

Judicial Application of the Government's Duty to Perform its Commitments under Private Sector Promotion Law

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Abstract: Articles 70 and 73 of Private Sector Promotion Law turn the performance of lawful policy commitments and government-enterprise contracts into a statutory obligation owed to private economic organizations. Even so, these provisions continue to work with the existing rules of civil and administrative law. Courts must first decide whether an agreement is administrative or civil. They must then ask how the law deals with four situations: a lawful change in the public interest, unlawful non-performance, objective impossibility, and an invalid agreement or clause. Based on decided cases and a textual and systematic reading, this article submits that the word "contract" in Articles 70 and 73 includes both administrative agreements and civil contracts. The rules applied, however, still depend on the nature of the legal relationship. Article 73 addresses "non-performance" only. An unlawful modification or termination must therefore be assessed under Article 70(1) and the rules of the relevant branch of law. Relief likewise depends on the applicable form of liability. The expectation interest, reliance interest, and actual expenditures should each receive a separate scope of protection.

Keywords: Private Economy Promotion Law; Government Performance of Commitments; Government-enterprise Contract; Reliance Interest; Relief for Loss.

1. Introduction

How consistently governments perform their policy commitments and contracts with enterprises directly affects how private enterprises judge the institutional setting and transaction costs. In practice, local governments seek investment through meeting minutes, investment-promotion documents, cooperation agreements, and concession agreements. Relying on these arrangements, enterprises invest funds, land, equipment, and personnel. When a government later ceases performance because of a change of administration, institutional restructuring, a policy shift, or a revised project plan, the enterprise faces more than an ordinary commercial risk: the public authority has altered the basis on which the transaction was made. Article 70 of Private Sector Promotion Law of the People's Republic of China (hereinafter, the "Private Economy Promotion Law"), which took effect on May 20, 2025, requires local people's governments at all levels and their relevant departments to honor policy commitments lawfully made and contracts lawfully concluded with private economic organizations. They may not breach or repudiate those commitments or contracts on the ground of an adjustment of administrative divisions, a change of administration, an adjustment of institutions or functions, or replacement of relevant personnel. When national interests or the public interest requires a change to a commitment or contractual term, the change must be made according to law, and the resulting loss must be compensated. The latter part of Article 73 further provides that an authorized organ shall correct a local government's or department's failure to perform a lawfully made policy commitment or contract, that damages shall be paid for resulting loss, and that the responsible personnel may also be held accountable.

The government's duty to honor its commitments did not begin with this Law. Article 8 of the Administrative

Permission Law of the People's Republic of China (Administrative Permission Law) had already established a structure under which an administrative license may be modified or withdrawn for public-interest reasons, with compensation for resulting loss. Article 25 of the Foreign Investment Law of the People's Republic of China (Foreign Investment Law) and Article 31 of the Regulation on Optimizing the Business Environment require local governments to honor policy commitments and all types of contracts lawfully concluded. Article 78 of the Administrative Procedure Law of the People's Republic of China (Administrative Procedure Law), together with Articles 16, 19, and 21 of the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Agreement Cases (the "Provisions on Administrative Agreements"), addresses, respectively, lawful modification or termination of an administrative agreement, unlawful non-performance, and relief where the lawful exercise of administrative authority makes performance impossible or causes loss. Articles 70 and 73 of Private Sector Promotion Law therefore did not create an entirely new body of rules for government contracts. They gathered duties previously dispersed across administrative permission, foreign investment, the business environment, and administrative-agreement law, and raised them into statutory duties protecting all private economic organizations. The duty now has both an evaluative function in adjudication and a role in administrative oversight.

On May 20, 2026, the National Development and Reform Commission (NDRC) and the Supreme People's Court (SPC) jointly issued the Typical Cases on Implementing Private Sector Promotion Law (First Batch).[1] In *Nanyang X Real Estate Development Co., Ltd. v. Nanyang Municipal People's Government et al.*, the SPC held that the official minutes of a government meeting constituted an administrative promise. After the promised mode of performance became impossible

in fact, the Court relied directly on Article 70 of Private Sector Promotion Law and considered the causes of the loss, the parties' respective responsibility, and the project's profit. It ordered the government to bear half of the claimed loss of RMB 16.82309 million, namely RMB 8.411545 million.[2] In another case from the same batch, Zhangzhou Company A Co., Ltd. v. Longhai District People's Government of Zhangzhou Municipality, a profit-distribution clause in a cooperation agreement was held invalid because it harmed national interests and the public interest. The court did not award the expectation interest promised by the invalid clause. Applying the basic rules in Articles 18 and 70, the court instead awarded more than RMB 43 million for the enterprise's reliance loss created by performance of the agreement's remaining valid clauses.[3] Together, these cases show how Private Sector Promotion Law is already used in judgments and is beginning to shape both liability and remedies in disputes over government commitments.

