

# China's Revised Administrative Punishments Law: Strengthening Due Process and Implications for Social Credit Enforcement

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In January 2021, China's National People's Congress (NPC) Standing Committee [approved](#) an overhaul (the [Revision](#)) of the pioneering 25-year old Administrative Punishment Law (APL), which regulates the enactment, investigation and decision-making process for administrative punishments imposed by government agencies. The determination of whether a government order or action pertaining, for example, to [internet content](#) or [anti-monopoly](#) is an "administrative punishment" is critical for triggering prescribed rights-protective procedures. The Revision generally strengthens these due process rights, as well as the APL's flexible enforcement mandate and transparency requirements. This memorandum describes the APL, highlighting the major amendments that took effect July 15, 2021, and discusses the APL's relevance to regulatory enforcement actions in 2021 and to blacklisting and joint inter-departmental disciplinary measures imposed under China's still-evolving social credit system (SCS).

## *Background*

The APL was hailed as a milestone in China's legal development for introducing due process into Chinese administrative law. It sought to curb widespread abuse of the government's power to impose non-criminal administrative punishments such as fines, license revocations and administrative detention, by requiring government agencies to provide alleged offenders with notice of an intent to impose punishment and the basis therefor; the opportunity to defend their actions prior to punishment, including through a public hearing in some cases; and the right to appeal the final decision administratively and in the courts. The APL also introduced a separation of administrative powers principle, mandating that officials investigating a possible infraction should not be involved in making administrative punishment decisions and that those decisionmakers should not be the same personnel that collect any imposed fines. It also imposed liability on agencies and their personnel that violate APL requirements and afforded the public the right to seek compensation for injury or losses caused by unlawful government action. Over the years, administrative punishment cases came to make up the [majority of lawsuits against the government](#).

The APL is one of a suite of Chinese administrative laws that govern procedural aspects of state action and the relationship between state and society. Other such laws regulate [litigation against the government](#), internal [administrative reconsideration](#) of agency decisions, [administrative licensing](#), [administrative compulsion](#), [state compensation](#) for harmful government action, and the [legislative process](#) including agency rulemaking. Nationally-applicable State Council regulations institutionalized [government information disclosure](#) and major policy and project [decision-making procedures](#).

The APL does not itself prescribe punishments for specific acts. Those may only be enacted through legislative acts. These include (art. 4, 16) laws adopted by the NPC (法律, **Laws**);

nationally-applicable administrative regulations adopted by the State Council (行政法规, **State Council Regulations**); local regulations adopted by local people's congresses (地方性法规, **Local Regulations**) and, collectively with State Council Regulations, **法规 Regulations**); or central departmental and local government rules (规章, **Rules**), all of which constitute “**Legislation**” (立法) under the [Legislation Law](#). The APL instead stipulates permissible *types* of administrative punishments and the *authority* and *procedures* the government must follow to enact and impose them. The entire administrative punishment process must follow the principles of legality (art. 4), fairness, openness, and proportionality (art. 5). The Revision also makes clear that foreigners and foreign organizations are subject to administrative punishment for unlawful conduct within Chinese territory (art. 84).

### ***What are administrative punishments and who can enact them?***

The Revision provides, for the first time, a definition of *administrative punishment* (行政处罚). It is an action by an administrative organ taken in accordance with the law to discipline (惩戒) citizens, legal persons and organizations for non-criminal violations of the administrative management order, by reducing their rights and interests or increasing their obligations (art. 2). The [key issue](#) is whether an administrative action taken in response to a violation reduces rights or increases obligations. An order to correct unlawful acts or situations within a given time period, for example, is [not considered an administrative punishment](#), since correcting an illegality [does not reduce rights or increase obligations](#) beyond what the law provides.

