

# Analysis on the Problems of Agent Performance in Administrative Law

Puyuan Zhan\*

Shanghai Chen & Guo Law Firm, Shanghai 201100, China

\**Corresponding author:* Puyuan Zhan, tuopangxumi19949@163.com

---

**Abstract:** With the rapid development of modern social politics and economy, agent performance has been a need of the People's Republic of China's administrative law enforcement and the public. Its form is relatively mild, and it is the product formed in the field of modern administrative law enforcement. The contemporary agent performance system has been playing an important role in environmental protection and traffic safety, which can save administrative costs to a certain extent, improve the efficiency of law enforcement, as well as effectively protect the legitimate rights and interests of the obligee. In spite of this, agent performance in China's administrative law has gained a lot of space for development, but there are many aspects that still need continuous development and improvement such as the subject, procedure, and cost of agent performance. This article focuses on the issue of agent performance as well as analyzes the subject, procedure, and cost of agent performance in administrative law of the People's Republic of China in aiming to promote the development of agent performance in administrative compulsory law of the People's Republic of China.

**Keywords:** Administrative law; Agent performance; Social relations; Administrative affairs

---

**Publication date:** July 2021; **Online publication:** July 30, 2021

## 1. Introduction

Modern social relations are becoming more and more diversified along with more complex processing procedures of related administrative affairs. There are increasingly more administrative affairs with private as the main body. Therefore, the binary opposition between the state and society in the traditional system has been gradually broken down and the relationship between the rights and obligations of all parties is becoming much more complex which needs to be sorted out. As an indirect way of administrative enforcement, agent performance can play an important role in the field of administrative law of the People's Republic of China. Since the introduction of the concept of third-party participation in the system of agent performance, the practice of the concept of third-party has also become a dilemma for the development of the system. Many researchers have different views on the conditions and the scope of responsibility of agent performance. Throughout the development of the agent performance system, its application scope has been very wide. Even if some concepts in practice may have vague definition, one cannot deny the actual value of the system. From these levels, it shows that the issue of agent performance in administrative law is worthy of a more in-depth study.

## 2. Concept and content of agent performance in administrative law of People's Republic of China

### 2.1. Meaning of previous agent performance in administrative law of People's Republic of China

Different countries and scholars in related fields have different definitions of the agent performance concept. Some scholars think that the administrative subject of agent performance is to hire someone to replace the

counterpart who does not perform the obligations of administrative law in which it is a subject to force the obligor to pay the service fee. Other scholars believe that agent performance belongs to the substitution performance which means that the administrative organ replaces the directly stipulated conducts and obligations of the counterpart or imposes necessary obligations on the obligor. According to the views of many scholars, the common point is that obligations must be fulfilled, and they are all substituting obligations. The controversial point of these views is whether the administrative organ can act as the subject of the performance implementation on behalf of the executive. In reality, the subject of agent performance can be applied to the dual principal system. Both the administrative organ and the third party can be the subjects of agent performance. The scope of agent performance can also be expanded to traffic safety, environmental pollution, and other fields. Among them, the right of administrative enforcement cannot be entrusted in the process, instead of performing the relevant obligations on behalf of the opposite party, it is not a substitute for the administrative organ to exercise the corresponding rights. It is easy for misunderstandings if it becomes the right of administrative enforcement. The agent performance requires the parties to be able to eliminate obstacles and dangers. If the parties do not perform and there is an overdue situation, such consequences will affect the public interest. The administrative organ or the third party without interest relationship can replace the obligee to implement compulsory execution.

## **2.2. Concept of agent performance and enforcement**

The content of direct enforcement refers to the enforcement by the administrative organization on the counterpart who failed to fulfill his or her obligations. The difference between the two lies in that one belongs to administrative enforcement and the other belongs to the form of administrative organ as the main body. However, both of them have the characteristics of compulsion and enforcement. There are some differences between agent performance and directness in terms of the scope of application, authorization, and charging. For example, in terms of applicability, agent performance is more applicable to traffic safety, environmental pollution, and other fields that can be directly substituted to directly achieve the goal of administrative law enforcement. In terms of authorization, direct compulsory execution can only be carried out by the organs prescribed by law while the performance on behalf of others is relatively free but certain contents need to be interpreted according to the law. In the aspect of charging, the administrative organ cannot charge the relevant fees by direct coercion. The agent performance charge fees in the form of expenses borne by the administrative counterparts.