Several issues about how courts should apply Articles 70 and 73 are still open. They include which commitments or contracts are protected, how to classify a government's departure from an earlier arrangement, whether compensation or damages apply, and how to measure the loss. Before Private Sector Promotion Law was enacted, Chinese scholarship followed three main approaches. The first used the ideas of a trustworthy government, legitimate reliance, or legitimate expectations to explain why a reasonable expectation created by government conduct deserves legal protection.[8] The second studied how courts review an administrative organ's unilateral modification or termination of an administrative agreement. It stressed that this prerogative needs a statutory basis and remains limited by proportionality and procedure.[4][5][6] The third asked how much compensation should follow termination of an administrative agreement. It argued that courts should first honor a valid compensation clause and, if none exists, coordinate the expectation interest, reliance interest, and actual loss.[7] This literature helps explain the government's duty to honor its commitments, but much of it focuses on administrative agreements or administrative prerogatives. Articles 70 and 73 refer to both "policy commitments" and "contracts" without defining their legal nature. Official cases decided after the Law took effect also concern an administrative promise that became impossible to perform and compensation for reliance after part of an agreement was held invalid. Thus, the earlier choice between "modification in the public interest" and "unlawful repudiation" cannot cover every dispute.

Using doctrinal analysis, this article draws on existing judgments and official typical cases. It first explains how the commitment provisions fit the existing legal framework and what they cover. It then addresses how to identify and compensate lawful changes in the public interest, followed by remedies for unlawful non-performance, impossibility, and invalidity. The aim is to support more consistent judgments and more stable legitimate expectations for private economic actors.

2. Systematic Position and Scope of the Provisions Governing the Government's Duty to Honor Its Commitments

(1) How Existing Rules Continue and Where the New

Provisions Stand

Articles 70 and 73 of Private Sector Promotion Law operate within the existing rules of public and private law. They do not govern every government-enterprise dispute on their own. For administrative agreements, Article 16 of the Provisions on Administrative Agreements already tells courts how to treat lawful and unlawful modification or termination. If the act is lawful but causes loss to the private party, the court may order compensation. If it is unlawful, the court may annul it. When annulment is not available, the court may declare the act unlawful and award damages. Article 19 allows continued performance, remedial action, or damages when an administrative organ does not perform an agreement according to law or its terms. Article 21 applies when the lawful exercise of administrative authority for national interests or the public interest makes the claimant's performance impossible, raises its cost materially, or causes loss. Therefore, even before Article 70 took effect, courts had rules for how to compensate a lawful change, award damages for unlawful non-performance, and compensate loss when a lawful exercise of authority made performance impossible.

The provisions' place in the legal system can first be seen from whom they protect and their legal rank. Earlier rules covered only administrative permissions, administrative agreements, or foreign investors. Article 70 instead protects private economic organizations, treats policy commitments and contracts together, and states a general rule in legislation. Second, it says that adjustments to administrative divisions, changes of administration, adjustments to institutions or functions, or replacement of personnel do not justify breach or repudiation. In a civil contract, the government therefore cannot rely only on its own organizational or personnel change to claim force majeure or changed circumstances. In an administrative agreement, an internal organizational risk cannot become a public-interest ground for unilateral modification or termination. Third, Article 73 creates a chain of responsibility outside litigation. A court may decide performance, remedial action, or monetary liability in a civil-contract or administrative-agreement dispute. At the same time, an authorized organ must correct non-performance and, if adverse consequences or effects follow, hold the responsible leaders and personnel accountable. Correction and discipline do not replace the enterprise's action; they link liability in one case with oversight of government integrity. Finally, Article 70 gives courts a clear standard for evaluation. In a policy-commitment dispute, it can directly supply the substantive basis for the government's duty and its obligation to compensate. In civil-contract and administrative-agreement disputes, it chiefly confirms the duty to honor commitments and guides judicial evaluation, while the type of action, form of judgment, and scope of loss still depend on the Civil Code of the People's Republic of China (Civil Code), the Administrative Procedure Law, the Provisions on Administrative Agreements, and other rules of the relevant branch of law.

