

Report on Social Insurance Legislation in Germany and Sweden

A Chinese Delegation composed of 13 people and headed by Mr. Yu Mingqin, Deputy Director of the Department of Legislation of the Ministry of Human Resources and Social Security (MOHRSS) visited Germany and Sweden from May 4 to May 15, 2009 on a mission of learning social insurance legislation in the two countries. The following is the result of the mission:

1. Activities participated in Germany and Sweden

The delegation is composed of 13 people from the Department of Legislation, Department of Social Insurance Fund Supervision, Social Insurance Administration center of MOHRSS, Legislation Committee of the National People's Congress, Legislation Office of the State Council, and Labour and social security bureaus of Beijing municipality, Jiangsu, Hubei, Guangxi and Guizhou Provinces. This study tour was arranged by international experts in the Sino-Europe Social Security Project, during which activities were conducted in the fields of legislation, judicial and administrative supervision on social security in the two countries. In Germany, the Delegation visited Labour and Social Affairs of Germany, Germany-China Group of Congressman in the German Federal Congress, German Federal Congress, Albert Fund, Berlin Social Court, German Employers' Association Confederation, German Federation of Trade Union, Social Insurance Office in Potsdam etc. The German Ministry of Labour and Social Affairs attached importance to this visit during which two Vice Ministers and a State Secretary received the Delegation and participated in discussions. The Delegation was also invited to attend a working dinner with more than ten German Congressmen present and to have discussions convened by Albert Foundation with more than ten German prestigious experts in the social insurance field. The former Minister of Labour and Social Affairs, Mr. Riester, now a Congressman attended discussions three times with the Chinese Delegation. In Sweden, the Delegation visited such agencies as Swedish Health and Social Affairs Ministry, Swedish Parliament, Labour Market Social Insurance Company, State Social Insurance Bureau, Headquarter of Swedish Blue Color Workers' Organisation, Administrative Court of Stockholm, Swedish Enterprise Confederation, State Audit Office. The main activities of the delegation was to have discussions with government officials, congressman, judges, people in charge of employers and workers organisations, as well as experts in the field of social insurance legislation. The Delegation also visited local social insurance agencies and hearing cases on pension schemes conducted by local social courts. The delegation not only participated in activities during day time, but having discussions in the evenings as the agenda of the visit was very tight.

2. Reflections and experiences learnt from the study tour

(1) Scientific and democratic features be reflected in legislation

There are common features in legislation in Germany and Sweden, such as they drafted and revised laws based on making sufficient investigation and soliciting opinions from the public, and these drafted and revised laws go through repeated discussions by various kinds of groups of interests so that the whole process of legislation is open and transparent. Any groups of interests and congressman can have an influence on legislation through written opinions, hearing meetings, discussions and queries as well as media. In addition, provisions in laws and regulations are specific and clear which is easy to be implemented and operated after being issued. Based on the above experiences in Germany and Sweden, the process of legislation in China should be more scientific and democratic, which are reflected in the following: firstly, legislation should be more forward-looking, and fully consider such factors as population growth in the future, changes in age structure, industrial development process, people's increasing demands, socio-economic development planning etc. There should be strategic considerations and long-term system arrangements so as to avoid too often revising laws and regulations due to socio-economic situation changes after these laws and regulations issued to the public, or to avoid such kind of phenomenon happening as these laws and regulations difficult to be implemented, which would make laws having no effectiveness. Secondly, provisions of laws should be easy to be implemented and operated and combine people's rights and obligation with reality, making these rights and obligation fulfilled. At the same time, the capability of law implementing agencies and their technical support levels should be sufficient enough in law enforcement so as to avoid provisions of laws being put in place but not implemented effectively. Thirdly, suggestions and opinions should be solicited from the public and representatives from relevant departments and stakeholders be invited to participate in the discussion during the process of drafting laws or regulations. Law provisions should also consider interests of all kinds of groups, especially for keys issues, they should be repeatedly discussed by people from different parties so that a better solution can be found and shorten the time duration in reviewing by legislatures.

