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中国动态： 双语版亚洲雇佣法：季评

2016-2017

第十八期：2017年第四季度

Asia Employment Law: Quarterly Review

2016-2017

ISSUE 18: FOURTH QUARTER 2017

索引 INDEX:

引言 INTRODUCTION



亚洲法律顾问与人力资源顾问的工作往往涉及多个司法辖区。准确把握雇佣相关法律发展情况既是重中之重又充满挑战。

为协助阁下获取最新法律动态，孖士打律师行发布电子期刊**亚洲雇佣法：季评**，内容涵盖亚洲14个司法辖区，并将每季更新。

在第十八期中，我们将回顾并评点2017年第四季雇佣法发展情况，同时列出一些2018年立法、咨询、政策及判例法方面的预期重大变革。

孖士打与亚洲地区14家律师行长期开展跨境合作，与对方律师建立了密切的工作关系，本刊正是这一努力的结果。欲获悉撰稿律师及律师行名单，请浏览[联络人页面](#)。

我们衷心希望本刊对阁下有所助益。

Asia's legal and human resources advisors are often required to function across multiple jurisdictions. Staying on top of employment-related legal developments is important but can be challenging.

To help keep you up to date, Mayer Brown JSM produces the **Asia Employment Law: Quarterly Review**, an e-publication covering 14 jurisdictions in Asia.

In this eighteenth edition, we flag and provide comment on anticipated employment law developments during the last quarter of 2017 and highlight some of the major legislative, consultative, policy and case law changes to look out for in 2018.

This publication is a result of ongoing cross-border collaboration between 14 law firms across Asia with whose lawyers Mayer Brown JSM has had the pleasure of working with closely for many years. For a list of contributing lawyers and law firms, please see the [contacts page](#).

We hope you find this edition useful.

顺颂商祺

With best regards,



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人力资源社会保障部、财政部关于机关事业单位基本养老保险关系和职业年金转移接续有关问题的通知

人社部、财政部于2017年1月12日发布《关于机关事业单位基本养老保险关系和职业年金转移接续有关问题的通知》(下称《通知》),自2014年10月1日执行。《通知》就基本养老保险关系转移接续、相关待遇计发参数、处理多重养老保险关系、职业年金转移接续等事宜作出安排。《通知》规定,参保人员在同一统筹范围内的机关事业单位之间流动的,只转移基本养老保险关系,不转移基金;参保人员从机关事业单位流动到企业的,在转移基本养老保险关系的同时,转移基金。参保人员跨统筹范围流动或从机关事业单位流动到企业的,个人缴费部分按计入本人基本养老保险个人账户的全部储存额计算转移;单位缴费部分以本人改革后各年度实际缴费工资为基数,按12%的总和转移,参保缴费不足1年的,按实际缴费月数计算转移。

[更多...](#)

Circular of the Ministry of Human Resources and Social Security and the Ministry of Finance on Matters Relating to the Transfer and Continuation of Basic Endowment Insurance Relations and Occupational Annuities of Organisations and Public Institutions

On January, 12 2017, the Ministry of Human Resources and Social Security and the Ministry of Finance issued the Circular on Matters Relating to the Transfer and Continuation of Basic Endowment Insurance Relations and Occupational Annuities of Organisations and Public Institutions (the "Circular"). Since commencement on October 1, 2014, the Circular makes arrangements with regard to matters such as the transfer and continuation of basic endowment insurance, parameters for calculation and payment of benefits, handling of multiple endowment insurance, and the transfer and continuation of occupational annuities. The Circular provides that, where an insured employee moves between organisations and public institutions within an area under the same planning zone for basic endowment insurance, only his or her endowment insurance needs to be transferred, funds do not need to be transferred. Where an insured employee moves from an organisation or public institution to an enterprise, the funds need to be transferred together with the basic endowment insurance. Where an insured employee moves between the organisations and public institutions within areas under different planning zone for basic endowment insurance, or from an organisation or public institution to an enterprise, the deposits of individual contributions included in his or her individual account for basic endowment insurance shall be transferred in full; and the contributions made by his or her employer shall be transferred at the rate of 12% of the total sum, using the actual annual wages for payment by individuals after annual review as the base, if the payment period is less than one year, the percentage of payment to be transferred shall be calculated according to the number of months contributions were made.