(2) The Scope of Government-Enterprise Contracts and Category-Specific Application

To achieve an administrative-management or public-service objective, a government may conclude concession agreements, expropriation compensation agreements, and investment-promotion agreements with enterprises. It may also act as an ordinary civil party in contracts for sale, lease, or construction. Government non-performance can arise under either type and can affect the business expectations of

a private enterprise in much the same way. Article 31 of the Regulation on Optimizing the Business Environment and Article 25 of the Foreign Investment Law both refer to "all types of contracts concluded in accordance with the law." Article 70 of Private Sector Promotion Law uses the general word "contract," not the more specific concept of "administrative agreement" found in the Administrative Procedure Law and its judicial interpretations. Its wording and protective aim therefore indicate that Article 70 also covers civil contracts.

How broadly the provision applies determines whether the government may change a contract unilaterally and which liability follows. In a civil contract, the government and the enterprise have equal legal status, so they should normally agree on any change through negotiation. If the substantial change described in Article 533 of the Civil Code occurs, the parties must negotiate first. If they fail, either party may ask a people's court or arbitral institution to modify or terminate the contract. Administrative power cannot rewrite the contract unilaterally. Damages for government breach normally protect the expectation interest, but remain subject to foreseeability, mitigation, and the offset of benefits against losses. The position is different under an administrative agreement. An administrative organ may lawfully modify or terminate it to prevent harm to national interests or the public interest, but a court may still review the organ's authority, grounds, procedure, and observance of proportionality. A lawful change that causes loss leads to administrative compensation. An unlawful change may require continued performance, remedial action, or damages. Article 70 places both kinds of contract under the duty to honor commitments, but their liability structures remain different.

(3) How the Text Limits the Provisions and How Other Rules Coordinate

The latter part of Article 73 addresses how local people's governments and their relevant departments "fail to perform" policy commitments lawfully made or contracts lawfully concluded. It does not expressly mention unlawful modification or termination. Article 73 should therefore not be treated, standing alone, as a complete damages provision for every form of "unlawful repudiation." Where the government uses unilateral modification or termination to avoid its obligations, the finding of unlawfulness begins with the prohibition on breach and repudiation in Article 70(1) and must be coordinated with the rules of the relevant branch of law. Administrative agreements are governed by Article 78 of the Administrative Procedure Law and Articles 16 and 19 of the Provisions on Administrative Agreements. Civil contracts are governed, among other provisions, by Articles 509, 577, and 584 of the Civil Code.

Nor can "compensation" and "damages" be distinguished mechanically by looking only at the numbers of Articles 70 and 73. Article 70(2) establishes no-fault compensation where a government lawfully changes a valid commitment or contractual term because national interests or the public interest so require. The damages contemplated by Article 73 presuppose failure to perform a lawfully made commitment or contract and will usually correspond to unlawful non-performance. Other situations fall outside that simple division. A commitment may become objectively impossible to fulfill; an agreement or some of its clauses may have been void ab initio. Neither circumstance necessarily amounts to a lawful modification in the public interest, yet neither can always be handled as unlawful non-performance of a valid contract.

Restitution, remedial measures, damages, or reasonable compensation must instead be selected by examining why performance became impossible, or the agreement was invalid, the fault of the government and the enterprise, and whether the enterprise's reliance was reasonable.

3. Identifying and Compensating Lawful Modifications in the Public Interest

(1) Determining When Modification Is Lawful on Public-Interest Grounds

Article 70(2) permits the government to change a policy commitment or contractual term when national interests or the public interest so require. It is a limited exception to the rule that commitments must be honored. Public interest is an abstract expression. A government cannot establish the exception simply by describing its action as a "policy adjustment." If that were enough, fiscal pressure, administrative convenience, or a rearranged project could strip the duty of real effect. An administrative agreement should be modified or terminated only under a law, regulation, or rule, or when the step is truly needed to prevent serious harm to national interests or the public interest. The public interest concerns an indeterminate group, not the administrative organ's own budget or convenience.[5] Article 70 does not use the words "serious harm," but it makes performance the rule and public-interest change the exception. The court must therefore ask whether the asserted interest is real and specific, and how the measure connects to it.

