



Social Security Reform Co-operation Project
中国 - 欧盟社会保障合作项目

An Approach on Social insurance Anti-fraud Law in China

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Abstract

The legislation on social insurance anti-fraud is becoming more and more necessary and urgent. This paper uses anti-fraud legislation and execution experiences from other countries as a reference for China. The legal principles of civil law, contract law, tax law and criminal law provide the guidelines and principles for the social insurance anti-fraud legislation; the relevant legal definitions of social insurance fraud will be the pivotal issue. Some local level governments have promulgated social insurance anti-fraud regulation; almost all encourage the public disclosure of information the so-called “whistle-blowing” reward system. In the national level legislative framework, we should define the liability of social insurance fraud, enacting by regulation at the current time, and in the future we should upgrade the regulation to law.

Keywords: Social Insurance, Anti-fraud Law, Legislation

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Chapter 1. Necessity and urgency of legislation on social insurance anti-fraud

With the continuing expansion of social security, the business of collection, operation, management, and payment of social insurance funds is becoming more complicated, with ever increasing funds involved. Because the working procedure of social insurance funds is complex, the risk points increase naturally as a consequence. Some entities and individuals practice fraud by taking advantage of weaknesses in social insurance business procedures, leading to loss in social insurance funds. To some degree, this kind of behaviour will bring a negative impact to the social insurance system unless authorities react effectively. According to our survey on social insurance funds legislation in 15 provinces, social insurance fraud exists in all schemes, and in every step from collection to payment. Take collection for example, the employers reduce the assessable payroll calculation and contribution base, delay registration, and falsify employees' ID deliberately to escape contribution. False claims also exist in payment. For instance, benefits are still claimed after death of the beneficiaries (typically by their family members or relatives). What's more, false claims and collusions are even more widely observed in medical insurance.

In order to prevent fraud in social security, especially in contribution collection and payment, the State Council, and the then Ministry of Labour and Social Security issued a number of documents including *Interim Regulations on Collection and Payment of Social Insurance Premiums*, *Social Security Contribution Collecting Inspection and Audit Rules*, *Social Security Audit Rules* and some other administrative rules and department regulations, for the proposes of reinforcing social insurance funds audit. But when conducting audit work in reality, obstacles in social insurance anti-fraud exist as follows:

Firstly, the lack of primary law and regulations limit execution of anti-fraud activities. Even though some relevant social insurance regulations have been published in the last decade, they are still far from providing a complete social insurance legal framework. Thus fixing emerging problems like false claims by law is difficult. Furthermore, articles of anti-fraud borrowed from Criminal Law and Contract Law can't match the exact situations in social insurance.

Secondly, regulations of different social insurance are not uniform. Anti-fraud is important for social insurance regulation, however, so far social insurance regulation system still hasn't emerged due to the fragmented arrangements for collection of different social insurance schemes. Generally speaking, anti-

fraud measures in social insurance contribution collection and payment are operated by social insurance agencies. However what usually happens in reality is that most, external fraud is carried with the support of employees of agencies. Anti-fraud should be executed by specific social insurance funds regulation bureau, so that management and supervision are separated from each other.

The third fact is weaknesses in the internal control system, which decreases the ability of preventing social insurance fraud. The Internal control system is a kind of self discipline for social insurance agencies. Obviously, a well-functioning internal control system plays an important role in social insurance regulation system, as well as being the key point of controlling various risks. Even though some advanced agencies have been enacting internal control rules, most of other agencies still ignore the importance of internal control. As a result, colluding behaviors happen frequently and make investigation more difficult.

The last one relates to limitations of budget leading to inadequate numbers of agencies workers, and inadequate separation of duties which actually encourage fraud. Because of the large number of poverty population in China, especially some fraud cases are arose by poor people, they are got much sympathy form their neighbors, government officials, even judges.

The solution to all the problems I've mentioned above relies on enacting a social insurance anti-fraud law, which is why it is necessary and urgent to conduct this research.

Chapter 2. International practice on Social Security anti-fraud legislation

Social Security fraud is a general problem all over the world including China. Borrowing from laws in UK, US and Australia can be helpful to identify potential improvements in the Chinese law system.

In the period since 1992, the UK government has invested substantial resources in identifying the nature of frauds, the type of people who carry them out and effective measures for combating fraudulent behaviour. They have supported these anti-fraud measures by defining social security fraud behaviour clearly by law. (Social Security Fraud Act 2001)² and through the passing of related legislation which has created a wider anti-fraud framework. These include the Public Interest Disclosure Act 1998 which provides support and protection to internal staff who report cases of fraud in the public interest and the Fraud Act of 2006 which provides a wider legal framework for defining

² Fraudulent behaviour in relation to social Insurance collection is dealt with through the legislation on taxation and social insurance as they is unified collection by the taxation agency

and combating fraud

Section 2 of Social Security Fraud Act 2001(c.4) is as follows:

“A person shall be guilty of an offence if—

- (a) There has been a change of circumstances affecting any entitlement of his to any benefit or other payment or advantage under any provision of the relevant social security legislation;
- (b) the change is not a change that is excluded by regulations from the changes that are required to be notified;
- (c) he knows that the change affects an entitlement of his to such a benefit or other payment or advantage; and
- (d) he dishonestly fails to give a prompt notification of that change in the prescribed manner to the prescribed person.