(2) Objectives and aims be further clarified in terms of social insurance legislation

Although social insurance legislation requires that enterprises afford a large portion of the social insurance contribution, and the State and the individuals afford a certain portion of the contribution, the aim of the legislation is to safeguard basic rights and interests of workers, to release their economic burdens in the future and promote social justice and a harmonious society. Looking back at the evolution of social insurance system in Germany, Sweden and other countries in the world, establishing a social insurance system is not passively a response to the development of industrialization and urbanization, not to ease the contradiction between Labour and

management, but actively dissolve worries of workers which may arise in the future so as to promote social justice and increase workers' benefits. Therefore, Social Insurance Act in a country is essentially a law on workers' rights and interests. Provisions in Social Insurance Act of China should reflect the goal of establishing the social insurance system, which is to ease the burden of workers in their future life, promote their interests and increase their benefits, create an equitable and competitive environment, and maintain a harmonious society and stable development. Only when the obligations between the State, an employing unit and individual workers are specifically and clearly defined and divided, as well as measures on enforcement of laws specified and implemented, can a social insurance system be established within which all workers can enjoy benefits.

(3) Rights and obligations of parties involved in social insurance be clearly defined through legislation.

According to relevant provisions in the Constitution in China, Germany and Sweden, establishing a social insurance system by a State is to fully realize the rights of citizens in terms of their living, health and development. For citizens, social insurance system is not a favor given by a State, instead, it is their legitimate right in security which a citizen should enjoy, and it means that the State realizes citizens' basic rights by fulfilling its inescapable obligations. Therefore, citizens should have access to social insurance which can not be deprived. The basic obligation of a State is to establish a social insurance system and put it in place. However, this does not mean that the State should afford all duties and fulfill all obligations in the system. Germany has for long emphasized that employers and employees should share their part of obligation. Sweden has also reformed their system from a system by a State affording main responsibility shifting to a system by individuals affording their part of responsibilities. As a developing country with a large number of population and low level productivity, it is not realistic for China, the State to afford all the obligations in social security. Parties involved in social security system is multiple, and every citizen and individual who is capable to work, employing units and employers should afford a part of duties and fulfill a part obligations for the realization of citizens' basic rights. The State should specifically define rights and obligations of all parties concerned in social insurance through legislation, and feasibly secure obligations fulfilled and rights enjoyed by all parties by means of law enforcement.

(4) Social insurance legislation should emphasize social equity

Legislation should be based on the promotion and implementation of social equity on welfare, interest, and rights of workers. Despite the regional difference and difference between rural and urban areas, it should be considered to narrow the inequity in legislation. The Swedish social insurance is widely representative. All Swedish citizens and foreign citizens in Sweden are entitled to the social insurance. When they

reach 16 years old, they could register to the social insurance system in local organisations. The Swedish social security system is typical in welfare States. To sum up, it could be characterized by wide range of coverage, comprehensive content and high insurance level. Social equity comes first, efficiency is considered, and welfare level is taken as ground. In the legislation of social insurance system in our country, the social insurance is not necessarily required to be high level in the initial stage, but it must cover widely. In view of Germany experience, we should have a uniform national law and regulation, which could be implemented with the approval of National People's Congress. Enterprises, public institutions and individuals have obligations to contribute social insurance fees (taxes) and rights to enjoy social security. The ratio to contribute social security fees and welfare level between enterprises, public institutions and individuals should develop in a balanced way. Notably, legislation should comply with the basic principle of "equal Labour, equal pay; equal rights, equal system". The difference of identity among workers should be eliminated, e.g. workers in the same organisation or under the same employer should enjoy equal rights and interests of social insurance. But the difference of profession among workers should be considered, e.g. in Germany, the pension and insurance system for civil servants, high income earners, and peasants are difference from that of enterprise employees. To establish a uniform social insurance system in our country, the coverage should be wide, but social insurance level and welfare can vary from different professions.

