

## **Administrative Procedure Act (Excerpt)**

**Act No. 88 of November 12, 1993**

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### **Chapter III Adverse Dispositions**

#### **Section 1 General Rules**

(Disposition Standards)

##### **Article 12**

- (1) Administrative agencies must endeavor to establish disposition standards, and to make the standards available to the public.
- (2) Administrative agencies, in establishing disposition standards, must make them as concrete as possible in light of the nature of the particular Adverse Disposition in question.

(Procedures Prerequisite for Adverse Dispositions)

##### **Article 13**

(1) Administrative agencies must, with regard to rendering Adverse Dispositions and pursuant to terms of the following items, establish procedures for hearing statements of opinion of persons who will become the subject parties of the Adverse Dispositions, in accordance with the categories specified respectively in those items and generally in the manner set forth in this Chapter:

(i) Hearings: when any of the following applies:

- (a) when rendering Adverse Dispositions that will rescind some permission, etc.;
- (b) beyond the circumstances provided for in (a) of this item, when rendering any other Adverse Dispositions which will directly deprive the subject parties of some conferred qualification or status;
- (c) when rendering Adverse Dispositions that are rendered to corporations and order the dismissal of the officers of the subject corporations, that order the dismissal of the persons engaged in the processes of the subject parties, or that order the expulsion of persons who are members of the subject parties; or
- (d) other than cases as described in (a) through (c) of this item, when cases occur which administrative agencies recognize as appropriate.

(ii) Granting of the opportunity for explanation: when none of the circumstances described in (a) through (d) of the preceding items apply.

(2) The provisions of the preceding paragraph do not apply to the cases which fall under any of the following items:

- (i) when, for the public interest, it is necessary to render Adverse Dispositions urgently, and procedures for statements of opinion prescribed in the preceding paragraph cannot therefore be timely implemented;
- (ii) when rendering Adverse Dispositions which must be rendered when it is ascertained that some person's qualifications required by laws and regulations are lacking or have been lost, and when the fact of the non-existence of the qualifications or their loss has been expressly established by a written judgment or decision of court, by the document of the appointer which corroborates that person's assuming the specific position, or by some other objective documents;
- (iii) where laws and regulations clearly provide for, with technical standards, the matters to be complied with concerning the establishment, maintenance or management of facilities or equipment, or concerning the manufacturing, sale or other handling of goods and when rendering Adverse Dispositions ordering to

comply with the standards, solely based upon the fact of non-compliance with these standards, which has been confirmed by measurement, experimentation, or some other objective method for the determination;

(iv) when rendering Adverse Dispositions which fix an amount of money to be paid, which order the payment of a specific amount of money, or which rescind a decision of cash benefits or otherwise restrict cash benefits; or,

(v) when rendering Adverse Dispositions, which are specified by Cabinet Order as being not subject to the requirement to hear the opinion of those who will become the subject parties owing to the fact that, in light of the nature of the Dispositions, the contents of the duties imposed by the Dispositions are extremely insignificant.

(Showing of Grounds for Adverse Dispositions)

#### **Article 14**

(1) Administrative agencies, if they render Adverse Dispositions, must concurrently show the grounds for the Adverse Disposition to the subject parties; provided, however, that this does not apply when there are pressing needs for rendering Adverse Dispositions without showing grounds.

(2) In the case referred to in the proviso of the preceding paragraph, but excepting cases where the locations of the subject parties have become unknown and other cases where circumstances make it difficult to show grounds after rendering of the Disposition, administrative agencies must show the grounds for the Disposition concerned within the considerable period of time after its rendering.

(3) When Adverse Dispositions are rendered in writing, the grounds set forth in the preceding two paragraphs must also be shown in writing.

#### **Section 2 Hearings**

(Manner of Notice of Formal Hearings)

#### **Article 15**

(1) In conducting hearings, administrative agencies must provide to the anticipated subject parties of Adverse Dispositions written notice of the following particulars, which notices are to be provided with a considerable period of time before the date of the hearing:

(i) the contents of the anticipated Adverse Disposition and the specific provisions of laws and regulations which will be the grounds for the anticipated Adverse Disposition;

(ii) the facts which will be the cause of the anticipated Adverse Disposition;

(iii) the date and place of the hearing; and,

(iv) the name and location of the organization which has jurisdiction over processes relating to the hearing.