Meanwhile, the recipient is guilty of an offence if—

- (a) he knows that the change affects an entitlement of the claimant to a benefit or other payment or advantage under a provision of the relevant social security legislation;
- (b) the entitlement is one in respect of which he has a right to receive payments to which the claimant has, or (but for the arrangements under which they are payable to the recipient) would have, an entitlement; and
- (c) he dishonestly fails to give a prompt notification of that change in the prescribed manner to the prescribed person.

Therefore, no matter benefactors or relevant person (such as offspring of pensioner after death); have to give a prompt notification of that change (such as pensioner's death) in the prescribed manner to the prescribed person (such as local social security funds disburse agencies).

The UK government has taken other measures, some requiring secondary regulation and others changes in management and operating procedures to reduce fraud which include:

- (a) Prevention of false claims, which means tight control of issuing new social security number and ID strictly, recording potential benefit fraud claimers, cooperation with other social security departments and the sharing of information.
- (b) Improving Investigation of fraudulent claimants through funding relevant specific investigate agencies, and conducting extra investigation to high risk claimants by monitoring personal life and consecutive measures.
- (c) Making increased use of the media and the public, to improve publicity for an anti fraud culture and measures through TV, radio and

newspaper.

- (d) Improving incentives to identify and sanction fraud, including support from higher administrative rank, a policy on prosecution, data matching support from other authorities, and allowing local government to keep a proportion of money reclaimed from fraudsters.

In the US similar legislation was enacted through the False Statements Act 1986, which has been used as the foundation for anti-fraud work in medical insurance. This made it an offence to knowingly make, use, or cause to be made or used, a false record or statement to get a false claim paid or approved by the government. The sanctions provided by the Act include the imposition of damages of 3 times the value of the loss / false claim and civil fines of \$5,000 to \$10,000 per false claim.

The enforcement regime of Centrelink in Australia is also worthy of note. The number of anti-fraud enforcement officials is about 4000 nationwide, accounting for 16% of whole staff. The number of administrative supervision enforcement officials in the Medicare system is more than 4500, accounting for 83.4% of whole staff. All the officials mentioned above implement nationwide uniform standards, and enjoy sufficient information and other resources with relevant sections. The key point is that the enforcement officials use powers effectively, and therefore provide pretty powerful deterrence to social insurance fraud.

During social security contribution collection and payment procedures, Australian Centrelink conducts "data matches" checking records of registered shareholders (including all board members, and the top 20 shareholders) on their revenue, property claims, cross holdings of stock, in cooperation with the tax bureau, investment and securities commission. If these data do not match, then the authorities find out problems by doing further cross examination based on tax claims. In 2005-06, they found out 28,000 overpayment cases, by doing match work on 1,900,000 data items in 43,627 social security payments, involving AUS dollar 2.143 billion. Besides, Centrelink conducts further data mining work mainly on medical insurance payment. They find out over use of medical resource by check normal medical insurance income and payment data.

In China, social insurance anti-fraud legislation needs to be improved. Currently, the State Council, and the Ministry of Human Resources and Social Security have enacted lots of rules, and regulations on various social insurance fields, that comprise a rudimentary legal framework for the social security system. However, only few of local governments, such as Shaanxi Province, Zhuhai of Guangdong Province, Chuxiong of Yunnan Province etc., have issued local regulations on social insurance anti-fraud. There is no

national law and regulation published yet. In my opinion, it is necessary to accelerate enacting work on social insurance anti-fraud across the country, as well as borrowing international experiences.

Chapter 3. Legal principles of social insurance anti-fraud legislation in China

In Chinese legal system, anti-fraud provisions exist mainly in Civil Law, Contract Law, Law of Concerning the Administration of Tax Collection, together with, conviction and penalties in Criminal Law.

A. The Civil Law.

Section 58 in General Principles of The Civil Law confirms that following civil acts are null:

- (1) those performed by a person without capacity for civil conduct;
- (2) those that according to law may not be independently performed by a person with limited capacity for civil conduct;
- (3) those performed by a person against his true intentions as a result of cheating, coercion or exploitation of his unfavorable position by the other party;
- (4) those that performed through malicious collusion are detrimental to the interest of the state, a collective or a third party;
- (5) those that violate the law or the public interest;
- (6) economic contracts that violate the state's mandatory plans; and
- (7) those that performed under the guise of legitimate acts conceal illegitimate purposes.

Civil acts that are null and void shall not be legally binding from the very beginning. The key point of this section is "civil acts made by fraudulent ways are null and void", the provision can be applied to Social insurance fraud.

