

Legal Advice by Huayi Law Firm

Dear Mr Ai Weiwei,

At your request, Beijing Huayi Law Firm is hereby giving the following specific legal advice on the criminal liability of you in the case of tax investigation which Beijing Fake Cultural Development Co., Ltd. (hereinafter as Fake Company) is undergoing. After reviewing and analysing the documents provided by Fake Company, we offer our legal advice as follows for your reference.

I. Major factual basis for issuing this legal advice:

1. *Administrative Penalty Notice by the Tax Authorities*, provided by Fake Company
2. *List of Items Impounded by Beijing Chaoyang District Public Security Bureau*, provided by Fake Company
3. *Notice for Taking of Evidence by Beijing Public Security Bureau*, provided by Fake Company
4. *Notice for Tax Inspection by the Second Inspection Bureau of Beijing Local Taxation Bureau*, provided by Fake Company
5. Statements by the party concerned

II. Major legal basis for issuing this legal advice:

1. *The Law of the People's Republic of China Concerning the Administration of Tax Collection*
2. *Criminal Law of the People's Republic of China*
3. *Amendment 7 to the Criminal Law of the People's Republic of China*
4. *Criminal Procedure Law of the People's Republic of China*
5. *Company Law of the People's Republic of China*
6. *Rules 2 on Certain Problems in Applying the Company Law by the Supreme People's Court of the People's Republic of China*
7. *Rules 3 on Certain Problems in Applying the Company Law by the Supreme People's Court of the People's Republic of China*
8. *Interpretations on Certain Problems in Applying Relevant Laws in Criminal Cases of Endangering Mining Production by the Supreme People's Court and Supreme People's*

*Procuratorate of the People's Republic of China*

9. *Rules 2 on Case Registration and Prosecution Standards of Criminal Cases within the Jurisdiction of Public Security Organs by the Supreme People's Procuratorate and the Ministry of Public Security of the People's Republic of China*

10. *Rules on the Procedures of Handling Criminal Cases by the Public Security Organs (Amendment) of the People's Republic of China*

11. *The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

### III. Background

On April 3, 2011, Ai Weiwei, designer at Fake Company, was detained by the Beijing Public Security Bureau at the Beijing Capital Airport, and then brought to a place in Beijing's suburb to be interrogated, being prohibited from contacting the outside world. The public security organ did not notice Ai Weiwei's family.

On April 5, 2011, three days since Ai was detained, the interrogators asked Ai Weiwei to sign on a *Written Decision on Residential Surveillance* issued by the Chaoyang District Public Security Bureau. No reason for the case was given in the document, only reasons for residential surveillance, and Ai Weiwei was asked to sign the date as April 3, 2011.

On April 3, 2011, multiple law enforcement organs including the Beijing Public Security Bureau visited Fake Company and impounded various materials including computers and compact discs, after showing a search warrant. No finance and accounting documents were taken.

Around 11 pm April 6, 2011, the Beijing Local Taxation Bureau and the Beijing Public Security Bureau visited the accounting service company that Fake Company has employed and obtained various accounting documents including account vouchers, tax payment vouchers, balance sheets, profit and loss statements, etc., after showing a *Notice for Taking of Evidence by Beijing Public Security Bureau*. About one hour later, that is before the midnight of April 6, the Xinhua News Agency released a brief news: "According to the Ministry of Public Security Wednesday evening, Ai Weiwei, actual controller of Fake Company, is suspected of economic crimes and undergoing

investigation according to the law." No further detail is provided by the brief news.

On April 7, 2011, Hu Mingfen, accountant of Fake Company, lost contact with the company. Fake Company did not know until June through private channels that she was taken by the public security organ in April. Until now she is still unavailable for contact through normal means.

On April 8, 2011, multiple law enforcement organs, including the Local Taxation Bureau and Chaoyang District Public Security Bureau, visited Fake Company and impounded all finance and accounting documents, contracts, official seals, etc, and for the first time officially showed to Fake Company relevant tax inspection notice, i.e. *Notice for Tax Inspection*.

On April 10, 2011, Liu Zhenggang, finance manager and shareholder of Fake Company, was forcefully taken away by four plainclothes men. Until now he is still unavailable for contact through normal means.