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人社部办公厅关于实施中芬社会保障协定的通知

人社部于2017年1月17日下发《关于实施中芬社会保障协定的通知》(下称《通知》),明确《中华人民共和国政府和芬兰共和国政府社会保障协定》(下称《协定》)于2月1日正式生效执行。根据《通知》,《协定》涵盖互免险种范围、中方适用免除在芬缴纳相关社会保险费的人员、芬方适用免除在华缴纳相关社会保险费的人员、免除缴纳社会保险费的期限等内容。其中,互免险种范围为:中国为职工基本养老保险和失业保险;芬兰为与收入相关的年金计划下的老年、残疾和遗属年金及失业保险。涉及人员为:1.派遣人员;2.自雇人员;3.在航海船舶上的雇员;4.在航空器上受雇的飞行人员;5.外交、领事机构人员和公务员;6.例外。期限为:派遣和自雇人员首次申请免缴期限最长为5年。《通知》还对依《协定》免缴相关社保费的管理办法作出规定。

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Circular of the General Office of the Ministry of Human Resources and Social Security on Implementing the Agreement on Social Security between China And Finland

The Ministry of Human Resources and Social Security ("MOHRSS") has issued the Circular on Implementing the Agreement on Social Security between China and Finland (the "Circular"), clearly states that the Agreement on Social Security between the Government of the People's Republic of China and the Government of the Republic of Finland (the "Agreement") entered into force as of February 1, 2017. According to the Circular, the Agreement includes the scope of reciprocally exempted insurances, Chinese individuals eligible to relevant exempted social insurance contributions in Finland, Finland individuals eligible to relevant exempted social insurance contributions in China, the duration for the exemption of social insurance contributions, and other contents. In particular, the scope of reciprocally exempted insurances includes the basic endowment insurance and unemployment insurance for employees in China; and the annuity and unemployment insurance for the aged, the disabled and members of the deceased employees under the annuity plan relating to incomes in Finland, involving such personnel as follows: 1. dispatched personnel; 2. self-employed individuals; 3. employees working on sea-going vessels; 4. flight crew employed on board aircraft; 5. diplomatic personnel, consular officers and civil servants; and 6. exceptions. The duration, for the dispatched personnel and self-employed individuals who apply for an exemption for the first time, may last up to five years. In addition, the Circular also provides for administrative measures for exemption of relevant social insurance contributions permitted under the Agreement.

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人社部、财政部关于阶段性降低失业保险费率有关问题的通知

人社部和财政部于2017年2月16日发布《关于阶段性降低失业保险费率有关问题的通知》(下称《通知》)。《通知》规定:一、从2017年1月1日起,失业保险总费率为1.5%的省(区、市),可将总费率降至1%,降低费率的期限执行至2018年4月30日。在省(区、市)行政区域内,单位及个人的费率应统一,个人费率不得超过单位费率。具体方案由各省(区、市)研究确定。二、失业保险总费率已降至1%的省份仍按《人力资源社会保障部、财政部关于阶段性降低社会保险费率的通知》执行。三、各地要充分考虑失业保险待遇按时足额发放、提高待遇标准、促进失业人员再就业、落实失业保险稳岗补贴政策等因素对基金支付能力的影响,制定具体方案,经省级政府批准后执行,并报人社部和财政部备案。

更多...

Circular of the Ministry of Human Resources and Social Security and the Ministry of Finance on Issues concerning Reduction of Unemployment Insurance Premium Rate in phases

The Ministry of Human Resources and Social Security and the Ministry of Finance issued the Circular on Issues concerning Reduction of Unemployment Insurance Premium Rate in phases (the "Circular") on February 16 2017. The Circular contains the following provisions. Firstly, provinces (autonomous regions or municipalities) where the overall unemployment insurance premium rate is 1.5%, are allowed to reduce such overall premium rate to 1% from January 1, 2017, and the premium rate reduction shall be in force until April 30, 2018. The respective premium rate applicable to entities and individuals shall be harmonized across the relevant province (autonomous region or municipality), and the rate at which

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the premium is paid by individuals shall not be higher than that paid by entities. Specific plans shall be researched and determined respectively by each province (autonomous region or municipality). Secondly, provinces where the overall unemployment insurance premium rate which has already been lowered to 1% shall still be subject to the Circular of the Ministry of Human Resources and Social Security and the Ministry of Finance on Periodically Reducing Social Insurance Payment Rates. Thirdly, all places are required to take into full account the impacts on the payment capacity of the fund exerted by certain factors, such as the payment of unemployment insurance benefits in full and on time, raised benefits of unemployment insurance, promotion of reemployment for the unemployed, implementation of the policy on the employment stabilizing subsidy from the unemployment insurance fund, and making specific plans which shall not be in force until approved by the provincial government. These are required to be submitted to the Ministry of Human Resources and Social Security and the Ministry of Finance for record.

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劳动人事争议仲裁办案规则

2017年5月8日,人力资源和社会保障部(“人社部”)发布了《劳动人事争议仲裁办案规则》(“《规则》”),《规则》自2017年7月1日起施行。2009年1月1日人社部公布的《劳动人事争议仲裁办案规则》(人社部令第2号)同时废止。

《规则》共5章81条,对仲裁程序的申请和受理、开庭和裁决、简易处理、集体劳动人事争议处理以及调解程序等做出了规范。

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Rules for Handling Arbitration Cases Involving Labor and Personnel Disputes

On 8 May 2017, the Ministry of Human Resources and Social Security (“MOHRSS”) issued the Rules for Handling Arbitration Cases Involving Labor and Personnel Disputes (the “Rules”). The Rules shall enter into force as of July 1, 2017. The previous Rules for Handling Arbitration Cases Involving Labor and Personnel Disputes (Order of the MOHRSS No.2) released by the MOHRSS on January 1, 2009 shall be repealed at the same time.