Administrative punishments include (art. 9):

- 1) Warnings and the newly added circulating a notice of criticism (通报批评), which had [traditionally been employed](#) as an administrative sanction within the government bureaucracy and, as applied to the public, is a form of [reputational penalty](#);
- 2) Fines and confiscation of illegal proceeds or property;
- 3) Suspending or revoking a license and the newly added reduction of qualification levels (降低资质等级), which had previously been imposed, for example, on entities under construction, energy conservation and planning laws;
- 4) Ordering the suspension of production or business, and the newly added punishments of restricting the development of production and operational activities, ordering business closure and restricting employment;
- 5) Administrative detention, which can only be imposed by the public security authorities and, pursuant to the Revision, by other organs designated by law (art. 18), such as state security authorities under the [Counter-Espionage Law](#); and
- 6) Other administrative punishments provided for by Laws or State Council Regulations.

Administrative punishments do not include internal personnel sanctions imposed on [Chinese Communist Party \(CCP\) members](#) (纪律处分) or on [public employees](#) (政务处分). In addition, punishment of acts harmful to society that disturb public order, endanger public safety, infringe the rights of person and property or hamper social administration are primarily handled under the [Public Security Administration Punishments Law](#).

The Revision expands the authority to enact additional punishments that do not restrict physical liberty -- the sole [constitutional authority](#) for which [resides in the NPC](#), subject to different requirements for different administrative levels. In general, new types of punishment must still be based on the scope of conduct and types and ranges of punishments stipulated in Laws or State Council Regulations. The State Council may enact supplementary punishments if relevant Laws do not stipulate the punishment for a prescribed violation (art. 11), and provincial-level legislatures may do so --except for revoking licenses -- through Local Regulations where relevant Laws and State Council Regulations are silent (art.12). In each such case, the enactment of supplemental punishments must go through consultation and explanation procedures. The consultation process may take the form of hearings or expert evaluation meetings to widely listen to opinions; the general public's participation through providing opinions is not mentioned, but is [normally required](#) when [formulating Legislation](#).

The APL further permits State Council departments and local governments to enact warnings, criticism notices and fines through Rules that comply with higher-level Legislation, including stipulations on the maximum amount of fines (arts.13 and 14). The Revision mandates periodic assessments of administrative punishments enacted through such Rules (art. 15).

### ***Who can impose administrative punishments?***

Enforcement agencies must lawfully carry out their punishment authority. The APL empowers the State Council and provincial-level governments to decide whether to have a single agency exercise punishment authority for other relevant agencies. The Revision emphasizes the key sectors of urban management, market regulation, environment, culture, transportation, emergency response and agriculture as areas that might merit comprehensive enforcement (art. 18), to avoid overlapping responsibilities and multiple enforcement actions. The Revision specifically requires agencies to severely address conduct violating emergency measures relating to major infectious disease epidemics, as well as other emergencies (art. 49).

Administrative punishment authority is normally exercised by county-level governments and above (art. 23), but the Revision empowers provincial-level authorities to delegate, by published decision, urgently needed punishment authority to township (the lowest administrative level) and sub-district (街道) authorities that have the requisite capacity, and subject to legally-prescribed procedures and periodic assessments (art. 24). The APL also permits entrustment of qualified (art. 21) organizations with public affairs management authority -- like the [All-China Lawyers Association](#) -- to impose administrative punishments. The Revision clarifies that entrustments must be set forth in published documents stipulating the specific matters covered, scope of authority and time limits (art. 20).

The Revision prescribes jurisdictional authority and cross-jurisdiction cooperation rules (arts. 25-27). It enhances the principle of [criminal priority](#) by newly requiring that suspected crimes uncovered in the process of administrative law enforcement must be transferred to the judicial branch to pursue criminal responsibility, and requires cases to be transferred back for administrative punishment if criminal liability is not ultimately pursued (art. 27). Agencies must not impose administrative punishment in addition to criminal liability, and the APL provides for adjustments between criminal and administrative punishments to avoid excessive punishment for

the same violation (art. 35). Separate [State Council Regulations](#) stipulate that any warnings and orders to suspend operations or suspend or revoke licenses implemented prior to transfer of a suspected criminal case should continue to be implemented even while criminal liability is being pursued. If judicial organs decide not to impose criminal liability, the case should be transferred back to the administrative organ.

