

## The Implementation of Expatriates' Social Security Contribution Rules in China

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Recently China's Ministry of Human Resources and Social Security issued interim measures stipulating all foreign nationals with work authorisation must participate in China's social insurance programmes. In addition, the ministry issued a notice setting out detailed guidelines regarding a foreigner's participation in China's social insurance programmes, as well as exemption from the programmes in accordance with bilateral treaties governing the avoidance of dual payment. This newsletter examines the detailed implementation of the interim measures and the notice in different localities in China, and the current legal implications.

On 6 September 2011, the Ministry of Human Resources and Social Security (MHRSS) issued the Interim Measures on Participation in Social Insurance by Foreigners Working in China, which took effect on 15 October 2011 (Interim Measures). Under the Interim Measures, all foreign nationals with work authorisation must participate in China's social insurance programmes. Employers and their employees must both make contributions towards retirement, medical, work-related injury, unemployment and maternity programmes.

In addition, MHRSS further issued a Notification on Guidance of Measures for Foreigners Working in China to Participate in Social Insurance (Notice) on 2 December 2011, which sets out detailed guidelines regarding a foreigner's participation in China's social insurance programmes, such as: how to make such social security contributions, the late fee levied for late payments and failure to provide the necessary documents that satisfactorily prove exemption from the programmes in accordance with bilateral treaties governing the avoidance of dual payment of social security between China and other countries (Bilateral Treaties).

As is the case with many other new regulations in China, the actual timetable for the implementation of the Interim Measures and the Notice varies from locality to locality. In addition, differences in pre-existing local practices also create discrepancies among localities on issues such as the salary basis upon which social security contributions are calculated and the social security programmes in which a foreigner must participate.

For instance, cities like Beijing have issued detailed written rules mandating participation by foreigners in all five social security programmes. An oral consultation with the relevant local branches of MHRSS also indicates it is now mandatory for foreign nationals to participate in all five mandatory social security programmes. By contrast, it is currently unclear if foreigners in Shanghai and Shenzhen will continue to participate in the three pre-existing social security programmes, *i.e.*, pension, medical and work-related injury, or if they will be transitioned into all five programmes mandated by the Interim Measures and Notice. So far, Shanghai and Shenzhen do not yet have any detailed implementation rules regarding how to transition the pre-existing three-programme scheme into the new five-programme scheme.

Complicating matters further, some cities in China, such as Guangzhou and Shenzhen, apply dual social security contribution systems depending on whether employees hold local residency (known as Hukou). Under the dual system, there are generally differences in contribution rates and the salary basis used when calculating social security contributions. Based on oral consultations with the relevant government authorities, it is the authors' understanding that foreign nationals will be treated as non-residents of those cities for the purposes of calculating social security contributions.

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