

Report for the Department of Justice

LL File No. 2013-009335

Bail Under Chinese Law

June 2013



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Bail Under Chinese Law

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SUMMARY Under Chinese law, a suspect or defendant may be released on bail by providing security in the form of an individual guarantor or cash deposit in criminal proceedings. During the bail period, the released person must comply with a series of restrictions including appearing before the court when summoned and not leaving the area where he resides. Security in the form of cash must be deposited into a bank account designated by the public security bureau, according to the law, but this requirement may not be followed in practice in many places.

I. Bail Under Chinese Law: *Qu Bao Hou Shen*

China's Criminal Procedure Law provides for a form of bail, *qu bao hou shen*, which literally means "seeking security while waiting for a trial." In criminal proceedings, a suspect or defendant may be released on bail by providing security, which is done by depositing certain amount of cash or providing an individual guarantor as ordered by the relevant authority.¹

Bail under Chinese law "is not an individual right designed to minimize restraints on freedom but an alternative pre-trial coercive measure. When bail is granted, it is usually on the initiative and for the convenience of the police."² While on bail, the released suspect or defendant must comply with prescribed restrictions. Violation of the restrictions may result in the forfeiture of the cash deposit or a fine on the guarantor.³ Depending on the situation, the violator may be ordered to pay another cash deposit or provide a new guarantor, or may be placed under residential surveillance or be arrested.⁴

Bail decisions may be made by courts, prosecutors, or public security bureaus (police), and must be carried out by the public security bureaus.⁵

II. Criteria for Bail

¹ Zhonghua Renmin Gongheguo Xingshi Susong Fa [The Criminal Procedure Law of the People's Republic of China] (promulgated by the National People's Congress on July 1, 1979, amended Mar. 17, 1996, last amended Mar. 14, 2012) art. 66, 4 ZHONGHUA RENMIN GONGHEGUO XIN FAGUI HUIBIAN 2012 [NEW LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA 2012] 26 (Beijing, 2012).

² Jerome Cohen, Op Ed., *Bail in China: A Crucial Human Right*, SOUTH CHINA MORNING POST (Sept. 3, 2009), available at <http://www.cfr.org/china/bail-china-crucial-human-right/p20140>. See also, Criminal Procedure Law, ch. VI, "Coercive Measures."

³ Criminal Procedure Law arts. 68–69.

⁴ *Id.* art. 69.

⁵ *Id.* arts. 64–65.

According to the Criminal Procedure Law, a criminal suspect or defendant may be released on bail if

- he or she has committed a minor offense punishable by public surveillance, criminal detention, or supplementary punishments separately meted out;
- he or she has committed a crime punishable by fixed-term imprisonment or more severe punishments, but would not pose a threat to society if released on bail;
- he or she is suffering from a serious illness and cannot take care of himself, or is pregnant or breastfeeding, and would not pose a threat to society if released on bail; or
- the investigation of the case has not been concluded upon expiration of the lawful detention period, when the authority decides granting bail is necessary.⁶

III. Restrictions

Bail under Chinese law is designed to guarantee not only that the suspect or defendant appears before the court when summoned, but also that he will comply with a series of restrictions during the bail period. A cash deposit may be forfeited in part or in full if the released person fails to comply with the restrictions.⁷ According to the Criminal Procedure Law, the released person must

- not leave the city or county in which he resides without permission of the police;
- report to the police within twenty-four hours any change of address, employer, or contact information;
- appear before the court on time when summoned;
- not interfere with the witnesses testifying in the case; and
- not destroy or falsify evidence or collude with others to make confessions consistent.

Furthermore, the authorities granting bail may order the suspect or defendant to surrender his passport, travel documents, or driver's license. He may also be specifically restricted from entering certain places, meeting or corresponding with certain people, or engaging in certain activities.⁸

IV. Security

The Criminal Procedure Law requires security in the form of cash to be deposited into a bank account designated by the public security bureau.⁹ According to the law, if the suspect or

⁶ *Id.* art. 65.

⁷ *Id.* art. 69.

⁸ *Id.*

⁹ *Id.* art. 70.

defendant does not violate any of the restrictions during the bail period, he can collect the money from the bank upon expiration of the bail period.¹⁰

Implementation of the Criminal Procedure Law provisions on security, however, appears to be problematic. The following problems were reported in a study of the implementation of the Criminal Procedure Law conducted in 2000:

- The amount of security was decided arbitrarily and varies from place to place, ranging from hundreds to millions of yuan.
- Public security bureaus in some localities were found to release suspects who committed minor offenses upon their turning in the cash security amount without further charges, and to embezzle the money accordingly.
- Only a few public security bureaus required security to be deposited in designated bank accounts; most kept the money themselves.
- The receipts were in different forms, and in some places the public security bureau does not give any receipt upon receiving security.
- In many cases, security was never returned even though the person on bail did not violate any restrictions during the bail period.¹¹

¹⁰ *Id.* art. 71.

¹¹ XINGSHI SUSONG FA SHISHI WENTI DIAOYAN BAOGAO [RESEARCH REPORT ON IMPLEMENTATION OF CRIMINAL PROCEDURE LAW] 16–18 (Chen Weidong ed., Beijing, 2001).