(2) The following particulars must be included in the written notice set forth in the preceding paragraph:

(i) that the addressee may appear and state his or her opinion on the date of the hearing, may produce documentary evidence or articles of evidence (hereinafter referred to as "documentary evidence, etc.") at that time, or may, in lieu of appearing on the date of the hearing, submit written statements and documentary evidence, etc.; and,

(ii) that the addressee, until the conclusion of the hearing, may demand inspection of materials which prove the facts upon which the anticipated Adverse Disposition will be based.

(3) Administrative agencies may, if the location of an anticipated subject party of an Adverse Disposition is unknown, provide the notice pursuant to the provisions of paragraph (1) of this Article by posting, on the notice board of their offices, the name of the addressee, the matters listed in items (iii) and (iv) of paragraph (1), and a statement that the administrative agency will deliver to the addressee in question at any time, a document addressing each of the matters listed in the items of the paragraph. Accordingly, notices are deemed to have reached the addressee two weeks after their posting.

(Agents)

**Article 16**

(1) Persons who have received the notice set forth in paragraph (1) of the preceding Article (including persons to whom the notice is deemed to have reached pursuant to the second sentence of paragraph (3) of the same Article. Hereinafter referred to as "parties") may appoint agents.

(2) Agents may perform any act relating to hearings individually on behalf of parties.

(3) The status of agents must be certified in writing.

(4) When an agent becomes divested of his or her status, the parties who appointed that agent must give written notice thereof to the administrative agencies concerned.

(Intervenors)

**Article 17**

(1) Persons who preside over hearings pursuant to the provisions of Article 19 (hereinafter referred to as "presiding officials") may, when they find it necessary, request persons who are not parties, but who are recognized, in light of laws and regulations on which anticipated Adverse Dispositions are pursuant to, as having an interest in the anticipated Adverse Disposition (referred to in paragraph (2), item (vi) of the same Article as "interested parties") to intervene in the hearing process or may permit the interested parties' intervention in the hearing process.

(2) Persons who intervene in the hearing process pursuant to the provisions of the preceding paragraph (hereinafter referred to as "intervenors") may appoint an agent.

(3) The provisions of paragraphs (2) to (4) of the preceding Article 16 inclusive applies mutatis mutandis to the agents set forth in the preceding paragraph. In this case, the term "parties" in paragraphs (2) and (4) of the same Article is deemed to be replaced with "intervenors."

(Inspection of Records)

**Article 18**

(1) Parties and intervenors whose interests would be harmed by a particular Adverse Disposition (referred to in this Article and in Article 24, paragraph (3) as "parties, etc.") may, between the time when notice of a hearing is given and the time when the hearing is concluded, request from the administrative agency concerned to inspect records indicating the results of investigations on the matters in question and other materials which prove the facts upon which the anticipated Adverse Disposition will be based. In this case, administrative agencies may not reject requests for inspection unless there is a risk that the interests of third parties would be harmed or unless there are other justifiable grounds.

(2) The provisions of the preceding paragraph do not preclude the parties, etc. from making additional requests for the inspection of materials, the need for which arises during the course of proceedings on the date of hearings.

(3) Administrative agencies may designate the date, time and place for inspections set forth in the preceding two paragraphs.

(Presidency of Hearings)

**Article 19**

(1) Hearings will be presided over by an official designated by the administrative agencies or the other persons as may be provided for by a Cabinet Order.

(2) No person who falls under any of the following items may preside over a hearing:

(i) parties to or intervenors in the hearing concerned;

(ii) spouses, relatives within the fourth degree of kinship, or other relatives living together with the persons

prescribed in the preceding paragraph;

(iii) agents of the persons prescribed in item (i) of this paragraph or the assistants prescribed in paragraph (3) of the next Article;

(iv) persons who were the persons prescribed by any of the preceding three items;

(v) guardians, supervisors of guardians, curators, supervisors of curators, assistants or supervisors of assistants of the persons prescribed in item (i) of this paragraph; and,

(vi) interested parties other than intervenors.

