

CHINA Legal Bulletin

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Foreigners' Social Insurance
Special Issue



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Executive Summary



Provisions Summaries and Analysis on Foreigners' Social Insurance in Guangzhou

After the Guangzhou Labor Bureau issued the announcement dated 27th November 2012, employers in Guangzhou are required to strictly conform with the laws and regulations regarding foreigners' social insurance. In this issue, we provide you with an overview of the basic provisions, together with a brief analysis of the social insurance contributions and the legal risk of failure to pay foreigners' social insurance.

Summary of Laws and Regulations in Relation to Issues on Social Insurance for Foreigners Employed in Guangzhou

Notice of Guangzhou Human Resources and Social Security Department and Guangzhou Local Taxation Bureau on Issues Concerning Participation in Social Insurance by Foreigners Employed in Guangzhou

[Document Number]: SRSTG [2012] No.16

[Date of Promulgation]: 27 November, 2012

Specific Content of the Notice:

In accordance with provisions of the *Social Insurance Law of the People's Republic of China* and the *Interim Measures for the Participation in Social Insurance of Foreigners Employed in China* (Order of the Ministry of Human Resources and Social Security No.16), and in consideration of the actual situation in Guangzhou, this Notice on properly handling issues concerning participation in social insurance by foreigners employed in Guangzhou is hereby made as follows:

1. Social Insurance Participants

Foreigners who have completed employment procedures and have established an employment relationship with employers in Guangzhou shall participate in the social insurance program of the Guangzhou Municipality in accordance with stipulations of the *Interim Measures for the Participation in Social Insurance of Foreigners Employed in China*.

2. Registration of Insurance

Employers having established an employment relationship with foreigners who have not participated in social insurance prior to issuance of this Notice shall, within 30 days from the date of issuance of this Notice, handle registration procedures of social insurance participation with local taxation authorities; employers who have established employment relationship with foreigners after issuance of this Notice shall, within the stipulated time limit, handle registration procedures of social insurance participation with local taxation authorities.

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3. Standards of Premium Contribution

Premium contribution standards for social insurance of foreigners employed in Guangzhou shall be implemented in accordance with the relevant provisions of the laws and regulations thereon.

Guangzhou Human Resources and Social Security Department
Guangzhou Local Taxation Bureau
27 November, 2012

From: http://www.gzds.gov.cn/ssxc/tzgg/sjgg/201212/t20121206_1231512.htm

Issues on Supplementary Payment and Late Fee

Under the relevant provisions of the *Notice of Guangzhou Human Resources and Social Security Department and Guangzhou Local Taxation Bureau on Issues Concerning Participation in Social Insurance by Foreigners Employed in Guangzhou* and the Notice issued by Guangzhou authorities, Guangzhou employers who handled registration procedures of social insurance participation for their foreign employees prior to 27 December, 2012 shall, in principle, commence paying social insurance premiums from the date of employment of their foreign employees (the earliest applicable date shall be 15 October, 2011) and may also be required to pay a late fee; in case of failure in handling such registration procedures by 27 December, 2012, Guangzhou employers may also be subject to a fine imposed by local taxation authorities (refer to Article 84 of the Social Insurance Law of PRC). Considering that the Notice issued lately by Guangzhou authorities contains no comprehensive detailed information and no consistent enforcement opinions have been reached, issues on supplementary payment of insurance premiums, the time limit for recovering premiums payable and imposition of a late fee shall be subject to the enforcement opinion of the local competent taxation authorities.