(5) Establishing multi-level social insurance system should be actively promoted

The social insurance system in Germany and Sweden is sound with various additional insurances and subsidies as well as the compulsory basis insurance (e.g. pension). Particularly, some privilege of taxation is granted for additional insurances such as additional pension (enterprise or professional annuity) or additional medical insurance. In this way, the social insurance achieves a really comprehensive coverage. To establish social insurance system in our country, we should consider our national conditions and establish a sound multi-level social insurance system. Transversely, laws, regulations (including local regulations) and rules should be consistent. Horizontally, the coercive regulations, initiative regulations and additional regulations in social insurance system should support each other. Currently, we have plenty of regulations on basic insurance in our country, but few on additional regulations. Particularly for the core issue of fund raising for additional insurance, we have failed to make a uniform regulation due to the lack of agreement, which has affected the establishment of multi-level social insurance system. In the draft social insurance act, the guideline of "wide coverage, basic insurance being guaranteed, multiple level, sustainability" has been proposed, but concrete regulations on additional insurance have not been made. Considering the sustainable development of social insurance, we should have a stable system for basic insurance. Various additional insurance system should develop with the times and keep flexible. It should be considered in the legislation.

(6) Further clarification of social insurance management system during the legislation

The function of different departments is very clear in Germany and Sweden regarding social insurance management system, i.e., the administrative department is in charge of macro-instruction and the institutes dealing with social insurance practice is responsible for detailed practice of social insurance procedure, the social insurance fund supervision agencies deals with fund supervision independently, the social court is in charge of legal supervision of social insurance. It can be found that practical agencies and fund supervision agencies are very key in the process of social insurance management. The social insurance practice agencies are substantial implementation agencies of all kinds of social insurance. The social insurance fund supervision agencies are the important agencies that ensure safe running of fund and sound operation of social insurance system. Both of the above two agencies shoulders the direct responsibility of guaranteeing healthy development of social insurance system and realizing the social insurance rights and benefits of the Labour. The social insurance practice agencies belong to the administrative departments in Germany and Sweden but they are independent, whose organisation, staff number and management budget can be reasonable solved through the budget management means, i.e., to draw management fee from the social insurance fund, which actually guarantees the smooth implementation of social insurance practical work. However, the management fee in China is set fixed according to the staff number and burdened by local finance, which greatly restricted the efficient implementation of social insurance practice. Therefore, the social insurance practice agencies should be standardized during the social insurance legislation through setting the function and legal responsibility of social insurance practical agencies and the ways of accepting supervision from the supervision agencies and society. Meanwhile, the function of supervision agencies should also be clarified including internal supervision, systematic supervision and the supervision outside the social insurance departments. Thus a unified social insurance management system is built up through legislation to guarantee the efficient implementation of social insurance practice and safe running of social insurance fund.

(7) Strengthen judicature supervision of social insurance practice management and service through legislation

There are specific social courts or administrative courts in Germany and Sweden which are in charge of judicature supervision of social insurance practical agencies, dealing with all kinds of social insurance disputes to guarantee the social insurance rights and benefits of the Labour. In Germany and Sweden, social insurance disputes are mostly solved through the courts based on the legal articles because of the comprehensive legislation on social insurance, stronger awareness of credibility by enterprises and higher quality of the citizens. However, most of the private enterprises

in China are at the preliminary stage of development and have weak awareness of credibility and legality. Meanwhile, some workers, especially migrant peasant workers, themselves also lack of the awareness of legality and have difficulty to protect their rights through legal way. Thus, when disputes among the contributors, social insurance practice agencies and administrative agencies happen, most of the cases have to be solved through administrative means. Therefore, the supervision power and authority should be strengthened during the legislation which can ensure the direction role of the government on one side. On the other side, the Labour should be guided to protect their rights through the courts to lessen the administrative intervention and improve the social insurance disputes settlement. Only then, our social insurance system can be operated soundly.

(8) To push the construction of modern social insurance information system actively

Social insurance practice is related with lots of agencies and supplies service to all the citizens which makes it quite complicated including dealing with kinds of social insurance, benefits identification and accounting, fund budget management etc. In Germany and Sweden, the information is connected all over the country through modern information system which realizes efficient management and good service. Each person who joins the social insurance system has one fixed social insurance number so that his information can be checked any time and he can get social insurance benefits accordingly. However, China has different situation, which has huge population, different provinces or cities have their own social insurance practice system, the benefits level are also different from each other, the Labour change his position and status frequently because of the restricts by the system, kinds of issues happened during the reform. Therefore, it is urgent to build up the modern information system during the construction of the unified social insurance system. The social insurance practice agencies, financial and tax agencies, the banks and internal social insurance service system at different level should be connected through internet so that the basic information and their change status can be known at any time when required and can be shared among agencies to ensure the effective running of the whole social insurance system in the country.