

Public Procurators Law of the People's Republic of China (with 2001 Amendments)

(Adopted at the 12th meeting of the Standing Committee of the Eighth National People's Congress on Feb.28, 1995, and amended according to the Decision on Amending the Public Procurators Law of the People's Republic of China adopted at the 22nd meeting of the Standing Committee of the Ninth National People's Congress on June 30, 2001))

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Chapter 1 General Provisions

Article 1 This Law is enacted in accordance with the Constitution to enhance the quality of public procurators, to reinforce the administration of public procurators, to ensure that the People's Procuratorates exercise legal supervision and exercise procuratorial authority according to law, to ensure that the public procurators perform their duties according to law and to guarantee the judicial justice.

Article 2 Public procurators are the procuratorial personnel who exercise the procuratorial authority of the State according to law, including chief procurators, deputy chief procurators (the Procurator-General, Deputy Procurators-General of the Supreme People's Procuratorate), members of procuratorial committees, procurators and assistant procurators of the Supreme People's Procuratorate, local people's procuratorates at various levels and special people's procuratorates such as military procuratorates.

Article 3 Public procurators must faithfully implement the Constitution and laws, and serve the people whole-heartedly.

Article 4 Public procurators, when performing their functions and duties according to law, shall be protected by law.

Article 5 The Supreme People's Procuratorate shall exercise leadership over the work of the local People's Procuratorates at various levels and of the special People's Procuratorates. The People's Procuratorates at higher levels shall exercise leadership over the work of the People's Procuratorates at lower levels.

Chapter 2 Functions and Duties

Article 6 The functions and duties of public procurators are as follows:

- (1) to supervise the enforcement of laws according to law;
- (2) to make public prosecution on behalf of the State;
- (3) to investigate criminal cases directly accepted by the People's Procuratorates as provided by law; and
- (4) other functions and duties as provided by law.

Article 7 Chief procurators, deputy chief procurators and members of procuratorial committees shall, in addition to the procuratorial functions and duties, perform other functions and duties commensurate with their posts.

Chapter 3 Obligations and Rights

Article 8 Public procurators shall perform the following obligations:

- (1) to strictly observe the Constitution and law;
- (2) to take facts as the basis and law as the criterion, to enforce laws impartially and not to bend law for personal gain when exercising their functions and duties;
- (3) to safeguard the State interests and public interests, and to safeguard the lawful rights and interests of citizens, legal persons and other organizations;

(4) to be honest and clean, faithful in performing their duties, and to abide by discipline and professional ethics;

(5) to keep State secrets and the secrets of procuratorial work; and

(6) to accept legal supervision and supervision by the masses.

Article 9 Public procurators shall enjoy the following rights:

(1) to have the power and working conditions which are essential to the performance of functions and duties of public procurators;

(2) to brook no interference from administrative organs, public organizations or individuals in performing procuratorial functions and duties according to law;

(3) to be not removed from the post or demoted or dismissed, and to be not given a sanction, without statutory basis and without going through statutory procedures;

(4) to be remunerated for work, to enjoy insurance and welfare benefits;

(5) to enjoy safety of the person, property and residence as ensured by law;

(6) to receive training;

(7) to lodge petitions or complaints; and

(8) to resign their posts.

Chapter 4 Qualifications for a Public Procurator

Article 10. A Public procurator must possess the following qualifications:

(1) to be of the nationality of the People's Republic of China;

(2) to have reached the age of 23;

(3) to endorse the Constitution of the People's Republic of China ;

(4) to have fine political and professional quality and to be good in conduct;

(5) to be in good health; and

(6) to have engaged in the legal work for at least two years in the case of graduates of law major of colleges or universities or of non-law majors of colleges or universities but possessing the professional knowledge of law, and among whom those to assume the procurators of the People's Procuratorates of provinces, autonomous regions and Municipalities directly under the Central Government and of the Supreme People's Procuratorate shall have been engaged in the legal work for at least 3 years; or to have been engaged in the legal work for at least one year in the case of those who have the Master's

Degree of Law or Doctor's Degree of Law, or those who have the Master's Degree or Doctor's Degree of non-law majors but possess the professional knowledge of law, and among whom those to assume the public procurators of the People's Procuratorates of provinces, autonomous regions and Municipalities directly under the Central Government and of the Supreme People's Procuratorate shall have been engaged in the legal work for at least two years.

The public procurators who do not possess the qualifications as provided by subparagraph (6) of the preceding paragraph prior to the implementation of this Law shall receive training, and the specific measures shall be made by the Supreme People's Procuratorate.

For the places where it is really difficult to apply the academic qualifications as provided by subparagraph (6) of the first paragraph, after being examined and determined by the Supreme People's Procuratorate, the academic qualifications for a public procurator may be eased for a specific period of time as two-year graduates of law major of colleges and universities.