Notice of the Ministry of Human Resources and Social Security of the People's Republic of China on Issues Concerning Participation in Social Insurance by Foreigners Employed Within the Territory of China

[Document Number]: RSTF [2011] No.113

[Date of Promulgation]: 02 December, 2011

Pursuant to stipulations of the Notice, competent local authorities shall, prior to 31 December, 2011, include eligible foreigners within the social insurance scope and urge employers and foreigners employed by them to participate in social insurance and make full payment of social insurance premiums on time pursuant to prevailing laws and regulations. Foreigners who were employed within the territory of China prior to 15 October, 2011 and are eligible to participate in social insurance shall uniformly commence making payment of social insurance premiums from 15 October, 2011; among them, those who handled insurance participation and premiums payment procedures during the period from 15 October to 31 December, 2011 shall be exempted from paying any late fee; those who handled such procedures after 1 January, 2012 shall be subject to a late fee calculated from 15 October, 2011. Foreigners getting employed within the territory of China after 15 October, 2011 shall participate in social insurance and commence paying insurance premiums from the initial month of their employment in China.

Where a person of the nationality of a country which has signed any bilateral or multilateral agreement/covenant on contribution of social insurance premiums with China (hereinafter referred to as "Agreement") is employed in China and is able, within 3 months from obtaining a certificate of employment within the territory of China, to produce a certificate of participating in social insurance program of the contracting country, he/she shall, as stipulated in the Agreement, be exempted from any obligation to pay premiums for the stipulated types of insurance within the stipulated time limit.

In principle, the prescribed age for receiving retirement insurance benefits by foreigners employed in China shall be in conformity with relevant stipulations of prevailing policies on retirement age. Maternity expenses incurred to the insured foreigners within the territory of China and covered by the maternity insurance shall be paid from the maternity insurance funds.

From: <http://www.mohrss.gov.cn/page.do?pa=402880202405002801240882b84702d7&guid=b03a3729923c49b9b36042225608abee&og=4028802023db8cc00123dfaeb60b0354>

Summary of Laws and Regulations in Relation to Issues on Social Insurance for Foreigners Employed in Guangzhou



Explanation of Key Articles of Interim Measures for the Participation in Social Insurance of Foreigners Employed in China

The *Interim Measures for the Participation in Social Insurance of Foreigners Employed in China* (hereinafter referred to as “the Measures”) was issued on 8 September, 2011 by the Ministry of Human Resources and Social Security of the People’s Republic of China and came into force on 15 October, 2011. As provided for in Article 97 of the *Social Insurance Law of PRC*, “foreigners employed within the territory of the People’s Republic of China shall participate in social insurance analogically in accordance with this Law”, therefore the Measures could be called as detailed rules for implementation of the *Social Insurance Law of PRC*.

Clause 2 The “*Foreigners employed in China*” refer to the persons without Chinese nationality who have legally obtained the employment certificates, such as the *Employment Certificate for Foreigners*, the *Foreign Expert Certificate* and the *Certificate of Resident Foreign Correspondents*, and residence certificates for foreigners, or who are holding the *Permanent Resident Permit for Foreigners* and are legally employed within the territory of China.

Explanation: This Article defines the scope of “foreigners” eligible for participation in social insurance; that is, such “foreigners” shall be those holding legal employment certificates.

Article 3 Foreigners legally employed by enterprises, public institutions, social organizations, private non-enterprise entities, foundations, law firms, accounting firms and other organizations which are legally registered in China (hereinafter the “employers”) shall participate in the basic retirement insurance for employees, basic medical insurance for employees, work-related injury insurance, unemployment insurance and maternity insurance according to law, and the social insurance premiums shall be paid by the employers and foreigners according to the relevant provisions. A foreigner who, after entering into an employment contract with an overseas employer, is dispatched to a branch or representative office registered in China (hereinafter referred to as the “domestic entity”) shall participate in the basic retirement insurance for employees, basic medical insurance for employees, work-related injury insurance, unemployment insurance and maternity insurance according to law, and the social insurance premiums shall be paid by the domestic entity and the foreigner in accordance with the relevant provisions.

Explanation: pursuant to provisions of this Article, the subject of duty to arrange insurance participation by foreign employees shall not only include “enterprises, public institutions, social organizations, private non-enterprise entities, foundations, law firms, accounting firms and other organizations” but also include branches or representative offices of overseas organizations registered in China.