### ***Investigation***

In general, agencies must objectively and fairly investigate suspected violations that require administrative punishment and occurred within two years – a statute of limitation that is extended to five years under the Revision in the case of violations that impact citizen health or safety and financial security with harmful consequences (art. 36). They should conduct inspections where necessary, and promptly open a case file (立案) -- a requirement newly codified by the Revision -- when unspecified standards are met (art. 54). The specific timing and procedures for case-filing are stipulated [in departmental administrative punishment rules](#). The Revision added a requirement that final administrative decisions are generally to be issued within 90 days of case filing (art. 60).

Another new provision requires two credentialed enforcement personnel to conduct the investigation as a general rule. They are to enforce the law civilly, respecting the parties' lawful rights and interests (art. 42), may not have a direct interest in the case (art. 43), and should proactively proffer their credentials (art. 55). The parties have new rights under those provisions to request recusal if they believe enforcement personnel have a conflict and to refuse cooperation if enforcement personnel do not present their credentials upon request.

### ***Decision-making***

After concluding investigations, responsible agency personnel are to review the investigation results and decide, in light of the specific circumstances, whether and how to impose an administrative punishment (art. 57). Some agency Rules establish [administrative punishment committees](#) to fulfill this role. The APL requires agencies to ascertain the facts and to not impose punishment if the facts are unclear or, under the Revision, the evidence is insufficient (art. 40). A new provision on using electronic monitoring equipment, such as [automatic pollution monitoring equipment](#), to verify facts requires legal and technical reviews to ensure the equipment meets standards and was properly installed and clearly marked; its location was announced to the public; and the recorded material is clear, complete and accurate (art. 41). The Revision adds rules of evidence, including exclusion of illegally obtained evidence (arts. 46, 56), and requires agencies to record and archive the entire administrative punishment process through text, audio or video records (art. 47).

The Revision broadens the APL's original stipulation to not punish minor violations that are promptly corrected and did not cause harm, to also not punish offenses where it can be shown the offender had no subjective fault (art. 33). It also provides discretion to not punish first offenses causing minor harm that are corrected in a timely manner. In the above cases, [education on compliance](#) is substituted for punishment.

The Revision further reaffirms the APL's flexible enforcement approach by extending its original principles of mitigating or commuting punishments involving juvenile (art. 30) and mentally ill individuals to include intellectually disabled offenders (art. 31) and those who confess a previously unknown violation (art. 32). It provides that administrative organs may formulate norms governing the exercise of punishment discretion, like those of the [Ministry of Ecology and Environment](#), which must be published (art. 34). The Revision also adopted a [criminal law exception](#) to the principle of ordinarily applying the law in effect at the time the violation occurred, in cases where subsequent legislative changes are favorable to the offender (art. 37).

While multiple administrative punishments, such as imposing a fine and suspending operations, may be imposed for a violation, the Revision maintains the principle that a party may not be *fined* more than once for the same violation, and clarifies that, if a single act violates multiple legal provisions, one fine shall be imposed based on the highest stipulated amount (art.29), a principle that may have been applied in the [\\$1.2 billion fine of ride-hailing giant Didi](#) in July 2022. The [practice in some cases](#) had been to treat that situation as multiple separate violations and impose multiple fines. Similarly, the Revision prohibits agencies from collecting administrative fines where a court orders a criminal fine and, if an agency had already imposed an administrative fine, the two fines should be offset, just as time spent in administrative detention prior to a court imposing criminal detention or prison should be offset (art. 35).

Legally-qualified personnel must conduct a pre-decisional legal review (法制审核), which under the Revision is only necessary for cases involving major public interests, major private interests concerning which a hearing was conducted, difficult and complicated circumstances involving multiple legal relationships, or as otherwise required by law (art. 58). In addition, punishment in cases that involve “complex circumstances” or “major violations” should be collectively discussed and decided (art. 57). In [a recent case](#), a Jiangsu appeals court revoked a decision ordering demolition of an illegally-constructed building due to the agency's failure to timely prove it had conducted the collective deliberation that was required in that case; the Revision will limit invalidating an administrative punishment on procedural grounds to cases involving “major and obvious” violations of the law (art. 38).

