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Foreigners Employed in China Now Required to Participate in Social Insurance

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On September 6, 2011, the *Interim Measures for Participation in the Social Insurance System by Foreigners Working within the Territory of China* ("Interim Measures") were issued by the Ministry of Human Resources and Social Security. The Interim Measures will become effective on October 15, 2011 and set out the proposed basic principles, applicability and scope of coverage for foreigners to participate in the People's Republic of China (PRC) social insurance system under the PRC Social Insurance Law.

Scope of Coverage

The Interim Measures apply to all foreigners legally employed in mainland China and require both the employee and their Chinese employer to contribute to the social insurance system on the same basis as for Chinese employees to worker's compensation insurance, medical insurance, pension, unemployment insurance and maternity insurance. The only difference is that no housing fund contributions will be required to be made by the foreign employee or his or her employer. Such contributions will add significantly to the employment costs for foreign employees in China. Social contribution premiums are set out in local city or provincial regulations and are ordinarily calculated based on a percentage of the employee's monthly salary subject to cap. For example, in Shanghai an employer will be required to contribute 37.3% of an employee's salary up to a maximum of RMB 4360 and an employee 11% of their salary up to a maximum of RMB 1286 each month. As many foreign employees are highly paid, their contributions are likely to be at the maximum level and increase in accordance with average salaries each year (in Shanghai, the average salary increased 9.6% in 2010).

Employers will be obliged to withhold contribution premiums on a monthly basis in the same way as for local Chinese employees and penalties will apply for failure to register employees or withhold contributions.

Employees from Hong Kong, Macau and Taiwan

While the Interim Measures do not specifically apply to employees from Hong Kong, Macau and Taiwan, there has been a similar system in place for such employees since 2005. To date, these rules have not been activity enforced, but it is anticipated that the authorities will start requiring enforcement on the same basis as the Interim Measures and it is recommended that employers treat all non-mainland Chinese employees consistently for the purpose of social security registration.

Exemptions

Employees from countries with bilateral social insurance agreements with China that participate in a mandatory social insurance scheme in their home country will be exempt from participating in the Chinese system to the extent of the terms of such agreement. For example, at present, bilateral agreements exist with Germany and Korea covering certain pension contributions. Contributions to other funds - medical, unemployment, maternity and work injury - are not covered. A number of other countries, including the United States, are reportedly seeking to negotiate bilateral agreements with China, but this process is likely to take some time and coverage may not be comprehensive.

Benefit entitlements

Under the Interim Measures, foreigners participating in the social insurance system are entitled social insurance benefits as long as they "meet the conditions". It is unclear what this will mean in practice and interpretation is likely to vary by location.

A foreign employee will be able to apply for withdrawal of the contributed pension amounts in her or her personal account upon leaving China permanently or may retain the pension account within China in case the employee returns to work in China or until retirement. A foreign employee who contributes to the system for at least 15 years may draw a pension regardless of whether the employee has left China. As the personal account portion of the pension is only a part of the pension contribution amount and - primarily the employee contribution portion - and few foreign employees will spend 15 or more years working in China, most employees will likely receive limited benefits from their contributions.

Local Implementation

At present, local implementation guidelines in connection with the Interim Measures are yet to be issued in most locations, including Shanghai and Beijing, and it is possible that there may be further grace periods in some locations. Nevertheless, employers should start planning on the basis that they will be required to start making contributions for employees. In anticipation of the upcoming implementation, employers are recommended to audit the employment permit status of existing foreign employees, advise employees of the new obligations and the required withholdings, and review any special arrangements such as tax equalization agreements that may require employers to make employee contributions on their behalf.