Article 4 Where a foreigner is employed, the employer shall, within 30 days from the date on which the employment certificate is handled, handle the social insurance registration for the foreigner. For a foreigner who is dispatched by an overseas employer to a domestic entity, the domestic entity shall handle the social insurance registration for the foreigner according to the provision of the preceding paragraph. Institutions issuing employment certificates to foreigners according to law shall timely notify the local social insurance agencies of information about foreigners employed in China. Social insurance agencies shall check information about issuance of employment certificates to foreigners with the relevant institutions on a regular basis.

Explanation: This Article stipulates the time limit for employers to handle social insurance registration procedures for their foreign employees; in addition, it further prescribes a mechanism of information communication between social insurance agencies and institutions issuing employment certificates to foreigners which has significantly enhanced supervision on foreigners’ participation in social insurance. In other words, competent social insurance authorities may, by checking information about issuance of employment certificates to foreigners and about insurance participation of foreigners, effectively urge employers and domestic entities to perform duties to arrange for their foreigner employees’ participation in social insurance.

Article 5 Where a foreigner participating in social insurance meets the relevant conditions, he or she shall enjoy social insurance benefits in accordance with law. Where a foreigner leaves China before reaching the prescribed age for receiving pension, his or her personal social insurance account shall be retained, and if he or she returns to China for employment, the contribution period shall be calculated cumulatively. If the social insurance relationship is terminated upon a written application of the foreigner, the balance in the foreigner’s personal social insurance account may be paid to the foreigner in a lump sum.



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Explanation: Pursuant to provisions of this Article, only when an insured foreigner files a written application for termination of his/her social insurance relationship, could social insurance agencies pay the balance in his/her personal social insurance account to him/her.

In line with the social insurance principle of “consistency between premiums and benefits”, implementation of specific benefits in relation to unemployment insurance and maternity insurance needs to be further stipulated. For example, it’s still unclear whether an insured foreigner failing to implement policies on planned birth insurance is repeatedly entitled to maternity allowance or whether an insured foreigner becoming unemployed and therefore usually has his employment certificate cancelled is entitled to enjoy unemployment benefits.

Article 8 Where any dispute over social insurance occurs between a foreigner participating in social insurance in accordance with law and his or her employer or domestic entity, they may apply for mediation or arbitration or institute a lawsuit in accordance with law. Where the employer or domestic entity infringes upon the foreigner’s social insurance rights and interests, the foreigner may request the social insurance administrative department or the institution collecting social insurance premiums to handle it according to law.

Explanation: This Article stipulates that any dispute over social insurance may be included within the acceptance scope of labor supervision cases and labor arbitration cases. Any employer not participating in social insurance shall be ordered to make a supplementary payment of social insurance premiums; if failing to make such supplementary payment within a stipulated time limit, the employer shall be subject to a fine up to 3 times of the outstanding amount of premiums in accordance with provisions of the Social Insurance Law of PRC.

Article 9 Where a person of the nationality of a country which has signed a bilateral or multilateral agreement on social insurance with China is employed in China, his or her participation in social insurance shall be governed by the agreement.

Explanation: Until now, only South Korea and Germany have concluded bilateral agreements on social insurance with China. Persons of nationalities of countries which have concluded such bilateral agreements may be mutually exempted from performing part of the duties of paying social insurance premiums.

Article 11 Social insurance administrative departments shall, in accordance with the Social Insurance Law, conduct supervisory inspections on foreigners’ participation in social insurance. An employer or domestic entity who fails to legally handle social insurance registration or pay social insurance premiums for employed foreigners shall be dealt with in accordance with the Social Insurance Law, the Regulation on Labor Security Supervision, other laws and administrative regulations, and relevant administrative rules. Where a foreigner who has not obtained an employment certificate in accordance with law or does not hold a Permanent Resident Permit for Foreigners is employed, the employer shall be dealt with in accordance with the Provisions on the Administration of Employment of Foreigners in China.