On April 12, 2011, the Second Inspection Bureau of Beijing Local Taxation Bureau sent a written notice, demanding Lu Qing, legal representative of the company, to report to the Local Taxation Bureau for investigation.

On May 11, 2011, the public security organ informed Lu Qing, wife of Ai Weiwei, that it could be arranged that Lu would meet Ai. Lu Qing then submitted an application for meeting Ai Weiwei. On the 15<sup>th</sup>, the public security organ brought Lu Qing to where Ai Weiwei was detained for the meeting, with the topic of conversation limited to personal health.

On June 22, 2011, Ai Weiwei was released in haste, without signing any legal paperwork. His mother was required to sign as the guarantor for the release on bail, but neither Ai Weiwei nor his family has ever seen or received legal document about the release on bail issued by the public security organ. On the same day, Xinhua.net released brief news entitled *Beijing Public Security Organ Released Ai Weiwei on Bail Pending Trial According to the Law*. (Note 1)

On June 27, 2011, the Local Taxation Bureau issued the *Administrative Penalty Notice by the Tax Authorities*.

On June 29, 2011, Fake Company submitted an *Application for Hearing* to the taxation organ,

requesting a hearing to be held and that all accounting documents be returned to Fake Company so that the company could check its accounts and tax records.

On July 6, 2011, the taxation organ sent Fake Company a *Written Notice for Hearing*, deciding no hearing was to be held. No reply was given for the request of returning accounting documents.

On July 11, 2011, Fake Company submitted a *Written Objection* to the taxation organ, expressing objection to the decision of not holding a hearing, and repeating its request for returning all accounting documents of Fake Company.

On July 14, 2011, a hearing was held in a non-public manner.

On July 19, 2011, legal representative of Fake Company received a phone call from a person working for the taxation bureau. Fake Company was informed to go to Shibalidian local police station of Chaoyang district to view its accounting documents within 3 days from July 20. The legal representative of Fake Company indicated that this was an administrative penalty procedure but the taxation organ asked the company to go to a public security organ to view the accounting documents that should have been returned. The legal representative expressed that this was inappropriate and refused to go and view the documents.

On July 20, 2011, the Beijing Local Taxation Bureau sent to Fake Company a *Notice for Provision of Tax Payment Documentations*.

On July 28, Fake Company submitted a *Reply to Notice for Provision of Tax Payment Documentations*, further reiterating that the taxation organ should return its accounting documents.

#### IV. Legal Advice

##### **A. Legal Analysis on Actions of Restriction Personal Freedom of Ai Weiwei by the Public Security Organ**

###### **1. Analysis on implementing the coercive measure of "residential surveillance" by the public security organ**

The public security organ showed no relevant legal paperwork when detaining Ai Weiwei. Rather they asked Ai to sign the so-called *Written Decision on Residential Surveillance*, which gives no case background at all, and demanded Ai to backdate his signature as of April 3, 2011, which is flagrantly in violation of relevant regulations by the *Rules on the Procedures of Handling Criminal Cases by the Public Security Organs (Amendment)* (Note 2). Because the document was backdated, blanks in the document could have been filled later by the public security organ, and the actions of the public security organ were not properly documented. It has constituted as false imprisonment or kidnapping.

It can be concluded from the acts by the public security organs described above that they attempted to disguise their act of detention as "residential surveillance". Even if residential surveillance might be relevant, the public security organs' calling their acts "residential surveillance" was not compatible with the stipulation by the law, and therefore cannot be justified:

1) If the public security organ took the coercive measures to Ai Weiwei on the basis of a placed case of tax evasion, it violated relevant laws and regulations on the procedures of investigation on tax evasion cases, which means all following detainment and interrogation were illegal.

According to Article 50 of the *Criminal Procedure Law*, "Depending on the situations of the case, the people's court, the people's procuratorate, and the public security organ may summon the criminal suspect or the defendant by warrant, release on bail pending trial, or put under residential surveillance ." It can be inferred that as a method of coercive measures that restricts personal freedom, residential surveillance can only be implemented on the condition that the case is placed. That is, placement of the criminal case is a prerequisite. From the fact that the public security organ announced directly to Ai Weiwei about their decision on "residential surveillance", it can be deducted that the criminal case was placed already.

