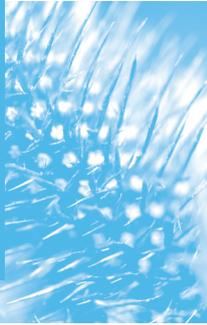


Labour Leader

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Social Insurance Law

The National People's Congress passed the Social Insurance Law (the "New Social Insurance Law") on 28 September 2010, and the new law came into effect on 01 July 2011. The new law harmonised various existing social insurance regulations promulgated by local governments and the Ministry of Labour. In this edition of Labour Leader, we focus on the requirement under the New Social Insurance Law that foreigners/non-PRC nationals should participate in the PRC social insurance system.

In summary, although the New Social Insurance Law has effect from 01 July 2011, there are not yet any implementing measures in relation to foreigners pursuant to this law. Our inquiries with the Beijing and Shanghai labour bureaux indicate that until new measures are introduced, social insurance in relation to foreigners is being administered in the same way as before 01 July 2011. i.e. For employers in these two localities, the new regime for foreigners is not yet in force.

To bring you up to date, this Labour Leader discusses the draft implementation measures that were released for comment in June 2011. To help employers prepare for the financial cost, we also set out the maximum contribution rates assuming that employers will contribute to social insurance for foreigners at the same rates as for local employees. We will continue to "watch this space".

Social Insurance for non-PRC nationals

The new law provides that non-PRC nationals working in the PRC "should participate" in social insurance programs. Although there have always been similar rules and regulations in the PRC on this, many localities (to date) have been unable to administer contributions by non-PRC nationals and have rejected applications by non-PRC nationals to participate in the social insurance programs.

What does social insurance cover?

Social insurance refers to basic pension, basic medical, unemployment, maternity and work-related injury insurance. Both employers and employees make contributions.

("Housing contributions" are not social insurance payments. Foreigners will not be required to contribute to any housing fund.)

Are foreigners now required to contribute to social insurance?

The new law requires non-PRC nationals to participate in social insurance, but various issues remain to be addressed, including the types of insurance foreign employees are required to participate in, rates of contribution, applicable caps, and ability to cash out when the foreign employee leaves the country. Our investigations with the Beijing and Shanghai labour bureaux so far indicate that

they are expecting implementing regulations to be promulgated on the national level. The bureaux do not indicate that they will be looking for back payments to 01 July 2011. Until new implementing regulations are in force, both bureaux will apply the pre-existing social insurance rules (which they treat as continuing to apply), namely:

- Pursuant to PRC's bilateral treaties with South Korea and Germany on social insurance (the "Treaties"), employees from those two countries can apply for social insurance accounts if they do not have social insurance accounts in their home country;
- In Shanghai, non-PRC nationals who have an employment relationship with a PRC employing entity can, if they wish, contribute to social insurance. It is not mandatory; and
- In Beijing, the labour bureau takes the view that non-PRC nationals should contribute to work-related injury insurance but not other types of social insurance. In practice, however, it is not common for employers to contribute work-related injury insurance for non-PRC nationals in Beijing.

We are aware that many foreign invested businesses in the PRC have strongly objected to the imposition of social insurance on foreign employees during the consultation period in relation to the [Interim Measures for Participation in Social Insurance for Foreigners Employed in the PRC \(draft for comments\)](#) (the "Draft Interim Measures").

What are these "Draft Interim Measures"?

On 10 June 2011, the Ministry of Human Resources and Social Security issued the Draft Interim Measures for public consultation. The consultation process of the Draft Interim Measures was completed on 17 June 2011. The outcome of the consultation has not been published, and to date, no further regulations are in place in relation to the participation of foreigners in social insurance.

What can we learn from the Draft Interim Measures?