Explanation: Any employer, for the purpose of evading “duties of paying social insurance premiums”, intentionally failing to handle procedures of obtaining employment permits for employed foreigners shall be dealt with in accordance with provisions of the Provisions on the Administration of Employment of Foreigners in China and the Rules for the Implementation of the Law of the People’s Republic of China Governing the Administration of Entry and Exit of Foreigners. Any foreigner holding posts or being employed without the approval of China’s labor administration or its authorized departments shall be subject to not only termination of his/her office term or employment but also a fine less than RMB 1,000; in case of serious circumstances, the employee shall be ordered to leave China within a stipulated time limit. Any employer or domestic entity that employs any foreigner without authorization shall be subject to termination of such employment and to a fine of not less than RMB5,000 but not more than RMB50,000 and shall be ordered to bear all expenses incurred from repatriating the foreigner.

Article 12 These Measures shall come into force on 15 October, 2011.

Explanation: This Article stipulates the implementation date of these Measures. After these Measures came into force, foreigners employed in China shall be subject to compulsory social insurance.

Note: The explanations above are for academic reference only and do not constitute legal advice. For more information and specific legal advice please feel free to contact info@wjnco.com, or your usual contact.

Summary of Laws and Regulations in Relation to Issues on Social Insurance for Foreigners Employed in Guangzhou



Summary of the Social Insurance Law of the People's Republic of China

[Issuing Authority] Standing Committee of the National People's Congress
 [Document Number] Order of the President of the People's Republic of China (No.35)
 [Date of Promulgation] 28 October, 2010

1. Summary of Provisions on Five Types of Social Insurance

	Premium Contributor	Conditions of Entitlement	Contribution Standards
Retirement Insurance	(1) Employers and employees; (2) Individual industrial and commercial households without employees, part-time employees and other persons in flexible employment. Notes: (1) Under compulsory contribution program; (2) Under voluntary contribution program. (see Article 10)	(1) Contribution period or the period in which the premiums are deemed to have been paid reaches 15 years; (2) The insured have reached the minimum pensionable age as stipulated by the State. <u>Notes: For any insured person reaching the pensionable age whose accumulative contribution period is less than 15 years. A. receive a monthly basic pension after having contributed premiums for 15 years; B. his/her insurance relationship may be transferred into the new-type social retirement insurance for rural areas or social retirement insurance for urban residents. and he/she shall enjoy the corresponding retirement insurance benefits in accordance with the relevant provisions of the State Council. (see Article 16)</u>	(1) An employer shall, as per the State-stipulated percentage of the total incomes of its employees, contribute the basic retirement insurance premiums, which shall be included in the general funds of basic retirement insurance. (2) Employees shall, as per the State-stipulated percentage of their incomes, contribute the basic retirement insurance premiums, which shall be included in the personal account. (see Article 12)
Occupational Injury Insurance	Employers (see Article 33)	Where an employee injured by an accident arising from work or suffering from any occupational disease is determined to have suffered an occupational injury, he/she is entitled to occupational injury insurance benefits. (see Article 36)	An employer shall, based on the total incomes of its employees, contribute the occupational injury insurance premiums at the premium rate determined by social insurance agencies. (see Article 35)
Basic Medical Insurance	(1) Employers and employees; (2) Individual industrial and commercial households without employees, part-time employees and other persons in flexible employment. Notes: (1) Under compulsory contribution program; (2) Under voluntary contribution program. (see Article 23)	<u>As stipulated in Article 22 of Procedures of Guangzhou Municipality for Trial Implementation of Basic Medical Insurance for Urban Employees, in the event that an employer and its employees have participated in basic medical insurance in accordance with relevant provisions and have duly paid insurance premiums in full, the insured may enjoy basic medical insurance benefits in the following month.</u>	The standards of benefits of the basic medical insurance for employees, new-type rural cooperative medical care and basic medical insurance for urban residents shall be governed by the relevant provisions of the state. (see Article 26)
Unemployment Insurance	Employers and employees (see Article 44)	(1) Before an insured person becoming unemployed, his/her employer and he/she have contributed the unemployment insurance premiums for one year or more; (2) Employment of an insured person is discontinued against his/her will; and (3) An insured person has performed unemployment registration and filed a job application. (see Article 45)	The standards shall be determined by the people's governments of provinces, autonomous regions and municipalities directly under the Central Government, but shall not be lower than the standards for minimum living safeguard for urban residents. (see Article 47)
Maternity Insurance	Employers (see Article 53)	Where an employer has contributed the maternity insurance premiums, its employees shall be entitled to maternity insurance benefits; and the unemployed spouse of an insured employee shall be entitled to maternity medical expense benefits in accordance with relevant provisions of the state. The funds needed shall be paid from the maternity insurance funds. (see Article 54) <u>Notes: As stipulated in Article 3 of the Notice of Guangzhou Municipality on Issues Concerning Implementation of Provisions on Maternity Insurance of Employees, entitlement to maternity benefits shall be subject to satisfaction of the following two conditions:</u> (1) <u>The insured person's employer has contributed maternity insurance premiums for her accumulatively for one year or more and is continuing the contribution;</u> (2) <u>Regulations on Law and regulations on population and family planning of national, provincial and municipal levels have been observed.</u>	The maternity allowances shall be calculated and paid to an employee as per the average monthly incomes of the employees of her employer in the previous year. (see Article 56)



