed shall be enforced by the administrative reconsideration organ
according to law, or an application shall be made to a People's Court for enforcement.

Chapter VI Legal Responsibility

Article 34 Where an administrative reconsideration organ, in violation of the provisions of
this Law and without justifiable reasons, refuses to accept an application for administrative reconsideration presented in accordance with law, to transmit the application as required by provisions, or to make a decision after administrative reconsideration within the statutory time limit, the persons who are directly in charge and the other persons who are directly responsible for the violation shall be given administrative sanctions such as disciplinary warning, recording of a demerit or of a serious demerit according to law; if the said administrative reconsideration organ still refuses to accept the application for administrative reconsideration or to transmit the application as required by provisions after it is ordered to do so, and if serious consequences are caused, the said persons shall be given administrative sanctions such as demotion, dismissal from office and discharge from office and discharge from public service according to law.

Article 35 Any member of an administrative reconsideration organ who, in the course of administrative reconsideration, engages in malpractices for personal gain or is derelict or negligent of his duty shall be given administrative sanctions such as disciplinary warning, recording of a demerit or of a serious demerit according to law; if the consequences are serious, he shall be given administrative sanctions such as demotion, dismissal from office and discharge from public service according to law; if a crime is constituted, criminal responsibility shall be investigated according to law.

Article 36 Where the defending party to an application, in violation of the provisions of this Law, refuses to make a written reply or submit the evidence, basis and other relevant materials on the strength of which it takes the specific administrative act, or prevents in a disguised form, citizens, legal persons or other organizations from applying for administrative reconsideration according to law, the persons who are directly in charge and the other persons who are directly responsible for the violation shall be given administrative sanctions such as disciplinary warning, recording of a demerit or of a serious demerit according to law; where the said persons resort to frame-up or retaliation, they shall be given administrative sanctions such as demotion, dismissal from office and discharge from public service according to law; if a crime is constituted, criminal responsibility shall be investigated according to law.

Article 37 Where the defending party to an application refuses to carry out or, without justifiable reasons, delays carrying out the decision made after administrative reconsideration, the persons who are directly in charge and the other persons who are directly responsible for the violation shall be given administrative sanctions such as disciplinary warning, recording of a demerit or of a serious demerit according to law; if the said persons still refuse to carry out the decision after they are ordered to do so, they shall be given such administrative sanctions such as demotion, dismissal from office and discharge from public service according to law.

Article 38 Where the department in charge of legal work under an administrative reconsideration organ finds that officials of the organ refuse, without justifiable reasons, to accept an application for administrative reconsideration, or to make a decision after administrative reconsideration within the prescribed time limit, or that they engage in malpractices for personal gain, resort to retaliation or refuse to carry out a decision made
after administrative reconsideration, etc., the department shall put forward suggestions to the said organ, which shall handle the case in accordance with the provisions of this Law, other relevant laws and administrative regulations.

Chapter VII Supplementary Provisions

Article 39 When accepting an application for administrative reconsideration, the administrative reconsideration organ may not charge the applicant any fee. The expenses on administrative reconsideration shall be included in and guaranteed by the budget of the organ.

Article 40 The administrative reconsideration period shall be calculated and the administrative reconsideration documents shall be served in accordance with the provisions on time periods and service in the Civil Procedure Law.

The provisions of "five days" and "seven days" for administrative reconsideration periods in this Law refer to workdays, excluding public holidays and weekends.

Article 41 This Law shall be applicable to foreign nationals, stateless persons and foreign organizations that apply for administrative reconsideration within the territory of the People's Republic of China.

Article 42 In case of discrepancy between provisions on administrative reconsideration in law promulgated before this Law goes into effect and those of this Law, the provisions of this Law shall prevail.

Article 43 This Law shall go into effect as of October 1, 1999. The Regulations on Administrative Reconsideration, promulgated and revised by the State Council on December 24, 1990 and October 9, 1994 respectively, shall be annulled at the same time.