The Draft Interim Measures are not law, but they do provide some limited insight as to how the social insurance program for foreigners might operate:

- The requirement for non-PRC nationals to contribute social insurance also applies to Hong Kong, Macau and Taiwan residents.
- Employees (except those from South Korea and Germany to whom the Treaties apply) who have a work permit will be required to register for social insurance. There is no initial exemption period, in contrast to the individual income tax regime. For example, certain non-PRC nationals who have worked in the PRC for less than six months are not required to pay individual income tax for salary paid overseas if the cost is borne by an overseas entity.
- Employees from South Korea and Germany to whom the Treaties apply will not be not required to contribute to a social insurance account in the PRC if they have a social insurance account in their home country.
- The requirement to contribute to social insurance applies both to non-PRC nationals who have an employment relationship with a PRC employing entity (eg. a Wholly Foreign Owned Enterprise or a Sino-Foreign Joint Venture; a Representative Office is not a PRC employing entity) and to non-PRC nationals who have an employment relationship with an overseas entity but are seconded to work in the PRC. This is different from the existing position in Shanghai which appears to apply only to the former category (non-PRC nationals who have an employment relationship with a PRC employing entity).
- The Draft Interim Measures focus on the pension contributions and the rights of non-PRC nationals to claim pension contributions. It does not address the rights of non-PRC nationals to claim other social insurance contributions and their ability to cash out other social insurance contributions when they leave the country.

The Draft Interim Measures do not set out the rates of contribution required. The rates are determined according to local rules. For the purposes predicting the future exposure, we suggest that employers assume that the contribution rates and caps for PRC nationals will also apply to non-PRC nationals.

We set out below, by way of illustration, the current rates for Beijing and Shanghai employees with household registrations (“hukou”) in a local urban area.

Table: Shanghai contribution rates and thresholds

Employee Monthly Wages (RMB)	Basic Pension		Medical		Unemployment		Maternity	Work-related Injuries
	Employer contribution rate	Employee contribution rate	Employer contribution rate	Employee contribution rate	Employer contribution rate	Employee contribution rate	Employer contribution rate	Employer contribution rate
RMB 2,338 to RMB 11,688 (see below)	22%	8%	12%	2%	1.7%	1%	0.8%	0.5%

Employees earning below RMB 2,338 (60% of the average wage of Shanghai) will be treated as earning that amount for purpose of calculating their social insurance premium. Wages earned above RMB 11,688 (three times the average wage of Shanghai) are disregarded.

Therefore, assuming that the rates for non-PRC nationals in Shanghai are the same as current rates applicable to PRC nationals:

- maximum additional monthly cost for an employer for each Shanghai employee: RMB 4,324.56; and
- maximum deduction from a Shanghai employee’s monthly wage for social insurance: RMB 1,285.68.

Table: Beijing contribution rates and thresholds

Employee Monthly Wages (RMB)	Basic Pension		Medical		Unemployment		Maternity	Work-related Injuries
	Employer contribution rate	Employee contribution rate	Employer contribution rate	Employee contribution rate	Employer contribution rate	Employee contribution rate	Employer contribution rate	Employer contribution rate
RMB 1,680 / 2,521 to RMB 12,603 (see below)	20%	8%	10%	2%+ RMB 3	1%	0.2%	0.8%	0.2% to 3%, depending on the nature of industry

Employees earning below RMB 1,680 (40% of the average wage of Beijing) will be treated as earning that amount for purpose of calculating their social insurance premium with respect to basic pension, unemployment and work-related injuries insurances. Employees earning below RMB 2,521 (60% of the average wage of Beijing) will be treated as earning that amount for purpose of calculating their social insurance premium with respect to medical and maternity insurances. Wages earned above RMB 12,603 (three times the average wage of Beijing) are disregarded.

Therefore, assuming that the rates for non-PRC nationals in Beijing are the same as current rates applicable to PRC nationals:

- maximum additional monthly cost for an employer for each Beijing employee: RMB 4,385.84; and
- maximum deduction from a Beijing employee’s monthly wage for social insurance: RMB 1,288.51.

For now, watch this space

Until definitive guidance arrives in relation to the payment of social insurance, we suggest employers remain mindful of this issue when reviewing remuneration and benefits. We suggest that local HR managers call their labour department from time to time for status updates on this issue. We will also, of course, monitor this on an ongoing basis.

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