Article 11 The following persons shall not hold the post of a public procurator:

- (1) to have been subjected to criminal punishment for commission of a crime; or
- (2) to have been discharged from public employment.

Chapter 5 Appointment and Removal

Article 12 A public procurator shall be appointed or removed from the post in accordance with the limit of authority for, and procedures of, appointment or removal as prescribed by the Constitution and laws.

The Procurator-General of the Supreme People's Procuratorate shall be elected or removed by the National People's Congress. The Deputy Procurators-General, members of the procuratorial committee and the procurators shall be appointed or removed by the Standing Committee of the National People's Congress upon the recommendation of the Procurator-General of the Supreme People's Procuratorate.

The chief procurators of the local People's Procuratorates at various levels shall be elected or removed by the local people's congresses at the corresponding levels. The deputy chief procurators, members of the procuratorial committees and procurators shall be appointed or removed by the standing committees of the people's congresses at the corresponding levels upon the recommendation of the chief procurators of those procuratorates.

The appointment or removal of the chief procurators of the local People's Procuratorates at the various levels must be reported to the chief procurators of the People's Procuratorates at the next higher level, who shall submit the matter to the standing committee of the people's congress at that level for approval.

The chief procurators, deputy chief procurators, members of the procuratorial committees and procurators of the branches of the People's Procuratorates set up in prefectures in the provinces or autonomous regions or set up in the municipalities directly under the Central Government shall be appointed or removed by the standing committees of the people's congresses at the corresponding levels upon the recommendation of the chief procurators of the People's Procuratorates of the provinces, autonomous regions or municipalities directly under the Central Government.

The assistant procurators of the People's Procuratorates shall be appointed or removed by the chief procurators of the procuratorates where they work.

The measures for the appointment or removal of the chief procurators, deputy chief procurators, members of the procuratorial committees and procurators of such special People's Procuratorates as the military procuratorates shall be formulated by the Standing Committee of the National People's Congress separately.

Article 13 Persons to be appointed public procurators for the first time shall be selected through strict appraisal in accordance with the standards of having both ability and political integrity from among the best qualified for the post who have passed the uniform judicial examination of the state and have obtained the qualification.

Chief procurators, deputy chief procurators of the People's Procuratorates shall be selected from among public procurators or those who are qualified for the post.

Article 14 If a public procurator is found to be in any of the following circumstances, a report shall be submitted according to law concerning the removal of his or her post:

- (1) having forfeited the nationality of the People's Republic of China;
- (2) having been transferred out of this procuratorate;
- (3) having no need to maintain his or her original post after a change of post;
- (4) being determined to be incompetent in the post through appraisal;
- (5) being unable to perform the functions and duties of a public procurator for a long period of time due to poor health;
- (6) having retired from the post;
- (7) having resigned from the post, or having been dismissed; or
- (8) being disqualified from continuing to hold the post because of violation of discipline, law or commission of a crime.

Article 15 Where an elected chief procurator of a People's Procuratorate does not possess the qualifications as provided by this Law, or a chief procurator of a People's Procuratorate is

elected in violation of the statutory procedures, the chief procurator of a People's Procuratorate at the next higher level shall have the power to apply to the standing committee of the people's congress at that level for disapproval.

Article 16 When a public procurator is appointed in violation of the provisions of this Law, the organ that made the appointment shall revoke that appointment once being found; when a People's Procuratorate at a higher level finds that the appointment of procurator made by a People's Procuratorate at a lower level has violated the qualifications as provided by this Law, it shall order the People's Procuratorate at the lower level to revoke that appointment according to law, or ask the People's Procuratorate at the lower level to apply to the standing committee of the people's congress at the corresponding level to revoke that appointment.

Article 17 The Procurator-General of the Supreme People's Procuratorate and the chief procurators of the People's Procuratorates of the provinces, autonomous regions or municipalities directly under the Central Government may make proposals to the standing committees of the people's congresses at the corresponding levels to remove or replace a chief procurator, a deputy chief procurator or a member of the procuratorial committee of a People's Procuratorate at lower levels.

Article 18 No public procurators may concurrently be members of the standing committees of the people's congresses, or hold posts in administrative organs, judicial organs, enterprises or institutions, or serve as lawyers.

Chapter 6 Posts to be Avoided

Article 19 Public procurators who are connected by husband-wife relationship, or who are directly related by blood, collaterally related within three generations, or closely related by marriage may not, at the same time, hold the following posts:

- (1) the chief procurator, deputy chief procurators, or members of the procuratorial committee in the same People's Procuratorate;
- (2) the chief procurator, deputy chief procurators, procurators or assistant procurators in the same People's Procuratorate;
- (3) the procurators or assistant procurators in the same department; or
- (4) chief procurators or deputy chief procurators of the People's Procuratorates at the levels next to each other.

