
China's First Comprehensive Social Insurance Law Now in Effect, Affecting All Employers

by Woon-Wah Siu and Steve Sun

Last October, China promulgated the Social Insurance Law of the People's Republic of China (the "Law"), which became effective as of July 1, 2011. Before its promulgation, China's social insurance policies were implemented through a web of rules and regulations at both national and local levels. The Law unifies previous, scattered laws that relate to social insurance matters. We summarize below some key features of the Law.

Basic Social Insurance Scheme

The Law expressly clarifies that the social insurance system in China includes pension insurance, medical insurance, unemployment insurance, work-related injury insurance and maternity insurance, all of which are mandatory for employees of companies operating in the PRC. Both employers and employees are required to make contributions for pension, medical and unemployment insurance, while only employers are required to make contributions for work-related injury insurance and maternity insurance.

The Law does not specify the contribution rates or the basis for calculating each kind of social insurance, which leaves room for local governments to implement the Law in light of their local economic realities and consistent with the national policy. Currently, contribution rates are determined at the provincial or municipal level. For example, as of early July 2011, Shanghai had not adjusted its local contribution rates.

Transferability of Individual Social Insurance

In the past, if an employee changed his work location, the person generally could not transfer credits in his or her social insurance accounts to the new location. Under the Law, pension and medical insurance contributions for an employee can be transferred between different locations if the employee moves from one location to another, provided both locations have social insurance administrative departments. (Villages and other rural areas do not typically have departments to administer social insurance programs; thus an employee moving from a municipality to a village will not be able to transfer the individual's social insurance credits.) Furthermore, the social insurance contribution years (for purposes of determining

entitlement) will accumulate despite the change in the work location of the individual concerned. The Law directs administrative departments of social insurance and public health to establish a medical expense settlement system to allow the participants to enjoy basic medical insurance coverage regardless of their location.

Reduction of Work-Related Injury Costs Borne by Employers

According to previous PRC rules, an employer was obliged to pay an employee who had suffered a work-related injury a hospital food allowance, transportation and accommodation expenses for medical treatment outside the city where the employee works, as well as a lump-sum medical subsidy when the employee's employment contract terminates due to the injury. Under the Law, all the above expenses are to be paid from the locally administered work-related injury insurance fund.

Collection of Social Insurance Contributions

If an employer fails to make sufficient or timely social insurance contributions, the local social insurance administrative department can require rectification by the employer within a specified time and impose a late payment penalty of 0.05% per day on the outstanding contributions. If such employer fails to make the overdue contributions and penalty within the specified time limit, the local administrative department may impose fines ranging from one to three times the amount of overdue contributions.

Furthermore, if any employer fails to comply, the local social insurance administrative department has the right to collect outstanding amounts from the employer's bank account. If the balance in the employer's account is not sufficient, the department may require the employer to provide guarantees for late payment or apply to the people's court for seizure, attachment and auction of the employer's properties.

Registration of Social Insurance

According to the Law, each employer must register with the local social insurance administrative department within 30 days of the employer's incorporation. In addition, the employer must register for its employees within 30 days of employment.

If any employer fails to register, the local social insurance administrative department will require rectification within a specified period. Failure to rectify within the required time will result in (i) a fine on the employer of between one to three times the social insurance amount due, and (ii) a fine on the manager in charge of the employer's social insurance administration and other responsible persons as determined case by case.

Foreign Nationals' Participation

The Law requires foreign nationals employed in China to participate in the PRC social insurance system. This is the first time China has imposed a requirement that foreign nationals participate in its social insurance programs.

In June 2011, the Ministry of Human Resources and Social Security issued draft measures governing the participation of foreign nationals in China's social insurance programs and solicited comments on the draft measures from interested parties, including the American Chamber of Commerce in Shanghai. According

to that organization, it is not expected that the draft measures will be implemented and contributions required immediately upon the Law's effective date of July 1, 2011.

Conclusion

Before the Law became effective, social insurance programs varied from location to location depending on the policies of local administrations. For instance, some locations only required pension and medical insurance, whereas the Law specifies that employers have obligations to make contributions to all five social insurance programs. The Law also aims to improve employers' compliance by specifying penalties and the power of the authorities to enforce such penalties in case of default. Most importantly, the Law allows employees more freedom to choose where they work.

It is still unclear how the provisions relating to social insurance contributions by foreign nationals working in China will be implemented. Some local officials reportedly have said that they will make participation by foreign nationals voluntary. Depending on how it is implemented, the Law may increase the cost of doing business in China for foreign investors.

Both domestic and foreign-invested enterprises should monitor implementation of the Law and carefully review the implementation rules when issued, and assess the potential impact of the Law on their cost structure.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors of this alert.

Woon-Wah Siu (bio)
Shanghai
+86.21.6137.7924
woonwah.siu@pillsburylaw.com

Thomas M. Shoesmith (bio)
Silicon Valley
+1.650.233.4553
thomas.shoesmith@pillsburylaw.com

This publication is issued periodically to keep Pillsbury Winthrop Shaw Pittman LLP clients and other interested parties informed of current legal developments that may affect or otherwise be of interest to them. The comments contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice.

© 2011 Pillsbury Winthrop Shaw Pittman LLP. All Rights Reserved.