The cases show why different grounds must be kept separate. In Changyang Huoshaoping Water Supply Co., Ltd. v. Huoshaoping Township People's Government of Changyang Tujia Autonomous County, the government changed an exclusive water-supply arrangement. The old arrangement could not meet growing regional demand, residents had objected, and higher authorities had issued requirements. The court accepted continuity of residential water supply as a public-interest ground and upheld compensation of RMB 300,000.[9] In Daye Boxin Parking Management Co., Ltd. v. Daye Urban Management and Law Enforcement Bureau, a provincial policy removed charges for parking on urban roads. This ended the legal conditions on which the concession depended. The court upheld termination according to law and required compensation for the enterprise's loss.[14] The courts reached a different result in Heilongjiang Dawei Real Estate Development Co., Ltd. v. Tongbei Township People's Government of Bei'an Municipality, where fiscal difficulty was raised against an accrued restitution duty, and in Dachuan Shengpeng Investment Co., Ltd. v. Kaijiang County Natural Resources Bureau, where the organ said fiscal funds had not yet been allocated.[11][12] Inadequate appropriations, internal payment processes, and funding schedules are risks within government. Without more, they are not national interests or the public interest under Article 70(2). In Nanling Huiling Real Estate Development Co., Ltd. v. Nanling County People's Government et al., a planning change and recovery of the land prevented performance in the agreed form. The court still treated the agreement as a civil contract and awarded damages for breach.[10]

Review should therefore ask four direct questions. Did an authorized organ make the change? Did the change actually displace the original form of performance? Could substitute

performance or negotiation have reduced the loss? Is the contract civil or administrative?

(2) Proportionality Review of the Modification Measure

A public interest alone does not allow a government to alter an earlier commitment or contract. The chosen measure must also be proportionate. When an administrative organ uses its prerogative to modify or terminate an administrative agreement, it must observe proportionality and follow procedures for consultation and reasons.[5] Courts may examine proportionality through suitability, necessity, and balancing (proportionality *stricto sensu*). Suitability asks how the change advances the stated public interest. The government cannot use a general public interest to replace a project or redistribute benefits where the measure has no link to that aim. Necessity asks whether an equally effective but less harmful option was available, such as continued or partial performance, substitute performance, a longer time limit, or complete termination. Balancing then compares the public benefit with the burden on the enterprise. One private enterprise should not carry a policy cost that belongs to society as a whole.

Proportionality turns the phrase "required by the public interest" into questions that parties can prove, contest, and ask a court to review. In the Changyang Huoshaoping case, greater demand for water could be a proper public-interest aim. Still, ending an exclusive operating arrangement required the court to ask whether the original operator could expand, whether another operator was needed to secure supply, and whether the first operator received reasonable compensation.[9] In the Daye Boxin case, the policy removed the legal power to charge for parking on urban roads. The original agreement could no longer be performed, so termination had a more direct link to the policy aim.[14] The two cases differ in how strong the public-interest ground was and what alternatives remained. Their compensation should not follow the same proportion.

Article 70(2) also requires "statutory authority and procedures." The organ that changes a commitment or agreement must have the required power. A government department cannot replace a decision by the authorized organ with an internal request for instructions or an opinion from a meeting. Before making the change, it should explain the facts and legal grounds to the enterprise, hear the enterprise's views, and discuss continued performance, other options, and how the resulting loss will be handled. If the organ does not give reasons, compare alternatives, or address the loss at the same time, this should weigh heavily when the court decides whether the procedure was unlawful or the discretion was manifestly improper.[5]

(3) The Scope of Compensation for Lawful Modification

An enterprise should not bear alone the special loss caused by a public-policy change; compensation spreads that burden. The court should first ask whether the contract or agreement has a lawful and effective compensation clause. Clear terms agreed by the government and the enterprise on policy changes, early termination, asset acceptance, and valuation should normally be followed, provided they do not harm national interests or the public interest. A valid compensation clause comes first. If there is none, the court should determine the scope by considering the expectation interest, reliance interest, foreseeability, and mitigation.[7] The court needs to supplement the parties' arrangement only when it is absent, invalid, or too narrow to cover the disputed loss.