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2. Collection of Social Insurance Premiums

Registration of social insurance participation

(1) Registration (see Article 57)

An employer shall, within 30 days from the date of its formation, apply to local social insurance agencies for social insurance registration upon the strength of its business license, registration certificate or official seal

(2) Termination or cancellation (see Article 57)

If any of the social insurance registration items of an employer is modified or an employer is terminated in accordance with law, it shall, within 30 days from the date of modification or termination, handle the modification or cancellation of social insurance registration at social insurance agencies.

(3) Registration of employment (see Article 58)

An employer shall, within 30 days from the date of employment, apply to social insurance agencies for social insurance registration for the employee.



Contribution of Social Insurance Premiums (see Article 60)

Employers shall declare and fully contribute social insurance premiums on time. No postponement, reduction or exemption of payment shall be allowed without any force majeure or other statutory cause. The social insurance premiums payable by employees shall be withheld and paid by their employers, and the employers shall inform the employees of the detailed contribution of social insurance premiums on a monthly basis.

3. Legal Liabilities

Risk of failing to handle registration of social insurance participation (see Article 84)

(1) The employer shall be ordered to make correction within a prescribed time limit;

(2) If the employer fails to do so within the prescribed time limit, it shall be subject to a fine 1-3 times the amount of the social insurance premiums payable, and the directly liable person in charge and other directly liable persons shall be subject to a fine of not less than RMB500 but not more than RMB3,000.

Risk of failing to declare the amount of social insurance premiums payable (see Article 62)

Where an employer fails to declare the amount of social insurance premiums payable in accordance with the relevant provisions, the amount payable shall be determined as per 110% of the amount of premiums paid by the employer in the preceding month; and after the employer makes up the declaration formalities, the collection agencies of social insurance premiums shall settle accounts in accordance with the relevant provisions.

Risk of failing to make full contribution of the premiums on time (see Article 63)

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- (1) Where an employer fails to fully contribute social insurance premiums on time, the collection agencies of social insurance premiums shall order it to pay or make up the deficit of premiums within a prescribed time limit.
- (2) If the employer fails to do so within the prescribed time limit, the collection agencies of social insurance premiums may apply to relevant administrative authorities at or above the county level for a decision on transferring social insurance premiums and notify in writing the employer's deposit bank or any other financial institution to transfer social insurance premiums.
- (3) If the balance in the account of the employer is less than the amount of social insurance premiums payable, the collection agencies of social insurance premiums may require the employer to provide security and sign an agreement on deferred payment.
- (4) If the employer fails to provide security for its insufficient payment of social insurance premiums, the collection agencies may apply to the people's court for seizure, sealing up or auction of the employer's properties at a value equivalent to the social insurance premiums payable to offset the social insurance premiums with the proceeds from auction

Liabilities for not making full contribution of social insurance premiums (see Article 86)

- (1) The collection agencies of social insurance premiums shall order an employer who fail to duly make full contribution of social insurance premiums to contribute or make up the deficit of premiums within a prescribed time limit, and impose a daily late fee at the rate of 0.05% of the outstanding amount from the due date;
- (2) If the employer still fails to contribute the premiums within the prescribed time limit, relevant administrative authorities shall impose a fine 1-3 times the outstanding amount upon it.