Agencies must normally inform a party prior to making a punishment decision of the specific content of the proposed punishment (a new requirement), the facts alleged, legal basis and reasoning relied on, and of the party's rights to state their case and provide defenses, as well as to request a hearing in some cases (art. 44). Under “simplified procedures,” however, authorities may make and deliver punishment decisions at the scene (art. 51), if the facts are conclusive and the punishment is either a warning or a fine of no more than RMB 200 *yuan* for citizens and 3,000 *yuan* for legal persons and organizations (increased by the Revision from RMB 50 and 1,000 *yuan*, respectively). In such cases, the enforcement personnel fill in and sign a pre-formatted decision document specifying the violation, punishment, name of the agency, and -- as newly required by the Revision --the channels and time limits seeking administrative reconsideration or filing an administrative lawsuit (art. 52).

The Revision does not clarify at what stage parties must be notified under “ordinary procedures.” Some agency Rules stipulate that officials must notify parties of their rights [the first time they](#)



[collect evidence](#) during investigation, while [others](#) require an administrative punishment notice to be [issued after investigation](#). However, agencies ordinarily may not issue administrative punishment decisions without having first informed the parties of the proposed punishment and the facts, reasoning and basis their rights to provide, and having considered, their defense, unless the parties have clearly waived such rights (art. 62). Agencies must fully consider the parties' opinions and review (复核) the facts, reasoning and evidence the parties submit; accept them when the defense is sustained (成立的); and not impose heavier punishment due to a party's statements or defense (art. 45).

This defense process traditionally involved a paper-based review. Although the original APL introduced China's first basic rules for holding public and free-of-charge adjudicative hearings, a practice [adapted from the West](#), the hearing process was [underutilized](#). The Revision expands the circumstances under which the parties may request hearings (art. 63), from cases involving relatively large fines, orders to suspend operations and license revocations, to include those involving confiscation of relatively large amounts of illegal income or relatively large-value illegal property; reducing qualification levels; restricting employment; ordering closure; other relatively heavy administrative punishments; and other situations stipulated in Legislation.

The APL previously required that objections to punishments that restrict physical liberty were to be handled pursuant to the [Public Security Administration Punishments Law](#). The Revision removed this provision and does not specifically mention a proposed administrative detention as grounds for a hearing. It is thus [not clear](#) whether detention is considered "other relatively heavy punishments" under the Revision or is to be handled under other laws.

The Revision maintains procedural requirements for hearings (art. 64) to be publicly held, unless they involve legally protected state or commercial secrets or personal privacy, and to be presided over by personnel who are not investigators in the case, to avoid conflicts of interest -- with a right for parties to request recusal. Under the Revision, parties are deemed to have waived their hearing right if they refuse to participate without a legitimate reason or withdraw from the hearing without permission. If a hearing was held, the Revision newly requires the final decision to be based on the hearing record (art. 65).

Written decisions must set forth the facts and evidence of the violation, the type and basis of the punishment, the methods and time limit for carrying it out, and the channels and time limits for filing administrative appeals or litigation, as well as the date and the name and seal of the decision-issuing agency (art. 59). An example of a detailed decision, issued after the Revision was adopted but before it took effect, is the [administrative punishment decision](#) imposing a record \$2.8 billion antitrust fine on Chinese e-commerce giant Alibaba by the State Administration of Market Regulation (SAMR) dated April 10, 2021. It states that SAMR first delivered an administrative punishment notice to Alibaba on April 6, setting forth the proposed punishment and its basis, after which Alibaba waived its rights to submit statements and a defense and request a public hearing; the notice indicated that SAMR had heard Alibaba's opinions many times in the course of the investigation, which had been launched in December 2020.

### *Enforcement*

The Revision maintains most enforcement procedures, including the prohibition on having the authority that made the administrative punishment decision or its personnel collecting fines, except under simplified procedures where fines are collected at the scene, and adds some details, including authorizing electronic payment. It newly authorizes taking compulsory measures to satisfy payment obligations (art. 72) and requires de-linking any income obtained from disposal of confiscated property and the performance evaluations of administrative punishment organs and their staff (art. 74). It adds exceptions to the general rule that administrative punishment enforcement is not suspended during the period of administrative reconsideration and litigation, when parties appealing detention decisions request such suspension and with respect to not imposing additional fines during such periods (art. 73). The Revision adds the explicit authority to confiscate illegal income to the APL's stipulation that agencies should, when carrying out administrative punishments, order parties to make necessary corrections within a set time period (art. 28).