However, from the moment Ai Weiwei was detained till he was released, the public security organ did not show any legal document to inform him of the crime that he was suspected of and the reason for the case, but only told him that the coercive measure taken against him was changed from "residential surveillance " to "release on bail pending trial". Under this circumstance, we can

only deduct from the brief news by Xin Hua News Agency and the following tax inspections on Fake Company by the Local Taxation Bureau that the reason for placing the case is "suspected tax evasion of a huge amount". Nevertheless, if the public security organ detained and interrogated Ai Weiwei with this as the reason for the case, it was not in compliance with the procedures stipulated by the law for public security organs to place a case and conduct investigation on a tax evasion case:

According to article 57 of the *Rules 2 on Case Registration and Prosecution Standards of Criminal Cases within the Jurisdiction of Public Security Organs by the Supreme People's Procuratorate and the Ministry of Public Security*, there are 3 situations under which tax evasion cases should be placed for prosecution (Note 3). Only the first one is applicable to Fake Company, the precondition being "no tax due is paid, no overdue fine is paid, or administrative penalty is not accepted, after the taxation organ has issued notice for payment according to the law". *Amendment 7 to the Criminal Law*, issued in February 2009, also stipulates the same precondition for prosecution of criminal liabilities for tax evasion cases. It can be seen that for Fake Company, which has never been subject to any administrative penalty, even if really involved in a tax evasion case, it is the taxation organ that should issue administrative penalty in the first place. Unless Fake Company decline to accept the administrative penalty decision, the public security organ shall have no power to place a case, let alone detain anyone from Fake Company.

**It can be concluded that if the public security organ detained Ai Weiwei solely on the basis of Fake Company being suspected of tax evasion, the reason for the case would be totally groundless and illegal, which means the following acts of detainment by the public security organ are in serious violation of the law.**

**2) The public security did not only detain Ai Weiwei on the basis of an illegal reason for the case, but also did not take residential surveillance measures according to the law. Instead their acts constituted detention in disguise.**

Concerning the venue for residential surveillance, article 57 of the *Criminal Procedure Law* and section 1, article 98 of the *Rules on the Procedures of Handling Criminal Cases by the Public*

*Security Organs (Amendment)* give clear stipulations (Note 4), i.e. it should be the legal residence where the subject of residential surveillance within the city or county of the public security organ handling the case. Only when the subject has no permanent residence, the public security organ may assign a living quarters for the subject. Ai Weiwei is a Beijing local, whose registered permanent address is the former residence of the Ai family in Dongcheng District. His company has a permanent office address in Beijing. Still, the public security organ directly detained him at a place undisclosed to either himself or his family. This constituted detention in disguise.

Paragraph 2, article 98 of the *Rules on the Procedures of Handling Criminal Cases by the Public Security Organs (Amendment)* specifically stipulates that "the public security organ shall not establish specialized venue for residential surveillance, as a means for detention in disguise of the suspect. Residential surveillance shall not be implemented in detention centers, administrative detention centers, temporary detainment room or any other working space of the public security organ." With such clear stipulations by the law, the public security organ still detained Ai Weiwei in secret. This is entirely in disregard for the law and violation of the law while enforcing the law.

**3) The public security organ detained Ai Weiwei in secret without informing his family in time, which deprived the right to counsel of the subject of residential surveillance.**

According to relevant stipulations by the *Criminal Procedure Law* and the *Rules on the Procedures of Handling Criminal Cases by the Public Security Organs (Amendment)*, unless the case is involved with national secret, the public security organ should have informed Ai Weiwei of his right to counsel from the day Ai was taken under coercive measures. He has the right to hire and meet with a lawyer, which is not subject to approval by the public security organ.

However, since Ai Weiwei was taken under custody on April 3, the public security organ has never informed him of his such right, nor notice his family, nor the specific location of his detention. (Ai's family did not get an opportunity to meet with Ai until May after the family kept contacting a relevant public security personnel repetitively. Only then did the family know for sure that Ai was detained by the public security organ.) This has undoubtedly deprived Ai Weiwei's important right to counsel.

