

## Further Observations on the Second Revision Draft of the Administrative Reconsideration Law

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China's Administrative Reconsideration Law (the **ARL**) regulates an underutilized internal agency process for appeals by the public against government action, as briefly discussed in an [earlier note](#) highlighting many of the initial proposed changes in the first revision draft (**First Draft**) that sought to substantially overhaul the ARL. Following a first round of public consultation in the Fall of 2022 and [further research and discussion](#), the National People's Congress Standing Committee published a second revision draft (**Second Draft**) on June 28, 2023 to solicit further input from the general public. In addition to more minor amendments, the Second Draft (English translation [here](#)) adds multiple provisions intended to further enhance the credibility of the process, a few of which are highlighted below:

Administrative Reconsideration Committees: Perhaps most significantly, given the research and pilots conducted for over a decade to enhance the *institutional* neutrality of the administrative reconsideration system, the Second Draft strengthens the role, newly legislated in the First Draft, of administrative reconsideration committees (**ARCs**). These are to be comprised of relevant government departments, experts and scholars and provide advisory opinions in certain cases. The Second Draft deletes language that was in Article 49 providing that the ARCs would be led by the government and stipulates that administrative reconsideration offices *should*, rather than *may* (under the First Draft) request ARC advisory opinions in certain cases. The original list of such cases included those that are major, difficult or complicated; involve relatively strong professional or technical matters; or where administrative reconsideration offices consider that advisory opinions are necessary. The Second Draft adds those where applicants challenge the act of a people's government at the provincial level.

Moreover, the Second Draft bolsters the status of ARC advisory opinions by stipulating, in Article 58, that administrative reconsideration organs should take them as "an important reference" when making the relevant administrative reconsideration decisions. Lastly, the Second Draft broadens the ARC responsibilities, adding that they should conduct research on and provide suggestions concerning major matters and common issues in administrative reconsideration work.

Hearings and in-person adjudication: The First Draft had expanded the situations under which an in-person hearing would be appropriate and favored "in principle" the use of in-person hearings or other mechanisms that permit reconsideration officials to "listen to" or hear directly from the parties. Article 46 of the Second Draft drops the "in principle" language, making in-person adjudication the rule – not simply a preference, with the traditional written review or "paper hearing" the exception. Written reviews would still be used where the parties consent, if in-person review is not possible due to reasons relating to the parties, or when the summary procedure under Article 50 is appropriate.<sup>1</sup>

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<sup>1</sup> Summary procedures are to be used either with the consent of all parties or in cases where (1) the facts and rights and obligations between the parties are clear and (2) the dispute is minor and involves government actions taken on the spot, an amount not more than 3,000 yuan, or government information disclosure.

Hearings are to be convened for major, difficult or complex administrative reconsideration cases, and may be held on the initiative of the administrative reconsideration offices or upon request by an applicant. Article 46 also calls for attendance at hearings by responsible personnel of respondents or a corresponding staff member, a requirement that echoes one in the [Administrative Litigation Law](#), designed to both enhance officials' appreciation of legal requirements and help ameliorate the substantive underlying disputes between government and the people. The Second Draft strengthens this provision by requiring that the responsible person must provide a written explanation if they cannot participate.

Transparency: In order to “[promote justice through disclosure and strengthen supervision](#),” the Second Draft makes clear that administrative reconsideration decisions should normally be disclosed to the public in accordance with relevant state provisions, which would include the State Council [Regulations on Open Government Information](#).

Other improvements to bolster “the role of administrative reconsideration as the main channel for resolving administrative disputes” suggested by stakeholders including the general public: The Second Draft further expanded the scope of administrative reconsideration to encompass government compensation agreements, including for housing and land expropriation (Article 11) and to remove “acts that do not produce concrete impact on the rights and obligations of citizens, legal persons or other organizations” from the list of matters that do *not* fall within the scope of administrative reconsideration.

Most laws and law revisions go through three drafts at most, so it is reasonable to expect that the ARL will be finalized based on its forthcoming third draft, at which point a more comprehensive analysis of the ARL will be appropriate.