If no effective agreement exists, compensation starts from

necessary and reasonable expenditures caused by the change. In *Guiping Jiuzhou Aluminum Technology Development Co., Ltd. v. Guiping Municipal People's Government et al.*, the court accepted that the government terminated an administrative agreement in the public interest. It included spending on office work, land leveling, surveying and mapping, and environmental impact assessment. Property that remained usable and expenses without evidence were excluded.[13] In *Hubei Daye Boxin Parking Management Co., Ltd. v. Daye Urban Management and Law Enforcement Bureau*, the court treated actual investment as the minimum compensation due for the concession. It included RMB 390,400 paid for equipment and RMB 665,345.92 in verified financing interest, while leaving the enterprise to bear operating expenses incurred after termination.[14] Both decisions require proof that the loss was actually incurred, was devoted to the project in dispute, and resulted from the government's change.

Anticipated returns do not call for a uniform answer. In *Xiuyan Manchu Autonomous County Jiahe Motor Vehicle Inspection Co., Ltd. v. Xiuyan Manchu Autonomous County Environmental Protection Bureau et al.*, a national policy removed numerical controls on inspection agencies. The court found it lawful for the government to discontinue the exclusive-operation arrangement, yet, on the basis of an appraisal, included machinery, office equipment, and RMB 1.62226 million in anticipated returns in total compensation of RMB 2.037067 million.[15] The Daye Boxin decision placed greater weight on actual investment and denied post-termination operating expenses and financing costs whose connection to the project was not proved.[14] These cases indicate that treatment of anticipated returns depends on the type of agreement, the project's operating history, its remaining term, the stability of its earnings, the reliability of the appraisal, and the enterprise's efforts to mitigate loss. Where a project has operated steadily, its earnings can be proved with some confidence, and early termination by the government directly causes lost profits, the foreseeable and reasonably ascertainable part may be included. Greater restraint is warranted where operations have not begun, and returns chiefly depend on future policy or market changes.

4. Category-Specific Remedies for Unlawful Non-performance, Impossibility of Performance, and Invalidity of an Agreement

(1) Unlawful Non-performance or Unlawful Modification or Termination

Where the government changes a commitment or contractual arrangement without grounds in national interests or the public interest, or acts without the requisite authority or procedure, the compensation rule for a lawful change under Article 70(2) should not apply. For administrative agreements, Article 78 of the Administrative Procedure Law and Articles 16(3) and 19(1) of the Provisions on Administrative Agreements provide remedies of revocation, continued performance, cure, and damages. Civil contracts remain subject to the breach-of-contract rules of the Civil Code. Article 73 of Private Sector Promotion Law attaches correction, damages, and disciplinary consequences to "non-performance," but direct review of an unlawful modification or termination still depends on Article 70(1) together with the applicable rules of administrative or civil law.

In *Nanling Huiling Real Estate Development Co., Ltd. v. Nanling County People's Government et al.*, a planning adjustment prevented the government from delivering the agreed land. The court did not treat the change in planning as an automatic release from liability; it ordered damages for the occupation of funds and for planning and design expenses.[10] In *Heilongjiang Dawei Real Estate Development Co., Ltd. v. Tongbei Township People's Government of Bei'an Municipality*, the township government refused to return a performance bond on the ground of fiscal difficulty. The court ordered repayment of the principal with the agreed interest.[11] In *Dachuan Shengpeng Investment Co., Ltd. v. Kaijiang County Natural Resources Bureau*, the bureau argued that the money still awaited a fiscal allocation. The court found that the bureau's internal funding process could not block the enterprise's accrued repayment claim. Because the enterprise had breached earlier, however, the court rejected its claim for a high contractual penalty.[12] These decisions show how government, as an ordinary contracting party, bears ordinary performance risks. Article 70 rules out special excuses based on the government's internal affairs. Article 73, in turn, provides ways to correct a breach of trust and hold personnel accountable. The recoverable loss remains controlled by civil rules on breach.

Jiayu Chaochang Water Supply Co., Ltd. v. Dupu Township People's Government of Jiayu County further shows the difference between civil liability and administrative compensation. The township government terminated a water-supply concession contract early and without consultation. Applying civil contract law, the court relied on an appraisal and ordered repayment of the unexpired concession fee and advance payments, together with damages for tangible assets and RMB 2.4201 million in lost profits, for a total of RMB 2.766933 million. It did not award the agreed contractual penalty again because the loss had already been made good.[16] Lost profits were recoverable because the court characterized the government conduct as a civil breach and awarded the expectation interest, not because every termination of a government-enterprise contract requires full compensation. The nature of the contract and the form of liability must therefore be settled before the loss is calculated.

