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### **Landmark Social Security Agreement to Reduce Employment Cost**

It is a common practice in the world for two countries to enter into social insurance agreements in order to foster cooperation, and to avoid excessive and double social security contributions.

Since the implementation of its revised Social Insurance Law in 2011, China has entered into its first bilateral social security agreement with another country, namely the Republic of Korea. This “Social Insurance Agreement between the People’s Republic of China and the Republic of Korea” (“Agreement”) has taken effect from January 16 this year.

China’s Ministry of Human Resource and Social Security (MOHRSS), which is the relevant administrative authority in China, also issued an administrative circular (Renshetingfa [2012] No 120, “Circular”) which provides additional interpretation and guidance on the Agreement. Previous provisional measures on the subject are repealed.

Since China has been holding talks with more than a dozen countries on similar arrangements, it is believed that more agreements will be entered into with other countries in the near future, thereby providing reliefs to potential excessive social security contributions for foreigners working in the contracting countries.

#### **Current Practice**

Under the current system, local Chinese individuals are required to make social security contribution encompassing five elements of social insurance. These are Unemployment, Pension, Basic Medical, Work Injury as well as Maternity Insurance.

China also announced the “Provisional Measures on the Participation in Social Insurance by Foreigners Working in China” in September 2011, requiring foreigners working in China to participate in the system similar to their Chinese counterparts.

However, the fact that there may be excessive or double contributions in China and their home countries by foreign workers has raised considerable concern on foreign workers and their employers. Also, whether and how the Chinese social insurance system can be enjoyed by foreigners is uncertain. Consequently, in practice, such foreigner contribution requirement may not be strictly implemented by some local government authorities.

### **Essence of the Agreement**

The Agreement states that the citizens of the two countries working in their countries shall have the obligation to contribute to social security plans of their own countries. Koreans working in China shall participate in the Chinese social insurance system in accordance with the “Social Insurance Law of the People’s Republic of China” unless otherwise stipulated.

The Agreement deals with the issue of double social insurance contribution in both countries and therefore may reduce the cost of employment. The following is the essence of the Agreement and its Protocol, for Koreans working in China:

- ***Insurance scope of the Agreement:*** For China, the scope of the Agreement covers Unemployment Insurance and Pension Insurance in China.

The Protocol to the Agreement also extends the coverage to include Basic Medical Insurance until the end of 2014, on condition that commercial medical insurance is provided. However, Korean citizens shall be obliged to participate and contribute to the Basic Medical Insurance plan thereafter.

- ***Employees of employers with place of business in Korea and assigned to work in China:*** They will be subject to the Korean social security contribution requirements and therefore exempted in China for a period of up to 60 months. The exemption can be extended for a maximum period of 156 months (13 years) under the Circular.
- ***Korean citizens temporarily resident in China:*** Koreans temporarily residing in China and who work for Chinese employers are also entitled to the exemption, provided the employment period is less than 60 months.
- ***Self-employed Korean citizens and investors:*** Korean citizens who are self-employed or those who have established foreign investment enterprises in China and are employed under such enterprises are also entitled to the exemption.
- ***Others:*** The Agreement also provides for other employees including those working on vessels and aircrafts, government employees as well as diplomatic staff.

## Application Requirement

In order to enjoy exemption in China, certification issued by the relevant authorities in Korean is required. For employees assigned to China as well as Koreans temporarily working in China, the certificates will also have to specify the relevant effective periods.

Since local practices and interpretation may apply, proper administrative and procedural requirements should be complied with in order to enjoy potential exemptions as well as ensure proper compliance with the Chinese law.

## Action

This Agreement is generally welcomed by foreign workers since double contributions may be reduced by the bilateral Agreement. However, it also signifies China's determination to resolve the alleged conflicts in accordance with international practices as well as strictly implement the social insurance contribution by foreigners working in China.

It is anticipated that China will introduce similar agreements with other countries, Human Resource management should monitor the development of the subject closely to ensure application to their foreign workers.

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