The Revision also strengthens administrative punishment oversight and evaluation mechanisms, adding public supervision to internal supervision, and maintains liability provisions for agency staff wrongdoing.

### ***Enhanced transparency requirements***

The original APL called for an open and fair punishment process, provided that only punishments imposed pursuant to published Legislation could be enforced, called for public hearings and public auctions of confiscated goods. The Revision codifies additional transparency practices that evolved after the APL's initial adoption, particularly following the State Council's Open Government Information ([OGI Regulations issued in 2007](#)). The original APL did not require disclosure of punishment decisions or their major details, due to [early](#) and [continuing](#) concerns over alleged privacy and commercial secrets protection and social stability. The State Council began promoting transparency around administrative punishment decisions in 2014 "to increase public confidence," under various [policy documents](#) and [departmental provisions](#). The Revision explicitly requires disclosing final punishment decisions, as well as any modification, revocation or invalidation thereof (art. 48), although only those having an undefined "definite social impact" must be published. In practice, [SAMR reported](#) its local agencies had publicized over 4.6 million administrative punishment decisions or summaries through its national enterprise information publicity system by the end of 2020.

Other new disclosure obligations include publicizing (公示) the administrative punishment implementing agencies, the basis for case filing, implementation procedures, and remedies (art. 39); and publishing (公布) enforcement entrustment documents (art. 20), delegation decisions (art. 24), discretionary standards (art. 34), and the location of monitoring equipment used in enforcement (art. 41).

The Revision also specifies the requirement for administrative organs and their staff to protect state and commercial secrets and private information learned through implementing administrative punishments (art. 50), confidentiality obligations that are codified in other Laws and the [OGI Regulations, which were revised in 2019](#).

## *The APL and Social Credit*

Administrative punishment decisions are a major component of [public credit information](#) that is to be shared among government departments and [disclosed to the public](#) under China's evolving [social credit system](#) (SCS). These decisions serve as evidence of “untrustworthy” (失信) behavior and, when they are imposed for serious misconduct, as a legal basis for listing on a regulatory agency's [seriously untrustworthy subjects list](#) (严重失信主体名单), commonly referred to as a [blacklist](#). Blacklisting may trigger market access, project qualification and other consequences, as well as lead to imposition of additional constraints and disciplines (约束和惩戒) by agencies other than the one that imposed the administrative punishment, under the SCS's main enforcement tool, the [controversial](#) joint discipline (联合惩戒) mechanism.

Those included in a blacklist must have been found to have committed seriously illegal -- and therefore untrustworthy -- acts within the blacklisting agency's jurisdiction. Recent [State Council guidance](#) (**SCS Legalization Opinions**) requires that agency designations of untrustworthy conduct must be based on legally effective documents, including judicial judgments, arbitration documents, decisions concerning administrative acts such as administrative punishments and administrative adjudication,<sup>1</sup> and other documents authorized by Laws, Regulations, or policy documents of the CCP or State Council. Moreover, the Opinions instruct that illegality leading to blacklisting must endanger public health and safety, seriously undermine fair market competition or disrupt social order, or involve refusing to perform national defense obligations or statutory obligations that seriously impact the integrity of judicial and administrative organs. The blacklist information is shared throughout the listing [departmental system](#) and with other regulatory departments and the general public on the agency's website, through the [National Enterprise Credit Information Publicity System](#), established in 2014 pursuant to [State Council Regulations](#) and currently administered by SAMR, as well as on the [Credit China](#) website managed by the National Development and Reform Commission.