(2) Impossibility of Performing a Policy Commitment or Contractual Obligation

In the administrative-promise case, *Nanyang X Real Estate Development Co., Ltd. v. Nanyang Municipal People's Government et al.*, minutes of a municipal-government meeting promised to compensate the enterprise for additional land-acquisition costs by granting 40 mu of land, adjusting the floor area ratio, and reducing supporting-facility charges. The government tried to perform some of these promises, but the promised "preferential treatment and compensation in policies on the floor area ratio, supporting-facility charges, and other matters" later became impossible in fact. The Supreme People's Court did not frame the case as an affirmative modification of the promise in the public interest, nor did it invoke Article 73. Instead, it applied Article 70 directly and examined how the government failed to negotiate or offer a remedy after performance became impossible.[2] The official statement describes three steps: "review of an administrative promise-determination of impossibility of performance-quantification of compensation liability." Article 70 therefore applies even when a commitment cannot be carried out in its original form, although the resulting loss must still be allocated.[1]

Impossibility of performance has at least three sources. First, a later change in law, policy, or objective facts may make the promised form of performance impossible. The court should ask how public authority was used, whether it served the public interest, and whether substitute performance is still available. If Article 70(2) or Article 21 of the Provisions on Administrative Agreements applies, lawful compensation follows. Second, the problem may come from poor internal coordination, a wrong allocation of authority, or inadequate preparation within government. These reasons do not establish a public-interest change and may instead support damages for unlawful non-performance. Third, the commitment may have been unlawful or outside the government's authority from the start. A court cannot compel the promised performance. Even so, if the enterprise reasonably invested in reliance on the government representation, the court should still consider legitimate reliance and a remedy similar to culpa in contrahendo.

The Nanyang court did not place the enterprise's entire claimed loss of RMB 16.82309 million on the government. To set the government's share at 50 percent, it examined how and why the loss arose, each party's responsibility, and the project's profits.[2] The decision shows that causation between the promise and the loss is not enough when performance is impossible. The court must also ask whether the enterprise knew or should have known that statutory approval was still needed, how its own conduct caused or enlarged the loss, and whether the project produced other returns.

(3) Invalidity of an Agreement or Some of Its Clauses

Article 70(2) assumes that a lawful commitment or an effective contract is being changed. It does not require the government to carry out an unlawful promise. If an agreement or clause violates law or harms national interests or the public interest, the enterprise cannot claim the expectation interest under that invalid term. The government, however, usually has greater legal knowledge and owes a higher duty of care. If it is mainly at fault for the invalidity and the enterprise has invested or performed under the remaining valid arrangements, denying all relief would allow the government to benefit from its own unlawful act.

In *Zhangzhou Company A Co., Ltd. v. Longhai District People's Government of Zhangzhou Municipality*, the cooperation agreement required the government to distribute to the enterprise part of the proceeds from a land grant. That clause was invalid because it violated legal rules and the national fiscal system and harmed national interests and the public interest; the enterprise could not calculate its expectation interest by reference to it. Other parts of the agreement did not violate mandatory rules and had been performed; however, the enterprise had carried out preliminary land-development work. Considering the work completed, the operating condition of the construction enterprise when the agreement ended, the cause of invalidity, and the parties' fault, the court found the government mainly responsible while assigning some fault to the enterprise. It upheld compensation of more than RMB 43 million for the reliance interest and invoked the rationale of Articles 18 and 70 of Private Sector Promotion Law.[3] The decision rejected the unlawful distribution of benefits, yet protected the enterprise's reasonable reliance on its government contract and on long-term performance of the agreement.

After an agreement is found invalid, relief should focus on restitution and the reliance interest. Property that can be

returned should be returned first. The court may compensate necessary and reasonable expenses spent on concluding or performing the valid part of the agreement, or preparing to perform it, when the reliance was reasonable and the expenses were caused by government fault. Expected profits under an invalid clause normally receive no protection. The government's share should be reduced if the enterprise knew that the clause was unlawful, joined in avoiding fiscal or land-administration rules, or kept increasing its investment after the risk became clear. Here, Article 70 gives a standard of good faith and protects legitimate reliance. It does not make an unlawful promise effective.

