



# China Employment Law ALERT

## Administrative Provisions on Declaration and Payment of Social Security Contributions

On November 1, 2013, the Administrative Provisions on Declaration and Payment of Social Security Contributions (“Provisions”) promulgated by the Ministry of Human Resources and Social Security went into effect and replaced the Interim Measures on Administration of Declaration and Payment of Social Security Contributions (“Interim Measures”).

The Provisions clarify certain substantive and procedural rules for the declaration and payment of social security contributions, as well as legal liabilities for non-compliance. Among others, the following provisions will have more significant implications on employers in China.

### Coverage of Statutory Social Security Contributions

Under Article 2 of the Provisions, social security contributions include the following: (i) pension premiums; (ii) medical insurance premiums; (iii) work injury insurance premiums; (iv) unemployment insurance premiums; and (v) maternity insurance premiums.

The Interim Measures covered only the first three types of premiums listed above. As of November 1, 2013, all PRC employers and employees will participate in all five types of insurance listed above.

### Contribution Breakdown Retained by Employers

According to Article 5 of the Provisions, employers must declare the social security contributions on behalf of their employees. The breakdown of such declared contributions and any changes thereto must be acknowledged in writing by employees (by signature). Employers must retain and make these breakdowns available for future inspection. An employer’s failure to retain the breakdown may be regarded as non-compliance with the Provisions. Employers should adopt this practice as soon as possible.

### Failure to Declare On Time

Article 8 of the Provisions provides that if an employer fails to complete social security registration and declare and pay social security contributions for its employees within 30 days from the date of employment, the social security agency will determine the interim amount payable at the rate of 110% of the employer’s contribution amount from the preceding month. Where the amount from the preceding month is not available, the amount payable will be determined based on

relevant information such as: the operating performance of the employer; the number of employees; and the local average salary for the preceding year.

This provision was covered by the Interim Measures, but had not been strictly enforced in many regions. Employers should not overlook this provision, however, as stricter enforcement of all social security laws and regulations are foreseeable.

## Failure to Withhold and Pay Fully On Time

Under Article 30 of the Provisions, if an employer fails to make prompt payment of social security contributions in full, the social security agency will order the employer to make due payment or cover the shortfall within a stipulated period. The employer will also be subject to a late payment fine at the rate of 0.05% per day from the date the shortfall commenced.

Although the late payment fine rate has been reduced from 0.2% to 0.05% under the Provisions, a fine of one to three times the amount of the shortfall will be imposed on employers who fail to make full payment within the rectification period.

Moreover, Articles 17 to 26 of the Provisions confirm the power of the local social security agency to enforce social security contributions or late payment fines provided by the Social Security Law of the People's Republic of China, and further clarify the conditions for enforcement. By doing so, the regulators hope to enhance the enforcement of the Provisions and secure the fulfillment of social security contributions by employers.

In summary, the Provisions have stipulated new requirements and stricter enforcement in terms of social security contributions. Employers in China should take all of the relevant steps to be prepared for the changes.

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