



China Introduces New Rules Requiring Expatriates to Participate in Social Insurance System

The Social Insurance Law of the People's Republic of China (the Law), promulgated on October 28, 2010, goes into effect on July 1, 2011. The Law is regarded as the first fundamental statute governing the social insurance system in China. According to the Law, foreign employees working in China must now participate in the social insurance scheme. Before the Law, local governments in major cities such as Beijing, Shanghai and Tianjin issued their own local rules in the absence of mandatory state regulation. Shanghai has been implementing a voluntary plan whereas Tianjin mandated expatriates contribute to their local social insurance plans. The Law is expected to unify the different practices in this area.

Article 97 of the Law stipulates that "Foreigners employed within the territory of the People's Republic of China shall participate in social insurance analogically in accordance with this Law." Under the Law, employers must contribute a corresponding amount for each of its hires, increasing the cost and liability of employers who employ expatriates in China.

However, the Law provides only a basic principle and is unclear on the integration of expatriates into China's current social insurance system, which may influence the effectiveness of the Law after July 1.

Given this concern, the Ministry of Human Resources

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and Social Security has issued two drafts concerning its implementation, "Several Rules on the Implementation of the Social Insurance Law of the People's Republic of China" and "Interim Measures for the Participation of Foreigners Working in China in Social Insurance" (Interim Measures). The two drafts, particularly the Interim Measures, further detail Article 97 of the Law and clarify the general inclusion of foreigners within China's statutory social insurance scheme. The main points are:

- Foreigners working in China are defined as non-Chinese nationals who legally work in China, holding work permits, foreign expert certificates or permits for foreign journalists. Both those employed by companies incorporated in China and those employed by foreign companies and dispatched to their branches and representative offices in China must participate in the social insurance scheme.
- Employees from Hong Kong, Macao and Taiwan are classified as foreigners under the Law.
- Foreigners must contribute to all five social insurance schemes including basic pension insurance, basic medical insurance, work-related injury insurance, unemployment insurance and maternity insurance. Consequently, based on the current officially published average salary in Beijing and Shanghai, the maximum employer contribution per employee would amount, per annum, to RMB 51,900 in Shanghai and RMB 49,150 in Beijing.
- Foreigners shall be entitled to enjoy the benefits of social insurance according to law. The personal accounts of those who leave China before reaching the retirement age may be retained. If they return to China to work, the insurance payment period will be calculated on a cumulative basis. An insured foreigner could apply in writing to withdraw his or her individually deposited funds. If the insured passes away, the balance of his or her personal account may be inherited.
- Participants from a country that has signed a bilateral social insurance agreement with China are subject to the terms of the agreement. Currently, only Germany and South Korea have

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signed agreements with China.

Since the comment period has expired, these two drafts are expected to be officially published and effective in the near future. It was hoped that they would go into effect with the Law, on July 1, but it seems unlikely. We have been in contact with local authorities in major cities since the promulgation of the Law. At the time of this Alert, labor authorities in Shanghai and Beijing remain reluctant to provide any comment on the drafts. It remains to be seen how local labor authorities are going to implement the Law. However, it can be sure that labor costs for foreign companies hiring or seconding expatriates in China will be increased and foreign companies should coordinate with their human resource departments to prepare in advance.

If you would like to discuss these matters, please contact your principal Squire Sanders lawyer or any of the persons listed in this Alert.

The information in this bulletin was compiled by the China offices of Squire, Sanders & Dempsey.

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