**4) The public security organ illegally detained Ai Weiwei for 81 days, with a tax evasion case as an excuse and "residential surveillance" as a means, which is typically arbitrary detention. This is not only against the law of the country, but also in violation of the *United Nations International Covenant on Civil and Political Rights* (Note 6) and *The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Note 7).**

Article 9, paragraph 1 of the *United Nations International Covenant on Civil and Political Rights* clearly states that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. " And article 9, paragraph 3 states that "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. ..."

China, which has been twice elected member of the UN Human Rights Council since 2006, should have basic endorsement on the universal values concerning human rights in the world, and also should set an example for the world for the improvement of human rights conditions. In this case, however, all acts by the public security organ were entirely baseless according to the law. They arbitrarily detained Ai Weiwei for 81 days with an arbitrarily fabricated excuse, inflicting great spiritual damage to Ai. This kind of arbitrary detention is not different from "secret detention" or "forced disappearance", which is in flagrant violation of the *United Nations International Covenant on Civil and Political Rights* and *The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Indeed this is a disgrace to China's law and does great harm to China's identity of a member of the UN Human Right Council.

**2. Because the public security organ's detention was illegal in the first place, so-called release from "residential surveillance" and change into "release on bail pending trial" are also groundless in law.**

On June 22, the public security organ released Ai Weiwei and informed him that his status was

changed into "release on bail pending trial", like before, without any legal paperwork. Though Xinhua News Agency issued a news saying that Ai Weiwei was released bail, Xinhua is only a news agency and cannot represent the law enforcement organ. Therefore, the news has no legal effect.

According to the *Criminal Procedure Law*, release on bail pending trial is one of the coercive measures taken against criminal suspect or defendant. When taken, the notice should be announced to the party involved, who then should sign (or seal) and print fingerprints on the notice (Note 8). When Ai Weiwei was being released, no such procedure was taken. Only Ai Weiwei's mother signed a guaranty. Neither Ai Weiwei nor his family has ever received any legal paperwork from the public security organ. Therefore, whether the law enforcement organ has placed a case, what the reason is for placement of the case, what the specific charges are, etc. remain unclear, and "pending trial" is irrelevant. The so-called "release on bail pending trial" is only an oral expression of their intention by the public security organ to Ai Weiwei and the public. From a legal procedure perspective, the case has never entered proper legal procedures.

## **B. Substance Legal Analysis on the relationship between Ai Weiwei and the tax case**

**1. For possible tax evasion by Fake Company, administrative penalty should a precondition. No legal representative, share-holder, employee, etc. shall be held criminally liable before Fake Company declined to accept the administrative penalty by the taxation authorities.**

Because Fake Company was inspected for taxation issues for the first time, the normal working procedure for the taxation inspection organ should be: taxation inspection and inquiry (taxation inspection credentials and taxation inspection notice shall be produced at this time.) → *Notice for Taxation Administrative Penalty* should be issued. → Public hearing should be held according to conditions and requests. → *Written Decision of Taxation Administrative Penalty* should be issued. → execution → (If the taxpayer decline to accept administrative penalty) transfer the case to law enforcement organ for prosecution of criminal liabilities. This case, however, was handled by the Beijing Municipal or Chaoyang District Public Bureau from the very beginning, with joint law enforcement by multiple organs. This is against the norm and groundless in law. Furthermore, the

public security organ obtained oral confession about the company's financial situation by means of handling criminal cases, which restricted personal freedom, and based the administrative penalty upon such evidence. This is also a significant problem in the chain of evidence on which the administrative penalty is based.

Paragraph 4, article 201 of the *Criminal Law* gives the following stipulation about criminal liability of tax evasion: "a person who committed an act under paragraph 1 shall be exempted from criminal liability if he has paid the tax due in arrears and the overdue fine, and accepted administrative penalty after the taxation authorities issued the notice for payment of taxes in arrears according to the law...". It can be deducted that Fake Company, which has never received any administrative penalty, should have received administrative penalty by the taxation authorities first, if there were actually taxes being evaded. Before the administrative penalty was issued, no one from Fake Company shall take any criminal liability for this.