(Method of Proceedings on the Date of Hearings)

#### **Article 20**

(1) The presiding official must, at the outset of the first date of the hearing, direct officials of the administrative agency concerned to explain to the persons who have appeared there: the contents of the anticipated Adverse Disposition, and the underlying provisions of laws and regulations, and the facts upon which the Adverse Disposition will be based.

(2) Parties and intervenors may, by appearing on the date of the hearing, state their opinions, produce documentary evidence, etc., and, with the approval of the presiding official, address questions to the officials of the administrative agency concerned.

(3) In the case referred to in the preceding paragraph, parties or intervenors may, with the permission of the presiding official, appear together with assistants.

(4) The presiding official may, when he or she finds it necessary, address questions to parties or intervenors, call upon them to state their opinions or produce documentary evidence, etc., or require officials of the administrative agency concerned to provide explanations.

(5) Notwithstanding the fact that some parties or intervenors may be absent, the presiding official may conduct the proceedings on the assigned date of the hearing.

(6) Except when administrative agencies are considered suitable to open to the public, proceedings on the date of hearings will be closed to the public.

(Submission of Written Statements)

#### **Article 21**

(1) Parties or intervenors may, in lieu of appearing on the date of a hearing, submit written statements and produce documentary evidence, etc. to the presiding official on or before the date of the hearing.

(2) If so requested by persons appearing on the date of the hearing, the presiding official may exhibit to persons in appearance there the written statements and documentary evidence, etc. set forth in the preceding paragraph.

(Designation of Dates for Continuation)

#### **Article 22**

(1) When the results of the proceedings on the date of a hearing suggest that continuation of the hearing is necessary, the presiding official may assign a continuation date.

(2) In the case referred to in the preceding paragraph, the parties and intervenors must be given, in advance, notice in writing of the date and the location of the next hearing; provided, however, that it would be sufficient to notify parties and intervenors who appeared on the date of hearing of the above matters made on the date of the hearing.

(3) The provisions of Article 15, paragraph (3) applies mutatis mutandis to the means of giving notice in the case referred to in the main clause of the preceding paragraph when the locations of parties or intervenors are unknown. In this case, the terms "an anticipated subject party of an Adverse Disposition"

and "two weeks after its posting" in paragraph (3) of the same Article are deemed to be replaced respectively with the "parties or intervenors" and "two weeks after its posting (but in the case of the second notice being made to the same parties or intervenors, then the day following its posting)."

(Conclusion of a Hearing with Nonappearance of Parties)

**Article 23**

(1) The presiding official may, where some or all of the parties fail to appear on the date of a hearing without justifiable grounds and the parties do not submit written statements or produce documentary evidence, etc. prescribed in Article 21, paragraph (1), or, where some or all of the intervenors fail to appear on the date of the hearing, conclude the hearing without granting the persons any further opportunity to state their opinions and produce documentary evidence, etc.

(2) Beyond the case prescribed in the preceding paragraph, if some or all of the parties fail to appear on the date of the hearing and do not submit written statements or produce documentary evidence, etc. prescribed in Article 21, paragraph (1), and when the persons are not expected to appear on an date for the hearing for a considerable period of time, the presiding official may ask them to submit written statements and produce documentary evidence, etc. with a due date, and conclude the hearing when the due date falls.

(Record of Hearings and Written Reports)

**Article 24**

(1) Presiding officials must prepare a record of the proceedings of hearings, and the record must clearly indicate the outline of the statements raised by parties and intervenors with regard to the facts upon which the anticipated Adverse Disposition will be based.

(2) The record set forth in the preceding paragraph must be prepared on each date of the hearing when hearing sessions are conducted, and where hearing sessions are not conducted, then promptly after the hearing is concluded.