The Rules, comprised of five chapters with a total of 81 articles, provide for applications for arbitral proceedings and acceptance thereof, hearing and rendering arbitration awards, summary adjudication, and procedures for handling cases involving collective labor disputes, and mediation procedures.

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最高人民法院、人社部关于加强劳动人事争议仲裁与诉讼衔接机制建设的意见

最高人民法院、人社部于2017年11月8日共同出台《关于加强劳动人事争议仲裁与诉讼衔接机制建设的意见》(下称“《意见》”)要求逐步统一裁审受理范围和法律适用标准,特别要逐步统一社会保险争议、人事争议等争议的受案范围;同时,要规范劳动人事争议案件受理、保全、执行等程序衔接。《意见》明确,仲裁委员会对在仲裁阶段可能因用人单位转移、藏匿财产等行为致使裁决难以执行的,应告知劳动者通过仲裁机构向人民法院申请保全。《意见》还要求建立健全案卷借阅制度,做好案卷借阅管理工作;人民法院要加强对仲裁委员会裁决书、调解书的执行工作,加大对涉及劳动报酬、工伤保险待遇争议特别是集体劳动人事争议等案件的执行力度。

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Opinions of the Ministry of Human Resources and Social Security and the Supreme People’s Court on Strengthening the Setting up of a Mechanism for Connecting the Arbitration and Litigations of Labor and Personnel Disputes

On November 8 2017, the Ministry of Human Resources and Social Security and the Supreme People’s Court issued Opinions on Strengthening the Setting up of a Mechanism

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for Connecting the Arbitration and Litigations of Labor and Personnel Disputes (the “Opinions”). The Opinions call for gradually unifying the acceptance scope and standards on the governing law for arbitration and lawsuits, particularly, the acceptance scope for cases involving disputes over the social insurance and personnel affairs. Meanwhile, the Opinions set out the need to standardize the connection between the acceptance, property preservation, and execution in respect of cases involving labor and personnel disputes. Moreover, the Opinions clearly specify that, in case that the difficulty in executing an arbitration award is likely to arise as a result of the employer’s efforts in transferring and hiding its property when the arbitration is under way, the arbitration committee shall notify the laborer of the opportunity of applying through the arbitral authority to the people’s court for preserving the employer’s property. Furthermore, the Opinions call for establishing and improving the system for access to case files and conducting effective administration of accessing case files for inspection; the people’s courts are required to strengthen the execution of arbitration awards issued by arbitral authorities and mediation agreements, and to step up their efforts to execute decisions of cases involving disputes over labor remuneration and benefits under the work-related injury insurance, particularly collective disputes over labor and personnel affairs.

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人社部《失业保险条例（修订草案征求意见稿）》

人社部于2017年11月10日发出《失业保险条例（修订草案征求意见稿）》（下称《征求意见稿》），现向社会公开征求意见，意见反馈截止于12月10日。《征求意见稿》共6章34条，相比于现行条例，主要有八方面修改。具体为：一是健全了制度功能；二是扩大了适用范围；三是降低了缴费费率；四是拓宽了基金支出范围；五是提高了失业保障水平；六是扩大了受益对象；七是统一了农民工和城镇职工的参保办法；八是完善了监督管理体系。其中，根据《征求意见稿》，参保范围由“城镇企业、事业单位及其职工”扩大到“企业、事业单位、社会团体、民办非企业单位、基金会、律师事务所、会计师事务所等组织及其职工”；同时，将3%的固定费率修改为不超过2%。

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Regulations on Unemployment Insurance (Revised Draft for Comment)

On November 10 2017, the Ministry of Human Resources and Social Security issued the Regulations on Unemployment Insurance (Revised Draft for Comment) (the “Draft for Comment”) for public consultation by December 10, 2017. Encompassing 34 articles in six chapters, the Draft for Comment introduces amendments in eight respects, compared with the existing Regulations. To be specific, the Draft for Comment improves functions of the unemployment insurance regime, widens the scope of application, reduces the rate of unemployment insurance contributions, enables the fund to be paid for a larger scope of affairs, raises the level of unemployment protection, brings more beneficiaries under the unemployment insurance, unifies methods for migrant workers and urban employees to participate in such insurance, and betters the supervisory and administrative system. In particular, the entities and individuals eligible for the unemployment insurance will cover “enterprises, public institutions, social groups, private unincorporated entities, foundations, law firms, accounting firms, and other types of organizations as well as employees thereof”, broader than the previous scope that only covers “urban enterprises and public institutions as well as employees thereof”, according to the Draft for Comment; meanwhile, the 3 percent fixed rate is adjusted to be a floating rate of up to 2 percent.

撰稿 CONTRIBUTED BY:

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