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## Social Security for Foreign Workers – The Plot Thickens

In a China Alert issued in October 2011, we reported that the enrolment of foreign workers in China would become mandatory under the new Social Insurance Law and Interim Measures. Although no clear timetable for compulsory enrolment was put in place at the time, the prospect of foreign employees being required to participate in China's social security system alarmed many employers because of the significant costs involved.

In most parts of China, this transition period of voluntary enrolment is now over. Over the past several months, a number of cities have issued new local implementing rules requiring employers to enroll their foreign employees and begin making contributions to the social security system. The cities include Beijing, Guangzhou, Shenzhen, Chengdu, Chongqing, Tianjin, Suzhou and Qingdao. This has happened in response to the Circular on Issues Relating to Participation in Social Security by Foreigners Employed in China ("Circular No. 113") issued by the Ministry of Human Resources and Social Security ("MHRSS"), which took effect from December 31, 2011.

The Circular 113 spells out that all foreign workers must enroll in the PRC social security system from December 31, 2011. Any foreign staff employed and otherwise eligible for enrolment before October 15, 2011 who are enrolled after December 31, 2011 will be subject to a late registration penalty of 0.005% per day (calculated on the basis of unpaid contributions) retroactive to last October 15.

In all of the cities that have implemented mandatory enrolment regulations, most employers are choosing to comply to avoid late registration penalties and other enforcement action. In cities like Shanghai, Dalian and Wuhan, which have so far declined to issue implementing regulations, the response has been mixed. MHRSS officials in these cities have been less than clear about the procedures for voluntary registration and payment arrangements for foreign workers. Consequently, while some employers are taking it upon themselves to voluntarily enroll their foreign staff, others are choosing to wait until the implementing regulations are issued and the enrolment arrangements are clarified.

It is too early to know whether the MHRSS has begun enforcing mandatory enrolment throughout China or is prepared to do so. It is not uncommon for regulations in China to be issued before there is a process for their implementation. Social security non-compliance is not a particularly high profile problem in China generally and most of the MHRSS's enforcement energies have been focused on non-compliance by PRC nationals and their employers.

The current state of affairs is very unsettling, especially for employers with foreign staff working in multiple locations across China. For employers in cities where the implementing regulations have been put in place, it is important that all foreign staff are enrolled and begin making contributions as soon as possible.

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In cities where no implementing rules have been issued, employers appear, for now, to have the option of voluntarily enrolling or waiting until the rules are released but delay may result in late registration penalties being levied against them.