



July 15, 2011

## **Brief of Certain Provisions on the Implementation of the Social Insurance Law of the People's Republic of China**

*The Social Insurance Law of the People's Republic of China* (the “**Social Insurance Law**”), which has gone through four deliberations, was finally adopted on October 28, 2010, and came into force on July 1, 2011. To ensure the implementation of the Social Insurance Law, Ministry of Human Resources and Social Security has promulgated *Certain Provisions on the Implementation of the Social Insurance Law of the People's Republic of China* (“**Certain Provisions**”) on June 29, 2011, which came into force simultaneously with the Social Insurance Law. *Certain Provisions* has mainly specified the following:

### **1. Improve the measures for treatment for participants who have paid the basic pension insurance premiums for less than 15 years at the statutory retirement age and measures for inter-regional transfer and continuity of basic pension insurance relations**

The Social Insurance Law has stipulated to establish a national coordination basic pension insurance system and realize the inter-regional transfer of basic pension insurance. With respect to participants who have paid the basic pension insurance premiums for less than 15 years at the statutory retirement age, *Certain Provisions* specifies that (1) such participants may continue to pay the premiums until the cumulative premium payment period reaches 15 years in the original insurance district; (2) such participants who have participated in the employees' basic pension insurance scheme and have moved to other provinces to work, may continue to pay the premiums until the cumulative premium payment period reaches 15 years after the places to collect the insurance benefits have been determined according to the provisions of the Notice of the General Office of the State Council on Forwarding the Interim Measures for Transfer and Continuity of Basic Endowment Insurance Relationship of Employees of Urban Enterprises Promulgated by the Ministry of Human Resources and Social Security and the Ministry of Finance (Guo Ban Fa [2009] No. 66); (3) such participants may apply for transferring the premium to the new type pension fund for rural residents or the pension fund for urban residents at the place of their registered

permanent residence and enjoy corresponding benefits; and (4) such participants who are not transferring the premium to the new type pension fund for rural residents or the pension fund for urban residents at the place of their registered permanent residence, may apply to terminate the employees' basic pension insurance scheme in writing, and apply for the withdrawal of all the funds deposited in their individual account. To protect the interests of the applicants, Certain Provisions stipulates that the social insurance agencies which have received the written application, shall, in written form, inform the applicants of their rights to transfer the premium to the new type pension fund for rural residents or the pension fund for urban residents and the consequences of termination of the employees' basic pension insurance scheme. The employees' basic pension insurance scheme shall not be terminated unless confirmed by the insurance applicants in writing.

In accordance with Certain Provisions, participants who have paid the basic pension insurance for less than 15 years at the statutory retirement age and participated in the insurance scheme before the implementation of the Social Insurance Law and whose accumulative payment period is still less than 15 years after a 5-year extension, may pay a lump sum premium to realize the 15-year cumulative premium payment period requirement. Those who have participated in the employees' basic pension insurance scheme and have moved to other places to work, shall have their pension calculated based on different segments of the period and collectively paid after reaching the statutory retirement age.

**2. Grant access to treatment in non-contracted medical institutions during the process of emergency and rescue; and expand to an appropriate extent of the scope of medicine for rescuing**

For the purpose of caring to the social insurance participants, Certain Provisions stipulates that in the case of emergency and rescue, the social insurance participants can get access to treatment in non-contracted medical institutions, and the scope of medicine for rescuing may be expanded to an appropriate extent.

**3. Specify the work-related injury insurance premium payment method in the case of employees who work concurrently for two or more employers and clarify the criterions of alcohol intoxication and some work-related insurance benefits**

Certain Provisions specifies that where an employee (including part-time employee) who works concurrently for two or more employers, each employer shall respectively pay the work-related injury insurance premium for such employee and the employer where the employee works when the injury occurs shall undertake the due liability for work-related insurance benefits.

The Social Insurance Law excludes the injury arising out of the alcohol intoxication from

work-related injury, however, it doesn't specify the criterion of alcohol intoxication. According to Certain Provisions, the criterion for judging alcohol intoxication shall be subject to *the National Standard (GB19522-2004), the Threshold and Test of Alcohol Concentration in the Blood and Expiration of Vehicle Drivers*. The test results, diagnose proof and the like from the traffic control department of the public security organ, medical institutions and other sources may serve as evidence for such judgment.

Certain Provisions also specifies that the one-off subsidy criterion for work-related death is 20 times the per capita disposable annual income in urban areas of the year before the occurrence of the injury.

#### **4. Specify the circumstances of “unintentional terminations of employment” and encourage re-employment of the unemployed**

According to the Social Insurance Law, “unintentional terminations of employment” is one of the conditions for the unemployed to enjoy unemployment insurance benefits from the unemployment insurance fund. To link up with the Labor Contract Law, Certain Provisions stipulates that termination of labor contract due to employers' causes constitute the circumstances of unintentional terminations of employment, for instance, the circumstances where the employers terminate the labor contracts initiatively or due to the change of its economic conditions, or the employees terminate the labor contracts due to the illegal acts of employers and so on.

To encourage the employment, Certain Provisions specifies that subsidies for the unemployed who accept job recommendation or training shall be paid from the unemployment insurance fund.

#### **5. Clarify the requirements of fund management and agency service**

To protect the social insurance participants' rights to know, Certain Provisions requires that social insurance agencies shall mail the personal interest record to the social insurance participants at least once a year, In addition, short messages or email, etc., may be also adopted for such delivery. Furthermore, Certain Provisions requests that the social insurance agencies and their employees shall keep confidential the information of employers and individual employees.

#### **6. Protect employees' social insurance benefits by specifying the obligations and liabilities of employers**

Certain Provisions sets forth that (1) when terminating a labor contract, if an employer refuses to issue the certificate to its employee proving the termination of labor relation, making it impossible for the employee to enjoy the social insurance benefits, the employer shall bear the liabilities for compensation to the employee; (2) employer that fails to withhold or pay the social insurance

premium in accordance with the law, it shall not compel its employee to pay the overdue fee which is ordered by the social insurance agency; (3) If an employer is experiencing difficulties in operation due to force majeure, subject to the approval of the administrative department of social insurance at the provincial level, it may suspend the payment within a certain period by providing guarantee and executing delayed payment agreement with the social insurance agency, its employees shall still enjoy the social benefits during the delayed payment period.

#### **7. Specify the scope of responsible parties who illegally dispose or manage the social insurance fund and specify the illegal acts**

Social Insurance Law only stipulates the legal liability of illegally concealing, transferring, embezzling and misappropriating social insurance fund or use the fund for other investment in violation of the relevant provisions, while Certain Provisions specifies the responsible parties which shall include social insurance agency, social insurance premium collection institution, social insurance fund management and investment institution and their employees. Certain Provisions also specify six circumstances of illegal disposal or management of social insurance fund.

In conclusion, Certain Provisions has made some clarifications on the Social Insurance Law; however, some issues of the Social Insurance Law remain to be specified.

If you have any question, please feel free to contact us.

## **Important Announcement**

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