**2. Ai Weiwei's role in the Fake Company means that he is not the subject of liability that shall shoulder the personal criminal penalty in a crime committed by a unit. He shall not take any legal responsibility for the possible act of tax evasion by Fake Company.**

According to article 31 of the *Criminal Law* (Note 9), the penalizing principle for unit crime is "the person in charge directly responsible and other persons directly responsible of the unit shall be sentenced criminally." Ai Weiwei's role in Fake Company is just a designer, neither the legal representative nor the financial director or the person in charge of taxation of the company. He is not the subject of liability that shall shoulder the personal criminal penalty in a crime committed by a unit. Therefore, Ai should not take any legal responsibility for the possible act of tax evasion by Fake Company.

**3. The criminal penalty for the actual controller shall follow the principle of assigning criminal penalty according to express definition of the law.**

In this case, the public security organ has never explicitly informed the reason for the case from the beginning till the end. Xinhua News Agency commented twice about this case, saying that they acquired the information from the public security organ that "Ai Weiwei is the actual

controller of the company" and that "Fake Company is suspected of economic crimes." If the comments were verified, the identification of "actual controller" and other accusation of Ai Weiwei are seriously problematic.

**1) On what basis did the law enforcement organ identify Ai Weiwei as the "actual controller"?**

Law should be rigorous. Whatever accusation the law enforcement organ is making, it should be supported by adequate evidence, rather than based upon deduction and imagination. The legal representative, shareholders, financial director of Fake Company are expressly appointed, while Ai Weiwei is only taking the role of designer in the company, with no involvement in handling practical businesses such as finance and administration. On this ground, we are wondering on what basis the law enforcement organ made the judgement that Ai Weiwei was the "actual controller". Could it be just because Ai is a well-known designer and spouse of the legal representative?

**2) There are stringent judicial interpretation on taking "actual controller" in the place of "person-in-charge directly responsible and other persons directly responsible" as the subject of crime. The law enforcement organ should not expand the interpretation of the rules and regulations so as to to apply it arbitrarily on any clause or article in the *Criminal Law* concerning crime committed by a unit.**

*Interpretations on Certain Problems in Applying Relevant Laws in Criminal Cases of Endangering Mining Production* by the Supreme People's Court and Supreme People's Procuratorate gives explicit interpretations on the illegal acts for which "actual controller" should take the place of "person-in-charge directly responsible and other persons directly responsible" as the subject of crime to take criminal responsibilities. *Rules 2 on Case Registration and Prosecution Standards of Criminal Cases within the Jurisdiction of Public Security Organs* by the Supreme People's Procuratorate and the Ministry of Public Security also stipulates explicitly that articles that demands placing a case for prosecuting the criminal liabilities of the "actual controller" shall have a limited applicability to cases in which the interests of a publicly listed

company are harmed due to breach of trust and cases of manipulation of securities and futures market (Note 10). In the same regulation, no explicit stipulation is given for taxation cases concerning "actual controller".

The above is sufficient to establish that laws and regulations have given strictly distinguished definitions between "person-in-charge directly responsible and other persons directly responsible" and "actual controller" in crime committed by a unit, and that when enforcing the law, the law enforcement organ shall strictly abide by the principle of assigning criminal penalty according to the express definition of the law, rather than make expanded interpretation of the legal provisions.

Through the above analysis on the legal procedures and legal facts, assuming Mr Ai Weiwei was detained on the charge of "Fake Company being suspected of evading taxes of a huge amount", we have the following conclusions:

i. Mr Ai Weiwei shall take no criminal liability in the taxation case of Fake Company.

ii. If the Fake Company accepts the administrative penalty decision made by the taxation authorities, this case shall end with administrative penalty and the taxation authorities cannot transfer the case to law enforcement organ. The legal representative, shareholders, or employees of Fake Company shall take no criminal liability for the case.

iii. If the Fake Company declines the administrative penalty by the taxation authorities, the taxation authorities may transfer the case to the law enforcement organ. Then the criminal liabilities of relevant persons responsible for the company may occur.

iv. The public security organ illegally detained Mr Ai Weiwei for 81 days without solid legal basis, showing no legal procedural paperworks. This is in violation of relevant laws of the country and constitutes acts of illegal detention.