(4) How Liability, the Scope of Loss, and the Form of Judgment Connect

Courts should examine these disputes step by step. First, the court asks whether a policy statement is definite enough, comes from the government, and can create reasonable reliance. These points show whether it amounts to a policy commitment. The court also asks whether a contract was formed and remains effective. It then decides how the agreement's purpose, rights, and duties, and use of administrative authority distinguish an administrative agreement from a civil contract. Second, if a policy commitment or contractual duty is effective, the court asks whether performance is still possible. If the agreement or a clause is invalid, the inquiry moves at once to restitution, culpa in contrahendo, or protection of the reliance interest. Third, where the original obligation is valid and capable of performance, the court decides whether the government's departure from it is a lawful modification required by national interests or the public interest, or an unlawful non-performance, modification, or termination lacking proper grounds. Fourth, it selects continued performance, cure, compensation, damages, restitution, or protection of the reliance interest as the form of liability, then determines the scope of loss within that framework. The amount should not be fixed first, and the form of liability inferred backward from it.

The scope of loss must correspond to the form of liability. Damages for breach of a civil contract begin in principle with the expectation interest, subject to foreseeability, mitigation, and contributory fault. Damages for unlawful non-performance of an administrative agreement should be determined under Article 19 of the Provisions on Administrative Agreements, with attention to the agreement's lawful content, the causal connection between the unlawful government act and the loss, and the provability of the claimed interests. Compensation for a lawful modification in the public interest should give priority to a lawful and effective compensation clause. If there is no clause or it is unclear, necessary and reasonable expenditures already made in reasonable reliance provide the starting point; the court may then consider the type of agreement, the remaining term, the stability of operating income, and the certainty of anticipated returns when deciding whether to protect other reliance interests. Impossibility and invalidity ordinarily place the emphasis on restitution and the reliance interest. If the facts and amount can both be proved, the court should issue a specific payment order whenever possible. Sometimes the administrative organ must first value assets, accept them, or choose among public options. The court may then require action within a stated period. Even in that situation, the judgment should state the form of liability, the types of compensation, and the limits of discretion, while keeping the

later administrative decision open to judicial review. Articles 70 and 73 do more than declare how government should act in good faith. They also give enterprises enforceable relief through payment, cure, and correction.

5. Conclusion

Articles 70 and 73 of Private Sector Promotion Law bring scattered rules together as statutory duties owed to private economic organizations. They expand who is protected, rule out defenses based only on changes in government organization or personnel, create correction and discipline mechanisms, and give courts a legal basis for asking whether government acted in good faith. Yet both articles must work inside the existing systems of civil and administrative law. They do not create a special law of damages that ignores the nature of the contract or the applicable liability. Courts should therefore classify the legal relationship first. The word "contract" in Article 70 can include administrative agreements and civil contracts, but the public-interest power to change an administrative agreement cannot be carried into a civil contract. Article 73 does not itself tell courts how to decide whether a modification or termination is unlawful. If such an act leads to non-performance of a policy commitment or contractual duty, Article 73 may still support correction, damages, and accountability. Whether the act is unlawful and which liability applies must be decided under Article 70(1), the Administrative Procedure Law, the Provisions on Administrative Agreements, or the Civil Code, as appropriate. Once government departs from a commitment or contract, courts must separate four situations: a lawful change in the public interest; unlawful non-performance, modification, or termination; impossibility of performance; and an invalid agreement or clause. When performance is impossible or a term is invalid, protection of reliance cannot be reduced to a simple choice between "public-interest modification and compensation" and "unlawful breach and damages."

The applicable liability determines how far compensation or damages extend. When a commitment is lawfully changed in the public interest, the court should first follow an effective compensation clause. Necessary and reasonable investment is the starting point. Part of the anticipated returns may also be protected with care if earnings were stable and the evidence is sufficient. Loss caused by unlawful non-performance should be made good under the applicable administrative or civil rules on breach. In cases of impossibility or invalidity, the central questions are whether reliance was reasonable, the respective fault of the government and enterprise, causation, and mitigation. A sequence of identifying the legal relationship, reviewing the reason for the change, selecting the governing rule of liability, and determining the scope of loss can preserve room for public-interest adjustments while making government commitments and government-enterprise contracts more stable and predictable.

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