

Asia Labor and Employment Client Service Group

To: Our Clients and Friends

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Local Authorities Implement Social Insurance for Foreigners in China

On September 6, 2011, the Ministry of Human Resources and Social Security promulgated the Interim Measures for Contribution of Social Insurance by Foreigners Employed within China (“Interim Measures”), which came into effect on October 15, 2011. The Interim Measures stipulates that all foreigners legally employed within the territory of China must participate in China’s social insurance system in accordance with the Social Insurance Law. To supplement Bryan Cave’s [Asia labor alert announcing the Interim Measures](#), this alert will provide an update on how this issue has developed on the national level and how it is actually being implemented on the local level.

The national and local regulations detailed below refer to foreigners paying social insurance premiums. Please note that in practice, and according to Article 20 of the Several Provisions on Implementation of the Social Insurance Law of the People's Republic of China, employers are obligated to withhold and pay social insurance premiums for their employees. Article 20 further states that if an employer fails to withhold and contribute social insurance premiums in accordance with the relevant laws and regulations, the employer shall pay a late payment fine equal to 0.05% of the outstanding amount per day. Employers are not allowed to shift late payment fines to employees.

I. National Rules on Payment Starting Dates, Late Payment Fines

To provide guidance for how local authorities should implement and administer social insurance for foreigners, the Ministry of Human Resources and Social Security promulgated the Circular on Issues Relating to Participation in Social Insurances by Foreigners Employed in China (“Circular”) on December 2, 2011. The Circular establishes premium payment starting dates and late payment fines as follows:

- **Payment starting date:** The Circular states that foreigners employed in China before October 15, 2011 shall participate in social insurance and pay insurance premiums beginning October 15, 2011. Foreigners who are employed in China after October 15, 2011 shall participate in social insurance and pay insurance premiums from the month they started employment.

- **Late payment fines:** The Circular also introduces late payment fines for foreigners employed before October 15, 2011 who failed to complete the insurance payment registration procedure. Foreigners who applied for the registration procedure between October 15, 2011 and December 31, 2011 and paid social insurance in full will have any late payment fines waived. However, foreigners who complete such procedure after January 1, 2012 shall be charged with late payment fines from October 15, 2011. The Circular does not contain specific language on late payment fines for foreigners employed after October 15, 2011.

II. Local Implementation

As is often the case in China, directives issued at the national level are not always uniformly reflected at the local level. While the Circular establishes national guidance for the implementation of social insurance for foreigners, many local authorities have established modified rules.

The following table lists the major cities that have issued notices implementing social insurance for foreigners, based on our research as of April 12, 2012. The table also summarizes each city's relevant rules on payment starting dates and late payment fines, indicating that several cities have implemented rules that differ from the Circular or lack language specifying how social insurance will work in practice.

City	Date of Issuance	Payment Starting Dates/Late Payment Fines
Beijing	Separately issued on Oct. 11, Nov. 8, and Dec. 19, 2011	<ul style="list-style-type: none"> • Foreigners employed before Oct. 31, 2011 should pay insurance premiums for the whole month of October. Foreigners employed after Nov. 1, 2011 should pay premiums starting from the month they were employed. • No late payment fines will be imposed if, before Jan. 1, 2012, employers complete insurance registration and pay all due premiums for the months from Oct. to Dec. 2011.
Suzhou	Jan. 18, 2012	<ul style="list-style-type: none"> • Foreigners employed before Oct. 15, 2011 should pay insurance premiums for the whole month of October. No specific language on foreigners employed after Oct. 15, 2011. • No specific language on late payment fines. Based on our no-name inquiry with the Suzhou labor hotline, there are currently no late payment fines, but regulations including such fines may be released at a later date.
Wuxi	Feb. 21, 2012	N/A: No specific language on payment starting dates or late payment fines.
Jiangyin	Mar. 29, 2012	<ul style="list-style-type: none"> • Foreigners employed before Oct. 15, 2011 should pay insurance premiums from Oct. 15, 2011. Foreigners employed after Oct. 15, 2011 should pay premiums starting from the month they were employed. • No specific language on late payment fines.
Zhangjiagang	Mar. 31, 2012	<ul style="list-style-type: none"> • Foreigners employed before Oct. 15, 2011 should pay insurance premiums from Oct. 15, 2011. Foreigners

		<p>employed after Oct. 15, 2011 should pay premiums starting from the month they were employed.</p> <ul style="list-style-type: none"> • No specific language on late payment fines. • Employees from Hong Kong, Macao and Taiwan should participate in social insurances as foreign employees.
Changshu	Mar. 9, 2012	Changshu follows Suzhou's implementing rules.
Chongqing	Jan. 31, 2012	<ul style="list-style-type: none"> • Foreigners employed before Oct. 15, 2011 should pay insurance premiums from Oct. 15, 2011. Foreigners employed after Oct. 15, 2011 should pay premiums starting from the month they were employed. • No specific language on late payment fines.
Chengdu	Oct. 19, 2011	N/A: No specific language on payment starting dates or late payment fines. The notice took effect on Oct. 15, 2011.
Qingdao	Nov. 4, 2011	N/A: No specific language on payment starting dates or late payment fines. The notice took effect on Oct. 15, 2011.
Rizhao	Feb. 13, 2012	<ul style="list-style-type: none"> • Foreigners employed before Oct. 15, 2011 should pay insurance premiums from Oct. 15, 2011. Foreigners employed after Oct. 15, 2011 should pay premiums starting from the month they were employed. • No specific language on late payment fines.
Xiamen	Mar. 6, 2012	<ul style="list-style-type: none"> • Foreigners employed before Oct. 15, 2011 should pay insurance premiums starting from Oct. 15, 2011. No specific language on foreigners employed after Oct. 15, 2011. • Employers that pay the due premiums before June 30, 2012 will not be subject to late payment fines. From July 1, 2012, employers that do not pay the late payment fines will be subject to such fines calculated from the date the payment is due.
Zhuhai	Separately issued on Oct. 11, 2011 and Mar. 20, 2012	<ul style="list-style-type: none"> • Based on our no-name inquiry with the Zhuhai labor hotline, foreign employees must participate in social insurance starting from Nov. 1, 2011. <p>Employees from Hong Kong, Macau and Taiwan who currently participate in social insurance must participate in the five types of insurance starting Apr. 1, 2012.</p> <ul style="list-style-type: none"> • No specific language on late payment fines.

III. Conclusion

Many questions remain about the social insurance system for foreigners. Local governments in Shanghai and Shenzhen, for example, have yet to promulgate their own implementing rules, sparking

questions as to whether and when foreigners will be responsible for paying social insurance in these cities.

As the above table indicates, several major cities in China have implemented social insurance systems for foreigners that differ from the national guidance found in the Circular. Authorities in Beijing, Xiamen, and Zhuhai have issued rules on payment starting dates and late payment fines that are different from those found in the Circular. Furthermore, the rules of Chengdu, Qingdao, and Wuxi do not expressly specify the payment starting dates or late payment fines, and Xiamen and Suzhou's rules are silent on the requirements for foreigners employed after October 15, 2011. In the absence of more uniform procedures and formalized rules for the implementation of social insurance for foreigners, these ambiguities and open questions may have to be settled by examining how local authorities actually enforce the rules.

Still, employers operating in cities that have implemented social insurance for foreigners should ensure that they are compliant with the local rules. Employers operating in cities that have not issued such regulations need to monitor the issuance of implementing rules, to ensure that the additional cost of employing foreigners is not further burdened with penalties and fines.

For additional information on this topic, please contact a member of Bryan Cave LLP's [Asia Labor and Employment Client Service Group](#).