This legal advice is unable to give answer to the following questions: Is this case an administrative sanction or criminal case? If it is administrative, why a criminal case was placed first? If it is a criminal case, what are the real reasons for the case? Why did the public security organ fail to produce official legal paperwork to clarify reasons for the case to Ai Weiwei and/or his family? Why only the tax issue was mentioned in Xinhua's news report? Is there no other reason for Ai

Weiwei's detention? Because the public security organ's acts were in violation of relevant laws and also in contradiction to the following administrative penalty by the taxation authorities, we are unable to give reasonable answers to the above questions based on available facts and evidence.

Beijing Huayi Law Firm

August 15, 2011

## 备注

### Notes:

#### 注 1:

#### Note 1:

新华社报道内容如下：“新华网北京 6 月 22 日电记者从北京市公安机关获悉：公安机关对艾未未涉嫌经济犯罪依法进行侦查，已查明其实际控制的北京发课文化发展有限公司存在逃避缴纳巨额税款、故意销毁会计凭证等犯罪行为。鉴于艾未未认罪态度好、患有慢性疾病等原因，且其多次主动表示愿意积极补缴税款，现依法对艾未未取保候审。”

Xinhua new report: "[Xinhua June 22 Beijing] Our reporter learns from the Beijing public security organ that the public security organ is investigating according to the law on Ai Weiwei, who is suspected of economic crime. It has been ascertained that Beijing Fake Cultural Development Company Ltd., which is under Ai's actual control, is involved in criminal acts including evading taxes of a huge amount and intentionally destroy accounting vouchers. Due to his good attitude, chronic disease, and repeated expression of his willingness to pay the taxes in arrears, Ai is now released on bail pending trial."

#### 注 2:

#### Note 2:

### 《公安机关办理刑事案件程序规定(修正)》

### *Rules on the Procedures of Handling Criminal Cases by the Public Security Organs (Amendment)*

第九十五条对犯罪嫌疑人监视居住，应当制作《呈请监视居住报告书》，经县级以上公安机关负责人批准，签发《监视居住决定书》。

Article 95 For criminal suspect under residential surveillance, *Application for Residential Surveillance* shall be made. Person-in-charge of public security organ of county level or above

shall approve the application, and sign and issue the *Written Decision on Residential Surveillance*.

第九十六条公安机关对犯罪嫌疑人决定监视居住的，应当向犯罪嫌疑人宣读

《监视居住决定书》，由犯罪嫌疑人签名(盖章)、捺指印，并通知负责执行的派出所。

Article 96 For criminal suspect whom the public security organ decides to put under residential surveillance, the *Written Decision on Residential Surveillance* shall be announced to the criminal suspect, and signed (or sealed) and printed with fingerprints by the criminal suspect, and the local police station responsible for execution shall be informed.

注 3:

Note 3:

《最高人民法院、公安部关于公安机关管辖的刑事案件立案追诉标准的规定(二)》

*Rules 2 on Case Registration and Prosecution Standards of Criminal Cases within the Jurisdiction of Public Security Organs by the Supreme People's Procuratorate and the Ministry of Public Security*

第五十七条[逃税案(刑法第二百零一条)]逃避缴纳税款，涉嫌下列情形之

一的，应予立案追诉：

Article 57 [Tax evasion case (article 201 of the *Criminal Law*)] For tax evasion, when one of the following situations is involved, a case shall be place for investigation:

(一)纳税人采取欺骗、隐瞒手段进行虚假纳税申报或者不申报，逃避缴纳税

款，数额在五万元以上并且占各税种应纳税总额百分之十以上，经税务机关依法下达追缴通知后，不补缴应纳税款、不缴纳滞纳金或者不接受行政处罚的；.....

1) If the taxpayer makes false tax declaration by means of cheating or hiding, or fails to declare tax, in order to evade tax, and the amount overdue is more than 50,000 *yuan* and takes above 10% of all taxes due, and the taxpayer fails to pay taxes due in arrears and the overdue fine, or declines the administrative penalty, after the taxation authorities issue the payment notice; ...

