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New Regulations Mandate Participation by Foreigners in the Social Insurance System



At the end of 2010, the newly promulgated Social Insurance Law made it clear that foreigners working in China must participate in the social insurance system. However, since there was no further information about the implementation rules, this regulation has thus far not been properly enforced. Now, the central government has drafted and made effective the *Interim Measures for Participation in Social Insurance by Foreigners Working within the Territory of China* (the Interim Measures). Below we introduce the main contents of the Interim Measures:

Foreigners are required to participate in social insurance

The Interim Measures make it clear that all foreigners working in China must participate in social insurance through Articles 2 and 3. Article 2 clarifies what it means by "foreigners working within the territory of China" as person who:

- 1) hold employment certificates such as a Work Permit for Foreigners, a Foreign Expert Certificate, or a Permit for Permanent Foreign Journalists; and
- 2) are not of Chinese nationality and are employed lawfully within the territory of China.

Article 3 states that any foreigner who, after having entered into employment contracts with an overseas employer, are dispatched to work in a branch or representative office (Domestic Entities) must also participate in basic pension insurance, medical insurance, work-related injury insurance, unemployment insurance, and maternity insurance, and the premiums should be contributed by both the employee and their Domestic Entity.

Therefore, it now appears clear that foreigners which currently have an employment certificate, whether employed directly in China or dispatched to China by a foreign enterprise, all fall into the category of people who are required to participate in the social insurance system, pursuant to any relevant and local regulations.

Insurance types and timing of social insurance registration

According to the Social Insurance Law and Interim Measures, foreigners working within the territory of China shall participate in the following five kinds of insurance: pension, medical, work-related injury, unemployment, and maternity. Further, social insurance registration formalities should be handled within 30 days from the date of completing the formalities for employment permits.

Termination and refund of social insurance

The Interim Measures also reassure foreign employees that should they leave China prior to reaching the statutory age for pension withdrawal/retirement, their personal social insurance

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account will remain open, and their years of contribution will be calculated cumulatively if they decide to return to work in China again in the future. They also have the option to apply for termination of their social insurance account and then the handling agency may make a lump-sum payment of the money deposited in the social insurance account to him/her. However, it should be noted that, in accordance with the law and in practice, the portion of insurance paid by the employer will not be available at the time of termination of the social insurance relationship.

Any balance remaining in the social insurance account when a foreigner dies may be inherited pursuant to the law, however, the portion paid by the company is not able to be inherited.

Receiving benefits abroad

As foreigners may choose to leave China when they retire, they are still eligible to receive their benefits while living abroad. Foreigners who reside outside the territory of China and may receive their monthly social insurance benefits as long as they, on a yearly basis, submit a certificate proving their continued existence. Such a certificate should be issued by the relevant Chinese embassy or consulate, or the certificate can be notarized or certified by the relevant authority in the country of residence, and then certified by the relevant Chinese embassy or consulate.

If the foreigner chooses to re-enter China, he/she may go to a social

insurance handling agency thus proving his/her existence and such certification of existence will no longer be needed.



Settlement of disputes

If a situation should ever arise when there is a dispute between the employee and the employer about social insurance, foreigners participating in the social insurance system may apply for arbitration, or file lawsuits and the dispute shall be governed by PRC law.

Bilateral agreements

Foreigners whose home countries have signed bilateral or multilateral social insurance agreements with China have the right to participate in the social insurance system in accordance with those agreements. Where a bilateral agreement has been signed, he/she may avoid dual social insurance obligations. At present, only Germany and South

Korea have signed bilateral agreement on social insurance with China. However, it should be noted that these treaties only exempt the said foreigners from dual responsibilities, as the measures are new there has been definition yet as to which parts will be declared dual and thus exempt from participation.

Nonpayment of premiums

If an employer fails to register a foreign employee in the social insurance system or fails to contribute the mandated social insurance premiums for such a foreigner employee, then the labor and social security administration may order such employer to correct the situation. If the employer refuses to make corrections according to the order, or refuses to abide by any decision on dealing with the matter by administrative means, a fine of between RMB 2,000 and RMB 20,000 will be imposed on the employer.

Summary

The Interim Measures will become effective on the 15th of October, 2011. In our experience local authorities will gradually implement these new changes over time and thus it is very important to stay in close contact with them. Further, the strength of any enforcement will certainly differ in various regions. Therefore, attention should be focused towards learning the attitude of the local labor authorities in regards to the enforcement of the Interim Measures.

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