(3) The presiding official must, promptly after the hearing is concluded, prepare a written report containing his or her opinion as to whether the assertion of the parties, etc. concerning the facts which will be the cause of the anticipated Adverse Disposition are justified, and submit the report to the administrative agency concerned together with the record set forth in paragraph (1) of this Article.

(4) Parties and intervenors may demand inspection of the records set forth in paragraph (1) of this Article and the written report set forth in the preceding paragraph.

(Reopening of Hearings)

**Article 25** Administrative agencies may, when they find necessary in light of the circumstances arising after the conclusion of a hearing, order the presiding official to reopen a hearing by returning to the presiding official the written report submitted pursuant to the provisions of paragraph (3) of the preceding Article. The provisions of the main clause of Article 22, paragraph (2) and of paragraph (3) of the same Article applies mutatis mutandis to this case.

(Decisions to Render Adverse Dispositions Following Hearings)

**Article 26** In deciding to render an Adverse Disposition, administrative agencies must do so only after careful consideration of the contents of the record set forth in Article 24, paragraph (1) and of the opinion of the presiding official entered in the written report set forth in paragraph (3) of the same Article.

(Limitations upon Requests for Review)

**Article 27** No request for review may be filed against Dispositions under the provisions of this Section or inaction thereof.

(Special Provisions on Hearings Prerequisite for Adverse Dispositions Ordering the Dismissal of Officers)

#### **Article 28**

(1) For the purpose of applying the provisions of this Section, when, in the hearings pertaining to an Adverse Disposition which falls under Article 13, paragraph (1), item (i) (c), the notice set forth in Article 15, paragraph (1) is given, the officers of the corporation which is the subject party, the persons engaged in the processes of the subject party, or the members of the subject party (limited to those persons being ordered in the Disposition to be dismissed or expelled) are deemed to be the persons who have received the notice.

(2) If hearings have been conducted pertaining to Adverse Dispositions set forth in the preceding paragraph that order the dismissal of officers of the corporation which is the subject party or the persons engaged in the processes of the subject party (hereinafter in this paragraph referred to as "officers, etc."), then, notwithstanding the provisions of Article 13, paragraph (1), administrative agencies are not required to conduct hearings for the officers, etc., with regard to Adverse Dispositions which are rendered pursuant to the provisions of laws and regulations to dismiss the officers, etc. because the original subject party did not follow the initial Adverse Disposition in question.

### **Section 3 Granting of the Opportunity for Explanation**

(Method of Granting an Opportunity for Explanation)

#### **Article 29**

(1) Except when administrative agencies authorize presentation to be made orally, explanations are to be made by submitting a written statement of explanation (hereinafter referred to as a "written explanation").

(2) When offering explanation, documentary evidence, etc. may be produced.

(Method of Notice of Granting of an Opportunity for Oral Explanation)

**Article 30** Administrative agencies must provide a written notice of the following particulars to the anticipated subject parties of Adverse Dispositions, which must be provided within a reasonable period of time before the deadline of the submission of written explanation (or in the case of granting of an opportunity for oral explanation, before the date and time of that presentation) :

- (i) the contents of the anticipated Adverse Disposition and the specific provisions of laws and regulations which will be the grounds for the anticipated Adverse Disposition;
- (ii) the facts which will be the cause of the anticipated Adverse Disposition; and
- (iii) the place and deadline for submitting a written explanation (or in the case of granting of the opportunity for oral explanation, the time, date, and place of explanation).

(Application Mutatis Mutandis of Procedures of Hearings)

**Article 31** The provisions of Article 15, paragraph (3) and Article 16 applies mutatis mutandis to the grant of opportunities for explanation. In this case, the terms "paragraph (1)" and "items (iii) and (iv) of the same paragraph" in Article 15, paragraph (3), and "paragraph (1) of the preceding Article" and "the second sentence of paragraph (3) of the same Article" in Article 16, paragraph (1) are deemed to be replaced respectively with "Article 30," "item (iii) of the same Article," "Article 30" and "the second sentence of paragraph (3), Article 15 as applied mutatis mutandis pursuant to Article 31."