Article 20 A former public procurator may not be the law agent or defender as a lawyer within two years after he or she left the post of the People's Procuratorate.

A former public procurator may not be the law agent or defender in the case handled by the procuratorate he or she belonged to after leaving the post of the People's Procuratorate.

The spouse or children of a procurator may not be the legal agent or defender of the case handled by the procuratorate that procurator belongs to.

Chapter 7 Grades of Public Procurators

Article 21 Public procurators are divided into twelve grades.

The Procurator-General of the Supreme People's Procuratorate is Procurator-in-Chief. Public procurators from the second grade to the twelfth grade are composed of principal public procurators, senior public procurators and public procurators.

Article 22 Grades of public procurators shall be determined on the basis of their posts, their actual working ability and political integrity, their professional competence, their achievements in procuratorial work and their seniority.

Article 23 The grades of public procurators shall be established and the measures for their evaluation and promotion shall be formulated separately by the State.

Chapter 8 Appraisal

Article 24 Appraisal of public procurators shall be conducted by the People's Procuratorates the public procurators belong to.

Article 25 The appraisal of public procurators shall be carried out objectively and impartially, through the combined efforts of the leaders and masses, and routinely and annually.

Article 26 The appraisal of public procurators shall include their achievements in procuratorial work, their ideological level and moral characters, their competence in procuratorial work and their mastery of law theories, their attitude in and style of work. However, emphasis shall be laid on achievements in procuratorial work.

Article 27 The results of the annual appraisal shall fall into three grades: excellent, competent and incompetent.

The result of appraisal shall be taken as the basis for award, punishment, training, removal, dismissal of a public procurator, and for readjustment of his or her grade and salary.

Article 28 A public procurator shall be informed of the result of appraisal in written form. If the public procurator disagrees with the result, he or she may apply for reconsideration.

Chapter 9 Training

Article 29 Theoretical and professional training for public procurators shall be carried out in a planned way.

The principles of integrating theory with practice, giving lectures in light of the needs and emphasizing practical results shall be applied in the training of public procurators.

Article 30 The public procurator colleges and universities of the State, and other institutions for training public procurators shall, in accordance with the relevant regulations, undertake the task of training public procurators.

Article 31 The results of the studies of public procurators and the appraisals made during their training shall be taken as one of the bases for their appointment and promotion.

Chapter 10 Awards

Article 32 Public procurators who have made significant achievements and contributions in procuratorial work, or performed other outstanding deeds shall be rewarded.

The principle of combining moral encouragement with material reward shall be applied in rewarding public procurators.

Article 33 Public procurators who have any of the following achievements to their credit shall be rewarded:

- (1) having achieved notable successes in enforcing laws impartially in procuratorial work;
- (2) having made proposals for procuratorial work or proposals for the reform of procuratorial work that have been adopted and produced remarkable results;
- (3) having performed outstanding deeds in safeguarding the interests of the State, the collective and the people against heavy losses;
- (4) having performed outstanding deeds by bravely fighting against illegal or criminal acts;
- (5) having scored outstanding achievements in protecting State secrets and secrets of procuratorial work; or
- (6) having performed other meritorious deeds.

Article 34 The awards include: Citation for Meritorious Deeds, Merit Citation Class III, Merit Citation Class II, Merit Citation Class I, and a title of honour.

Chapter 11 Punishment

Article 35 No public procurators may commit any of the following acts:

- (1) to spread statements damaging the prestige of the State; to join illegal organizations; to take part in such activities as assembly, procession and demonstration against the State; and to participate in strikes;

- (2) to embezzle money or receive bribes;
- (3) to bend law for personal gain;
- (4) to extort confessions by torture;
- (5) to conceal or falsify evidence;
- (6) to divulge State secrets or secrets of procuratorial work;
- (7) to abuse functions and powers; and to infringe upon the legitimate rights and interests of natural persons, legal persons or other organizations;
- (8) to neglect his or her duty so as to wrongly judge a case or to cause heavy losses to the party concerned;
- (9) to delay the handling of a case so as to affect the work adversely;
- (10) to take advantage of the functions and powers to seek gain for himself or herself or other people;
- (11) to engage in profit-making activities;
- (12) to meet the party concerned or his or her agent without authorization and attend dinners or accept presents given by the party concerned or his or her agent; or
- (13) to commit other acts in violation of law or discipline.

Article 36 A public procurator who has committed any of the acts listed in Article 33 of this Law shall be given sanctions; if the case constitutes a crime, he or she shall be investigated for criminal responsibility.

Article 37 The sanctions include: a disciplinary warning, a demerit recorded, a grave demerit recorded, demotion, dismissal from the post and discharge from public employment.

