



Implementation rules on foreigners' participation in China's social security system

Regulation discussed in this issue:

- Interim measures for the participation of foreigners employed in China in the Chinese social security system, released by the Ministry of Human Resources and Social Security on 6 September 2011

Background

Following the release of the draft interim measures for foreigners' participation in the Chinese social security schemes (Draft Interim Measures) for public comments on 10 June 2011, the Ministry of Human Resources and Social Security (MOHRSS) in China released the Interim measures (Interim Measures), which was approved by the State Council on 6 September 2011. The Interim Measures will take effect from 15 October 2011.

The following points from the Interim Measures are worth noting:

Social security registration

The Interim Measures stipulated a time frame of 30 days after submission of work permit application for Chinese entities to register their foreign employees for Chinese social security purposes. Authorities responsible for issuing work permits to foreigners and the social security authorities are required to communicate with each other to ensure compliance of the social security law on a timely basis.

Participation – Administration and inspection

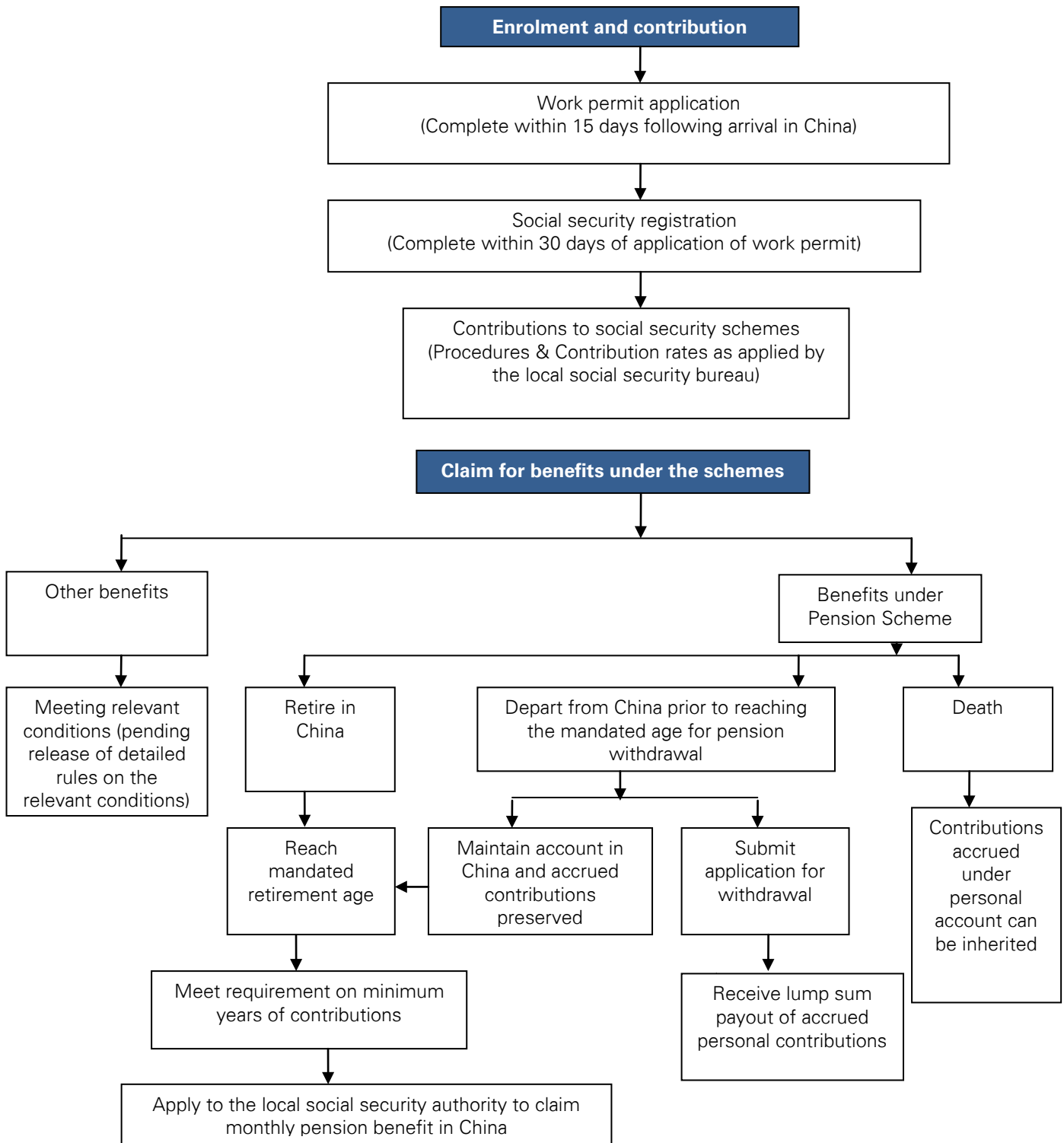
Failure to register or contribute for foreign employees in China in accordance with the Social Insurance Law may result in imposition of late payment interest surcharges and penalties on the Chinese entities by the relevant local social security authorities. Social security authorities shall carry out supervision and inspection of foreigners' participation in accordance with the relevant regulatory measures.

Participation of residents from Hong Kong, Macau and Taiwan

Article 11 of the Draft Measures on including residents from Hong Kong SAR, Macau SAR and Taiwan (The region) under the provisions for foreigners’ participation in the Chinese social security schemes was removed from the Interim Measures.

KPMG observations

Foreigners’ participation - Flowchart



Implementation date – practical implications

As 15 October 2011 is just round the corner, the local authorities or the contributors may not be ready. However, contributors should be prepared for contributions to start from October 2011 even if payments are made later.

Cost

Social security contributions base and rate vary across China. The maximum monthly contributions in Beijing and Shanghai for employee are RMB 1,289 and RMB 1,286 respectively and for employer are RMB 4,386 and RMB 4,360 respectively. These rates provide an indication of the rates in other locations.

Regulatory measures for enforcement

The requirement on establishing a communication mechanism between the authority that issues work permits to foreigners and social security authority, as well as emphasising the need to supervise and inspect on foreigners' participation in the schemes demonstrate clear intention by the authorities to monitor foreigners' participation in the Chinese social security schemes.

Do residents of Hong Kong, Macau and Taiwan need to participate in the Chinese social security schemes?

The Interim Measures does not include residents of Hong Kong SAR, Macau SAR and Taiwan (the regions), however this does not necessarily mean that their participation in the Chinese social security system is not required. Rather, it could be viewed as the authority's intention to enforce the implementation of Laodong Shehui Baozhangbu Ling [2005] No. 26, which broadened the Chinese social security net to include residents from the regions, as it has not been widely implemented since its introduction in October 2005. With the roll-out of the relevant measures for foreign employees, social security authorities across China could strengthen the collection and administration of social security contributions by residents from the regions simultaneously.

What are the social security benefits for foreign participants?

With respect to the types of benefits which foreign participants could enjoy from participating in various social security schemes in China, the interim measures state that foreign participants are eligible to receive benefits under the schemes provided that relevant conditions can be met. Apart from the explicit reference made to foreigners' entitlements under the pension scheme, there is no provision in the measures on how they can claim benefits under other schemes i.e. medical insurance, injury, unemployment and maternity insurance, which leads to the question of what conditions must be met in order for foreigners to enjoy benefits under other schemes. As such, it is reasonable to expect that the MOHRSS and the relevant local social security authorities may issue detailed rules on foreign participants' entitlement under various schemes to reduce such uncertainty.

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