## **3. Problems and related contents of agent performance in the administrative law of People's Republic of China**

### **3.1. Unclear third party's selection objective**

The introduction of the concept of third-party in the legal relationship of agent performance is the progress of China's administrative law. However, whether an administrative organ can appear as the third party in the actual work, it needs to entrust another administrative organ as the third party to participate in the agent performance. At present, research scholars in related fields still have disputes on the selection criteria of the third party. From the cases of entrusting administrative organs to participate in practice, assistance can be requested from the court or other administrative organs can be entrusted to assist in the agent performance. However, the entrusted organ can only act as the identity of the third party in order to avoid the difficulty in determining the defendant in administrative litigation. As the law in China does not make clear distinctions between the third party, the interests of the public and the private are different in nature when they are the third party. If the private acts as the main body of agent performance, the interests may

be vague and are difficult to be defined by relevant conditions which lead to a greater discretion of administrative agencies toward third parties. If there is collusion between administrative organizations and third parties, there may be divergences in fees and other aspects.

### **3.2. Imperfect selection mechanism of the third party**

Administrative organizations should select relevant organizations with professional qualifications as the third party in agent performance. However, the relevant laws in China do not make specific provisions on the selection of the third party which may become a problem for administrative organizations in practice. For example, in the case of government procurement and land transfer, government departments usually use the form of public bidding and make the relevant procedures public to enhance the transparency of the process. In the absence of a relatively open procedure, a third party would not be selected in order to avoid interest relations between various organizations or the breeding of corruption. Due to the lack of strict selection procedures, agent performance is easily confused with the concept of third-party. This leads to third parties meeting the interest needs in the name of agent performance which has a negative impact on the society.

### **3.3. Imperfect time regulation of agent performance**

The preceding procedure of agent performance is the procedure of exoneration. It is clearly stipulated in the Administrative Compulsion Law of China that exoneration should be carried out three days before the agent performance. If the administrative counterpart performs, the measures of agent performance would not be taken. In practice, if an administrative organization suspends its performance due to other reasons for the formation of the counterpart in the process of interpellation, it becomes a problem whether the administrative organization has the obligation to urge the other party again. The administrative organization may demand that the again. However, there are no clear provisions in the relevant laws on whether there is a limit on the number of interpellations, whether it can be shortened according to the actual situation, and whether the administrative organization can have the discretion which indirectly lead to the administrative organs in the performance of generation within the specified time in an imperfect situation.

### **3.4. Absence of provisions on objection to execution in agent performance**

The Administrative Compulsion Law of the People's Republic of China clearly puts forth that the third party claims the right of the object of execution and can suspend the administrative compulsory execution according to relevant factual reasons. Therefore, in the execution procedure, the third party belongs to the person other than the provisions in which it is different from the third party in the agent performance. There are some similarities of agent performance between the civil procedure law and the administrative law. One can learn from the civil procedure law in the administrative enforcement procedure. In the law of administrative coercion, there is no specific way of relief for the administrative counterpart and the other parties of interest. If special circumstances occur in the performance of the agent, it is difficult to achieve the ideal effect through a good administrative mechanism. As for how the administrative organization implements the process of agent performance, the third party would decide. If the objection procedure is not stipulated, the third party may take compulsory measures in order to pursue administrative efficiency, but it will not reach the degree of violent coercion. At this time, the administrative counterpart has no rights to suspend the acting performance on behalf of the administrative counterpart which may cause adverse effects on the administrative counterpart. In essence, it also infringes on the legitimate rights and interests of the administrative counterpart.

#### **4. Conclusion**

Agent performance in administrative law is a form of indirect compulsory execution which is obviously different from direct compulsory execution. Its means of execution is relatively mild while the field of administrative execution is relatively wide. The system of agent performance in China started late but it is developing steadily. However, the development of modern society needs to improve the implementation efficiency of agent performance in order to effectively ease the contradiction between the administrative organization and the administrative counterpart. In order to better protect the legitimate rights and interests of the administrative counterpart and comprehensively safeguard the public interests, the practice research on agent performance should be more in depth, relevant departments should pay close attention to the content of agent performance in legislation, judicature, and law enforcement, improve the problems in many aspects, analyze specific causes of the problems, as well as optimize the agent performance system so as to promote the healthy development of the agent performance system.

#### **Disclosure statement**

The author declares that there is no conflict of interest.

#### **References**

- [1] Zhu F, 2020, Research on the Problem of Agent Performance in Administrative Law. Hebei University, Baoding.
- [2] Wang X, 2017, Research on Environmental Administration Agent Performance System in China. Wuhan University, Wuhan.
- [3] Huang S, 2017, Research on Agent Performance in Administrative Compulsory Execution. Southwest University of Political Science and Law, Chongqing.
- [4] Zhao Q, 2013, Research on Administrative Agent Performance. Northeastern University, Shenyang.