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PRESS RELEASE

CHINA's New Evidence Guidelines Ban Torture In Capital Cases

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The SPC, SPP, MPS, MSS and MOJ have jointly announced new guidelines regarding evidence in capital cases. The new evidence rules will ban the use of torture to obtain confessions in capital cases. Public pressure for evidence reform mounted after the wrongful imprisonment of a Henan farmer was brought to light. Zhao Zuohai was released in May, 2010 after the man he confessed to killing was found alive. Zhao was tortured for nearly a month prior to his confession.

Under the new regulations evidence obtained through torture, violence or threats, physical evidence obtained without being properly documented and evidence certified by unqualified organizations may not be used for conviction in death penalty cases. “Although this seems to be a strong statement on the prohibition of torture, limiting these rules purely to capital crimes leaves a substantial portion of suspects subject to tortuous practice,” said Scott Garner, Director of Lehman, Lee & Xu Shanghai Office.

The regulations also raise the burden of proof in capital cases from “beyond a reasonable doubt,” to “exclude all other possibilities.”

An additional guideline allows a procedure for a defendant to dispute the legality of a piece of testimony. The defendant bears the initial burden of presenting evidence to establish illegality. However, once the court determines that the evidence may have been obtained illegally, the burden to prove the legality of the evidence shifts to the prosecution. “This in turn creates an incentive for prosecutors to pressure law enforcement agents to follow correct procedure when obtaining evidence,” said Edward E. Lehman, Managing Director of Lehman, Lee & Xu.

“These guidelines include for the first time the fundamental principles of justice,” said Hao Junbo, Attorney for Lehman, Lee & Xu. “Shortcomings still exist in China’s criminal proceedings, but reform is a multi-step process,” commented Hao.

The full text of the new regulations is not yet available to the public.

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Lehman, Lee & Xu is a prominent Chinese corporate law firm and trademark and patent agency with offices in Beijing, Shanghai, Shenzhen, Hong Kong, Macau, and Mongolia. The firm has been recognized as one of the top trademark firms in China by several intellectual property magazines and is managed by Mr. Edward Lehman, a leading expert on corporate law with 20 years of practice experience in Mainland China.

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