The salary of a public procurator who has been dismissed from the post shall at the same time be reduced and his or her grade be demoted.

Article 38 A sanction shall be authorized and procedures gone through in accordance with the relevant regulations.

Chapter 12 Salary, Insurance and Welfare

Article 39 The salary system and scales for public procurators shall, in light of the characteristics of procuratorial work, be formulated by the State.

Article 40 The system under which the salaries of public procurators are increased regularly shall be practised. The salary of a public procurator who has been confirmed through appraisal as being excellent or competent may be raised in accordance with regulations; the

salary of a public procurator who has made special contributions may be raised in advance in accordance with regulations.

Article 41 Public procurators shall enjoy procuratorial allowances, regional allowances and other allowances and insurance and welfare benefits as prescribed by the State.

Chapter 13 Resignation and Dismissal

Article 42 If a public procurator requests resignation, he or she shall present an application in written form before he or she shall be removed in accordance with the procedures as provided by law.

Article 43 A public procurator shall be dismissed if he or she is found to be in any of the following circumstances:

- (1) to be confirmed by annual appraisal as being incompetent for two successive years;
- (2) to be unqualified for the present post and decline to accept other assignments;
- (3) to refuse to accept reasonable transfer, which is necessitated by restructuring of the procuratorial organ or reduction of the size of the staff;
- (4) to have stayed away from work without leave or to have overstayed his or her leave without good reason for fifteen days or more in succession or for thirty days or more in a year aggregated; or
- (5) to fail to perform a public procurator's duty, and make no rectification after criticism.

Article 44 A public procurator who is dismissed shall be removed from the post in accordance with the procedures as provided by law.

Chapter 14 Retirement

Article 45 The retirement system regarding public procurators shall, in light of the characteristics of procuratorial work, be formulated separately by the State.

Article 46 After retirement public procurators shall enjoy the insurance of old age pension and other benefits as prescribed by the State.

Chapter 15 Petition and Complaint

Article 47 If a public procurator disagrees with the sanction or handling given to him or her by a People's Procuratorate, he or she may, within thirty days from the date of receiving the decision on the sanction, apply for reconsideration to the organ which gave the sanction or handling and shall have the right to appeal to the organ at a level higher than the organ which gave the sanction or handling.

The organ that receives the appeal must make a decision on it in accordance with regulations.

Execution of the decision on a sanction or handling given to a public procurator shall not be suspended during the period of reconsideration or petition.

Article 48 If a State organ or any of its functionaries commits an act infringing upon the rights of a public procurator as provided by Article 9 of this Law, the public procurator shall have the right to make a complaint.

If an administrative organ, a public organization or an individual interferes in a public procurator's performance of the procuratorial functions and duties according to law, that organ, organization or individual shall be investigated for responsibility according to law.

Article 49 The petition or complaint made by a public procurator shall be true to facts. If a public procurator makes up a story or lodges a false accusation against an innocent person, he or she shall be investigated for responsibility according to law.

Article 50 Where a sanction or handling given to a public procurator is wrong, it shall be put right without delay; if it has damaged the public procurator's reputation, his or her reputation shall be rehabilitated, the ill effects shall be eliminated and an apology shall be made; if it has caused financial losses to the public procurator, compensations shall be made. The persons who are directly responsible for retaliation shall be investigated for responsibility according to law.

Chapter 16 Commission for Examination and Assessment of Public Procurators

Article 51 A People's Procuratorate shall establish a commission for examination and assessment of public procurators.

The functions and duties of a commission for examination and assessment of public procurators are to guide the training, examination, appraisal and assessment of public procurators. Specific measures therefor shall be formulated separately.

Article 52 The number of persons on a commission for examination and assessment of public procurators shall be five to nine.

The chairman of a commission for examination and assessment of public procurators shall be assumed by the chief procurator of the procuratorate it belongs to.

Chapter 17 Supplementary Provisions

Article 53 The Supreme Procuratorate shall, jointly with the relevant departments, formulate the measures for the proportion of the specific number of personnel the public procurators shall occupy in the organization of personnel of the People's Court at all levels.

Article 54 The state shall adopt the uniform judicial examinations for the judges, public procurators to be appointed for the first time and for the lawyers to acquire the qualification

for lawyers. The administrative departments of justice under the State Council shall, jointly with the Supreme People's Court, the Supreme People's Procuratorate, formulate the measures for the implementation of the judicial examinations, and the administrative departments of justice under the State Council shall be responsible for the implementation.

Article 55 Measures for the administration of the clerks of the People's Procuratorates shall be formulated by the Supreme People's Procuratorate.

The administrative judicial personnel of the People's Procuratorates shall be administered in accordance with the relevant regulations of the State.

Article 56 This Law shall come into force as of July 1, 1995.