

China Releases Draft Interim Measures for the Participation in Social Insurance of Foreigners Employed in China

August 1, 2011

On June 10, 2011, China's Ministry of Human Resources and Social Security released "Interim Measures for the Participation in Social Insurance of Foreigners Employed in China (Draft for Comments)" for public comment. The comment solicitation period ended June 17, 2011. The finalized Interim Measures have not yet been released but are expected soon.

The draft Interim Measures, if adopted, would for the first time require foreign employees legally working in China to participate in China's social insurance system. Foreign employees in China fall into two categories under the draft Interim Measures:

- Foreign employees employed by companies, enterprises, public institutions, law firms, accounting firms, and other employing units registered in China including wholly foreign owned entities (WFOEs) and foreign invested joint ventures.
- Foreign employees working for their foreign parent company in a branch or representative office (RO) registered in China.

According to the draft Interim Measures, foreign employees in both categories would be required to participate in China's basic pension insurance, basic medical insurance, work-related injury insurance, unemployment insurance, and maternity insurance programs. The employing unit would be responsible for registering the foreign employees for the social insurance programs. The social insurance premiums would be paid by the employing unit and the foreign employee presumably on the same basis as current regulations provide for the employing unit and domestic employees.

The draft Interim Measures exempt foreigners who are nationals of countries that have entered into bilateral or multilateral treaties with China relating to social insurance. The United States does not have a social insurance treaty with China. To our knowledge, only Germany and South Korea currently have social insurance treaties with China.

The draft Interim Measures address a number of issues relating to foreign employees participating in China's social insurance programs including retaining individual pension accounts when leaving China before retirement age, cumulating payment periods for foreigners who leave and subsequently reenter employment in China, applying for payment of individual pension accounts in lump sums, treatment of pension balances upon death, requirements applicable to foreigners receiving social insurance benefits outside China, and dispute resolution provisions including mediation, arbitration, and litigation.

The draft Interim Measures are relatively short and leave many questions unanswered. Additional information may be available in the final Interim Measures or implementing regulations. We will keep you posted.

If you have questions or if we can provide assistance, please contact any member of our China Practice Team or the authors:

Continued

Thomas G. Appleman
+1.248.267.3241 (Troy)
+86.21.6103.7489 (Shanghai)

Zhiguo Du
+1.248.267.3226 (Troy)