

CHINA LEGAL REPORT*

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Subject [**Making Things More Uncomplicated: The New Social Security Agreement between China and Switzerland**](#)

I **Why this matters**

II **Whom it concerns**

III **Be alert and be quick – or have a lawyer**

Making Things More Uncomplicated: The New Social Security Agreement between China and Switzerland

When it comes to international social security matters, many entrepreneurs and HR departments throw their hands up in horror of the bureaucracy they are going to face when dealing with these issues. While we won't go so far as to argue that anything in the sphere of social security matters is becoming less complicated with an additional set of rules, here is one that, at least, makes things more uncomplicated and less costly: the new bilateral Social Security Agreement between the People's Republic of China and the Swiss Confederation ("SSA" or "Agreement"), which came into force on June 19, 2017. This new Agreement was signed on the occasion of Federal Councilor Alain Berset's visit to Beijing in September 2016.

I. Why this matters

Nowadays, 600 Swiss companies employ 200'000 persons in China. 1'900 Swiss citizens call China their home while 12'500 Chinese citizens settled in the heart of Europe. The increasing economic exchange between the two countries sometimes leads to a company needing to post one or several of their employees to the respective other country for a certain period of time. For instance, if a Swiss company posts a worker to its Chinese subsidiary for a short duration or if a Chinese company posts one of its employees to Switzerland, these so called posted workers (and the employers too) have to pay social security contributions (including unemployment insurance) in the country where the worker is posted as well as in the country where she or he initially worked and resided. The general rule of social security contributions says that a person is subject to the social insurance legislation of the country where he or she performs work while often - by law, by choice or due to both - remaining also subject to the social security system of the country he or she initially worked in as well. This – quite obviously – leads to a double payment of social security contributions, whose amounts may turn out to be quite high: in the case of a Swiss worker being posted to China, this could mean that besides the contribution that the worker as well as the employer have to pay to the Swiss social security system, the worker will also pay Chinese contributions, which, in some provinces, can amount to 50 percent of the gross salary. While the Chinese legislation does provide for a reimbursement of the paid-in amount upon leaving the host country, the administrative effort and time invested to claim this amount are considerable and the reimbursement is only partial.

¹ Message of the Swiss Federal Council relating to the Agreement between the Swiss Confederation and the People's Republic of China on Social Security, p.3

This “double social security contributions” issue is now addressed in the new SSA, making it possible for some specific Swiss and Chinese workers to remain exclusively under the social security legislation of their country of origin. Thereby, this Agreement will potentially avoid double coverage of social security contributions for temporary assignments in the other country, under the condition that the concerned person acts accordingly.

II. Whom it concerns

Not any Swiss or Chinese person deciding to spend the rest of his or her life in the host country will be spared there from paying social security contributions. Only a particular group of persons falls within the scope of the SSA, the so called *posted workers* (cf. Article 4 of SSA). A *posted worker* in the sense of the Agreement is an employee that meets the following conditions:

- Being employed by a company seated in China or Switzerland;
- Being posted by its company and in the context of the current employment to the respective other country to work there for the same company.

The benefit of being qualified as a *posted worker*, however, does not last forever, but for a limited duration of six years – which is, compared to similar social security totalization agreements between Switzerland and other countries, still a lot. After the duration of six years (or in the words of art. 4 of the Agreement after *72 calendar months*), the authorities of both countries, may mutually agree to further qualify the person as a *posted worker* (e.g. if the end of the worker’s posting is in sight).

The benefit of the Agreement does not encompass all existing social security contributions. The Swiss citizen working in China will be exempted from social contributions for pension payments and unemployment insurance, under the condition that he or she submits a Certificate of Coverage (CoC) (see below: *be alert and be quick – or have a lawyer*). However, he or she will still have to pay medical insurance, maternity and work related injury insurances. The Chinese citizen working in Switzerland will be exempted from social contributions for the old-age, survivors and invalidity insurances (including unemployment insurance), under the condition that he or she submits a CoC. However, he or she will still have to pay occupational pension fund, accident and health insurances.

A *posted worker’s* spouse and children also remain subject to the same social security legislation of the *posted worker* as long as they are not employed in the country they moved to (cf. article 8 of SSA). But, of course, if the spouse is also working in the “new” country, she or he may also apply for CoC.

Besides solutions for the posted workers, the Agreement provides solutions for sailors and airline employees: Seamen will be subject to the legislation of their country of residence even if the ship they work on flies the respective other country's flag. Airline employees are subject to the legislation of the country where the branch that hired them is located, even if the airline's headquarters are in the respective other country.

Employees of diplomatic and consular representations do not fall within the scope of this Agreement; they are subject to the Vienna Convention of Diplomatic Relations of 1961.

In certain fields (e.g. law firms), the necessary application to the Social insurance system in China requests an approval from the Ministry of Justice, which can take over a year. Hence, during such time a work permit cannot be obtained and without work permit, an employee is not covered by the Chinese social insurance.

Finally, where a person is not entitled to remain in his or her home social security whilst working in the host country, he or she can claim for a contribution refund when leaving the host country (*article 10 of the SSA*).

III. Be alert and be quick – or have a lawyer

If a person qualifies to remain subject of the social security legislation of the country where he or she was initially working and if this person wishes to keep it this way, he or she must request a respective confirmation (so called Certificate of Coverage) from the social security provider of their initial country of residence, i.e. from the *AHV/IV Ausgleichskasse* or *AVS/AI Caisse de compensation* in Switzerland or from the *Social Security Administration of the Ministry for Labor and Social Security* in China. This confirmation must be requested before the posting takes place. Persons that are already working in the respective other country at the time the Agreement entered into force must present this confirmation to the competent authority until September 19, 2017.

To keep things even more uncomplicated for you, maybe you want to ask your lawyer to apply for the CoC.

We may be reached under the following addresses:

Zurich

Wenfei Attorneys-at-Law Ltd.
Mainaustrasse 19
CH-8008 Zurich, Switzerland
T +41 43 210 8686
F +41 43 210 8688

苏黎世

瑞士文斐律师事务所
Mainaustrasse 19 号
CH-8008 瑞士文斐律师事务所
电话: +41 43 210 86 86
传真: +41 43 210 86 88

Beijing

Wenfei Attorneys-at-Law Ltd.
Room A1506, Nanxincang Business Plaza,
A No.22 Dongsishitiao,
Dongcheng District,
Beijing 100007 P.R.C.
T +86 10 5169 0263
F +86 10 5169 0965

北京

瑞士文斐律师事务所北京代表处
北京市东城区东四十条甲 22 号
南新仓商务大厦 A 座 1506 室
邮编 100007
电话: +86 10 5169 0263
传真: +86 10 5169 0965

Shanghai Cooperation

Wenfei Business Consulting
Office 18D, Shanghai Industrial
Investment Building,
No.18, Cao Xi Bei Road,
Shanghai 200030 P.R.C.
T +86 21 6427 6258
F +86 21 6427 6259

上海合作单位

文斐商务咨询
中国上海市徐汇区漕溪北路 18 号
上海实业大厦 18D
邮编 200030
电话: +86 21 6427 6258
传真: +86 21 6427 6259

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