Standards of Social Insurance Contribution for Foreigners Employed in Foreign-invested Enterprises in Guangzhou

1. Premium Contribution Proportion for Social Insurance Participated by Foreigners Employed in Foreign-invested Enterprises in Guangzhou in 2012

	Contribution Base	Contribution Proportion			Remarks
		Employer	Individual Employee	Total	
Retirement Insurance	Current monthly taxable income of employee	12%	8%	28%	
Unemployment Insurance	Current monthly taxable income of employee	2%	1%	3%	
Vocational Injury Insurance	Current monthly taxable income of employee	Primary sector of industry: 0.5%; Industrial sector: 1.0%; Tertiary sector: 1.5%;	--	0.5%; 或 1.0%; 或 1.5%;	According to Announcement on the Phased Adjustment on the Premium Contribution Proportion for Vocational Injury Insurance, during the period from 1 July, 2012 to 31 December, 2012, the premium contribution proportions for the three industrial sectors shall be adjusted from 0.5% , 1.0% , 1.5% to 0.25% , 0.5% , 0.75% respectively.
Maternity Insurance	Current monthly taxable income of employee	0.85 %	--	0.85 %	
Medical Insurance	Current monthly taxable income of employee	8%	2%	10%	



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2. Upper and Lower Limits of Premium Contribution for Social Insurance Participated by Foreigners Employed in Foreign-invested Enterprises in Guangzhou in 2012

If the current monthly taxable income of a foreigner employee is higher than the upper limit of contribution base of the corresponding type of insurance, the upper limit shall be deemed as the contribution base; if the current monthly taxable income of a foreigner employee is lower than the lower limit of contribution base of the corresponding type of insurance, such lower limit shall be deemed as the contribution base.

Type	Contribution Base	Upper Limit of Contribution Base	Lower Limit of Contribution Base
Retirement Insurance	Current monthly taxable income of employee	300% of the average monthly salary of fully employed staff and workers in Guangdong Province of the previous year (i.e. RMB11,289)	60% of the average monthly salary of fully employed staff and workers in Guangdong Province of the previous year (RMB2,258)
Unemployment Insurance		300% of the average monthly salary of fully employed staff and workers in Guangzhou Municipality of the previous year (i.e. RMB14,367)	Minimum Wage Standard in Guangzhou (i.e. RMB1,300)
Vocational Injury Insurance		300% of the average monthly salary of fully employed staff and workers in Guangzhou Municipality of the previous year (i.e. RMB14,367)	Minimum Wage Standard in Guangzhou (i.e. RMB1,300)
Maternity Insurance		300% of the average monthly salary of fully employed staff and workers in Guangzhou Municipality of the previous year (i.e. RMB14,367)	60% of the average monthly salary of fully employed staff and workers in Guangzhou Municipality of the previous year (i.e. RMB2,873)
Medical Insurance		300% of the average monthly salary of fully employed staff and workers in Guangzhou Municipality of the previous year (i.e. RMB14,367)	60% of the average monthly salary of fully employed staff and workers in Guangzhou Municipality of the previous year (i.e. RMB2,873)

Remarks:

- The average monthly salary of fully employed staff and workers in Guangdong Province of Year 2011 is RMB3,763;
- The average monthly salary of fully employed staff and workers in Guangzhou Municipality of Year 2011 is RMB4,789;
- The Minimum Wage Standard of Year 2012 in Guangzhou is RMB1,300/month.

Reference: <http://www.gzds.gov.cn/jffw/shbxf/sfxz/sbfjrylb/>

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