**注 4:**

**Note 4:**

**《刑诉》第五十七条**

**Article 57, Criminal Procedure Law**

被监视居住的犯罪嫌疑人、被告人应当遵守以下规定:

(一)未经执行机关批准不得离开住处,无固定住处的,未经批准不得离开指

定的居所;

The criminal suspect or defendant under residential surveillance shall abide by the following regulations:

1) Shall not leave residence, or assigned living quarters for those without permanent residence, without the implementing authorities' approval;

**《公安机关办理刑事案件程序规定(修正)》第九十八条**

**Article 98, Rules on the Procedures of Handling Criminal Cases by the Public Security Organs (Amendment)**

固定住处,是指犯罪嫌疑人在办案机关所在的市、县内生活的合法住处;指定的居所,是指公安机关根据案件情况,在办案机关所在的市、县内为犯罪嫌疑人指定的生活居所。

Permanent residence refers to the legal residence where the criminal suspect lives in the city or county of the investigating organ handling the case; assigned living quarters refers to the residence to live in for the criminal suspect, assigned by the public security organ according to the situation of the case, in the city or county of the investigating organ handling the case.

**注 5:**

**Note 5:**

**中国《刑事诉讼法》第九十六条**

**Article 96, *Criminal Procedure Law of China***

犯罪嫌疑人在被侦查机关第一次讯问或者采取强制措施之日起，可以聘请律师为其提供法律咨询、代理申诉、控告。犯罪嫌疑人被逮捕的，聘请的律师可以为其申请取保候审。

From the day the criminal suspect is first interrogated by the investigating organ or put under coercive measures, the criminal suspect may hire an attorney to provide legal advice, delegation for appealing and accusation. For the criminal suspect under arrest, the hired attorney may apply on his behalf for release on bail pending trial.

**《公安机关办理刑事案件程序规定(修正)》**

***Rules on the Procedures of Handling Criminal Cases by the Public Security Organs (Amendment)***

**第三十六条** 公安机关在对犯罪嫌疑人依法进行第一次讯问后或者采取强制措施之日起，应当告知犯罪嫌疑人有权聘请律师为其提供法律咨询、代理申诉、控告，并记录在案。

Article 36 From the day the criminal suspect is first interrogated by the public security organ or put under coercive measures, the criminal suspect shall be informed of his right to counsel to provide legal advice, delegation for appealing and accusation. The informing shall be recorded.

**第三十七条** 对于涉及国家秘密的案件，公安机关应当告知犯罪嫌疑人聘请律师须经公安机关批准。

Article 37 For cases involving national secret, the public security organ shall inform the criminal suspect that his hiring of attorney is subject to approval by the public security organ.

**注 6: 《公民人身权利与政治权利公约》(中国未加入此公约)**

**Note 6: *International Covenant on Civil and Political Rights* (China has not joined this covenant.)**

## 第九条

### Article 9:

一、人人有权享有人身自由和安全。任何人不得加以任意逮捕或拘禁。除非依照法律所确定的根据和程序，任何人不得被剥夺自由。

二、任何被逮捕的人，在被逮捕时应被告知逮捕他的理由，并应被迅速告知对他提出的任何指控。

三、任何因刑事指控被逮捕或拘禁的人，应被迅速带见审判官或其他经法律授权行使司法权力的官员，并有权在合理的时间内受审判或被释放。等候审判的人受监禁不应作为一般规则，但可规定释放时应保证在司法程序的任何其他阶段出席审判，并在必要时报到听候执行判决。

四、任何因逮捕或拘禁被剥夺自由的人，有资格向法庭提起诉讼，以便法庭能不拖延地决定拘禁他是否合法以及如果拘禁不合法时命令予以释放。

五、任务遭受非法逮捕或拘禁的受害者，有的到赔偿的权利。

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings

before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

**注 7 :**

**Note 7:**

中国于 1986 年签署了《禁止酷刑和其他残忍、不人道或有辱人格的待遇或处罚公约》，该《公约》第一部分第一条第一款对酷刑定义如下：“就本公约而言，‘酷刑’系指为了向某人或第三者取得情报或供状，为了他或第三者所作或被换衣所作的行为对他加以处罚，或为了恐吓或威胁他或第三者，或为了基于任何一种歧视的任何理由，蓄意使某人在肉体或精神上遭受剧烈疼痛或痛苦的任何行为，而这种疼痛或痛苦又是在公职人员或以官方身份刑事职权的其他人所造成或者其唆使、同意或默许下造成的。纯因法律制裁而引起或法律制裁所固有或随附的疼痛或痛苦则不包括在内。”