Other departments are encouraged to take the punishment information into account, based on Legislation applicable to their statutory authority, when dealing with the blacklisted individual or company on regulatory matters within their jurisdiction over which they have discretion, such as public procurement or licensing qualification. They may also formally agree with the listing department to impose disciplines within their own sector in response to administrative punishments, pursuant to the terms of published inter-departmental [joint memoranda of understanding](#) (**Joint Discipline MOUs**), if there is a legislative basis for imposing such discipline. Thus, for example, if the transportation department punishes a company for seriously violating road safety Legislation, the securities authorities can disqualify that company from making an initial stock offering under a Joint Discipline MOU with the transportation

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<sup>1</sup> Administrative adjudication, 行政裁决, is where a government agency handles civil or economic disputes related to their functions, as discussed at [http://www.gov.cn/zhengce/2019-06/02/content\\_5396932.htm](http://www.gov.cn/zhengce/2019-06/02/content_5396932.htm) and [http://www.xinhuanet.com/politics/2019-06/02/c\\_1124574304.htm](http://www.xinhuanet.com/politics/2019-06/02/c_1124574304.htm).



department, because [relevant securities Legislation](#) prohibits initial offerings by companies that have been given administrative punishments for serious violations in other sectors within the prior three years. Other [disciplinary measures in MOUs include](#) tighter administrative oversight, restrictions on professional qualifications, reduced access to government lending, grants, and participation in government procurement.

Newly added administrative punishments of reducing qualification levels and restricting production, operations and employment overlap with certain constraint and disciplinary measures listed in a seminal [May 2016 State Council policy \(the 2016 Policy\)](#) as well as the MOUs and may be intended to provide a legal basis for their imposition. Interestingly, the Revision uses the Chinese term translated here as “discipline” (懲戒) to define “administrative punishment.” Notably, the Revision does not mention the acts of blacklisting and joint discipline as forms of administrative punishment.

Professor Peng Chun of Peking University Law School found, in a [2021 study](#), that most untrustworthy behaviors and associated discipline measures set forth in 41 Joint Discipline MOUs among central departments do have an explicit legal basis, and thus are legal in the formal sense. However, Professor Peng criticizes the practice of disciplining both the company or organization *and* its various responsible personnel, encouraged under the 2016 Policy, unless there is a legal basis in applicable substantive law for holding both liable.

Moreover, some Chinese scholars argue that blacklisting itself may involve reputational harm through its disclosure to the public to signal credit risk and should have been [included within the scope of administrative punishments](#) under the Revision. The joint discipline system can also be criticized for violating the double-jeopardy principle of not punishing the same act twice, once through administrative punishment and a second time through (possibly multiple) additional disciplinary measures from other departments, even if legally based. Therefore, the argument goes, placing a company or individual on a "blacklist" and imposing joint disciplines [should require following the procedural requirements of the APL](#).

To be sure, SCS disciplinary measures are increasingly subjected to due process procedures similar to those strengthened in the Revision. The SCS Legalization Opinions call for ensuring that untrustworthy disciplinary measures imposed pursuant to the blacklist and joint discipline mechanisms are strictly based on Laws, Regulations and CCP or State Council policy documents. The Opinions, which appear to call for some APL-type protections, discourage over-penalizing small infractions and require compilation, with expert and public input and periodic updating, of a national basic catalog of such authorized measures. If departmental rules are proposed to fill any gaps in the blacklisting standards, draft standards must be released for a minimum 30-day public comment period and disclosed through Credit China and other websites after enactment, as well as subjected to periodic third-party assessment as to their efficacy. Before being blacklisted, parties should be notified of the facts, legal basis and their rights, including to object to the proposed action and receive a response within a deadline. Such procedural safeguards are now codified in general terms in certain [Local Regulations](#) but not yet national Legislation.

However, abusive application of untrustworthy disciplinary measures scattered among thousands of central, local and departmental documents, constituting a re-punishment or [additional punishment](#) for the illegal conduct on which an administrative punishment was based, has led to [widespread concern](#) and calls to enact a Social Credit Law that would harmonize and legalize the SCS enforcement mechanisms. The drafting of such a law has [reportedly been entered](#) into the NPC's legislative agenda and is [under discussion](#) among relevant scholars and officials.

In the meantime, given the uncertainties about treatment under the SCS, individuals and companies should strive to ensure compliance with applicable regulatory requirements and familiarize themselves with the procedures and remedies available under the administrative punishment system. Effectively handling and mitigating any proposed administrative punishments may prevent landing on a blacklist, with possible cascading consequences of SCS joint discipline.