**In 1986 China signed the *The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Article 1, paragraph 1 of part 1 of the Convention gives the following definition on torture: "For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. "**

**注 8 :**

**Note 8:**

## 公安机关办理刑事案件程序规定（修正）

### *Rules on the Procedures of Handling Criminal Cases by the Public Security Organs (Amendment)*

**第六十六条** 需要对犯罪嫌疑人取保候审的，应当制作《呈请取保候审报告书》，说明《取保候审决定书》。《取保候审决定书》应当向犯罪嫌疑人宣读，由犯罪嫌疑人签名（盖章）、捺手印。

**Article 66** If release on bail pending trial of the criminal suspect is necessary, *Application for Release on Bail Pending Trial* and *Written Decision on Release on Bail Pending Trial* shall be made. The *Written Decision on Release on Bail Pending Trial* shall be announced to the criminal suspect, and signed (or sealed) and printed with fingerprints by the criminal suspect.

#### 注 9：

##### Note 9:

**《刑法》第三十一条**[单位犯罪的处罚原则]单位犯罪的，对单位处罚金，并对其直接负责的主管人员和其他直接责任人员判处刑罚。本法分则和其他法律另有规定的，依照规定。

**Article 31 Criminal Law** [Penalizing principle for crime committed by a unit] For crime committed by a unit, a penalty fee shall be administered to the unit, and criminal penalty shall be taken by **person-in-charge directly responsible and other persons directly responsible**. If specific provisions of this law or any other law stipulate otherwise, the other stipulations shall override.

#### 注 10：

##### Note 10:

**《最高人民法院、公安部关于公安机关管辖的刑事案件立案追诉标准的规定（二）》**

*Rules 2 on Case Registration and Prosecution Standards of Criminal Cases within the*

*Jurisdiction of Public Security Organs by the Supreme People's Procuratorate and the Ministry of Public Security*

**第十八条**[背信损害上市公司利益案 ( 刑法第一百六十九条之一 ) ]上市公司的董事、监事、高级管理人员违背对公司的忠实义务，利用职务便利，操纵上市公司从事损害上市公司利益的行为，以及上市公司的控股股东或者**实际控制人**，指使上市公司董事、监事、高级管理人员实施损害上市公司利益的行为，涉嫌下列情形之一的，应予立案追诉：

.....

**Article 18** [Cases in which the interests of a publicly listed company are harmed due to breach of trust (Article 169.1 *Criminal Law*)]If director of the board, supervisor, or senior management of a publicly listed company, in violation of the fiduciary duty, takes advantage of his position to manipulate the publicly listed company to involve in acts harming the interests of the publicly listed company, and if the controlling shareholder or actual controller of a publicly listed company instigates the director of the board, supervisor, or senior management of the publicly listed company to commit acts harmful to the interests of the publicly listed company, when one of the following situation is involved, the case should be placed for investigation: ...

**第三十九条**[操纵证券、期货市场案 ( 刑法第一百八十二条 ) ]操纵证券、期货市场，涉嫌下列情形之一的，应予立案追诉：

**Article 39** [Cases of manipulation of securities and futures market (Article 182 *Criminal Law*)]For manipulation of securities and futures market, when one of the following situation is involved, the case should be placed for investigation:

( 六 ) 上市公司及其董事、监事、高级管理人员、实际控制人、控股股东或者其他关联人单独或者合谋，利用信息优势，操纵该公司证券交易价格或者证券交易量的；

.....

6) The publicly listed company, its director of the board, supervisor, senior management, actual controller, controlling shareholder, or other affiliated person, individually or jointly, exploit his/their advantage of information to manipulate the trading prices or volume of the company's securities;