B. The Contract Law.

A contract means that the intention expressed of all participants is genuine. If one party's intention is fault, it will be blocked the contract's effectiveness. Section 52 of contract law confirms contracts falling in the following situations are void:

Article 52: A contract shall be null and void under any of the following circumstances:

- (1) A contract is concluded through the use of fraud or coercion by one party to damage the interests of the State;

(2) Malicious collusion is conducted to damage the interests of the State, a collective or a third party;

(3) An illegitimate purpose is concealed under the guise of legitimate acts;

(4) Damaging the public interests;

(5) Violating the compulsory provisions of the laws and administrative regulations.

Provision in subsection 2 in section 54 of the Contract Law: If a contract is concluded by one party against the other party's true intentions through the use of fraud, coercion or exploitation of the other party's unfavorable position, the injured party shall have the right to request the people's court or an arbitration institution to modify or revoke it.

The provision of section 26(1) of Law of The People's Republic of China on Employment Contracts: states that an employment contract shall be invalid or partially invalid if: (1) A party uses such means as deception or coercion, or takes advantage of the other party's difficulties, to cause the other party to conclude an employment contract, or to make an amendment thereto, that is contrary to that party's true intent.

Third section 49 in Law of the People's Republic of China on Protecting Consumers' Rights and Interests: states that business operators found to have committed fraud in providing goods or services shall, as demanded, compensate the consumer with a sum doubling what the consumers have paid for such commodities or services.

C. The Taxation Law

Although taxation law borrowed a large number of concept, rules and principles from the civil law, it belongs to the public law system. It concerns the relationship between taxpayer and the government, so if the taxpayer is in fraud of the government, he ought to be punished. In the *Law of the People's Republic of China Concerning the Administration of Tax Collection*, fraud means evasion of tax.

Article 63: "Evasion of tax" means that a taxpayer forges, revises, conceals or destroys without authorization the accounting books or supporting vouchers for the accounts, or overstates expenses or does not state or understates income in accounting books, or refuses to file tax returns after having been notified by the tax authority to do so or files fraudulent tax returns, does not pay or underpays the taxes payable. For a taxpayer who evades taxes, the tax authority shall pursue the payment of the taxes unpaid or underpaid, the late fee, and impose a fine with the amount from 50% to five times of the

taxes unpaid or underpaid. If such acts constitute an offence, criminal liabilities shall be investigated in accordance with the law.

Where a withholding agent fails to pay or underpays the taxes which have been withheld or collected by the means specified in the preceding paragraph, the tax authority shall pursue the payment of the taxes unpaid or underpaid and the late fee, and impose a fine with the amount from 50% to five times of the taxes unpaid or underpaid; if such acts constitute an offence, criminal liabilities shall be investigated in accordance with the law.

Article 64: Where a taxpayer or a withholding agent submits a fraudulent tax return, he shall be ordered by the tax authority to correct his acts and be imposed on a fine of 50,000 Yuan or less. Where a taxpayer does not file tax returns, or does not pay or underpays the taxes payable, the tax authority shall pursue the payment of the taxes unpaid or underpaid and the late fee, and impose a fine with the amount from 50% to five times of the taxes unpaid or underpaid.

From the anti fraud perspective the civil law and tax law system in China would appear to be consistent. According to civil law principles, when the same concept used in different laws, interpretation of the concept shall be consistent. Considering the multiple references to anti-fraud in the civil legal system, it is necessary and important to unify the concept of fraud..

However, there are inconsistent definitions of fraud and its legal effect made in the laws. For example, section 58 establishes that the legal impact of fraud to void a contract. Based on civil law principles, if there is legal concept, interpretation should follow it strictly or otherwise take legal theory and interpretation of the Supreme People's Court as reference.

According to legal theory, "fraud" means a party falsifies or distorts facts intently, or disguises truth deliberately, leads to representor make proposal by mistake. One of its components is "fraud intention"; if there is no intention, there cannot be fraud. Based on interpretations of the Supreme Court, "a party falsifies or distorts facts intently, or disguises truth deliberately, leads to representor make proposal by mistake shall be convicted of fraud," Obviously, "intention" is an indispensable component affirmed by both theory and interpretation of the Supreme Court. Passive acts, (not reporting something or staying silent) may not be fraud, except where notification is a specific duty to a person according to laws, transaction habits or honest principles, in that case, keeping silent is fraud because of hiding truth (such as siblings of pensioners keeping silent after his/her death).

D. The Criminal Law

Besides Civil Law, the definition and penalty for the offence of fraud is defined in Chinese Criminal Law. According to section 16 of the "Decision on Punishment over Crimes against the Financial Rules 1995", any person perpetrating an insurance fraud involving sums exceeding a certain monetary limit shall be convicted of insurance fraud. Section 198 of Criminal Law defines insurance fraud as:

- (1) an applicant deliberately falsifying the subject matter of the insurance;
- (2) an applicant, an insured or a beneficiary falsifying the cause of an insured accident or overstating the extent of loss;
- (3) an applicant, an insured or a beneficiary falsifying an insured accident that has not in fact occurred;
- (4) an applicant or an insured deliberately causes the occurrence of an insured accident that leads to property damage; or
- (5) an applicant or a beneficiary deliberately causes the death, disability or illness of the insured.

Even though insurance fraud here aims at commercial insurance, considering insurance theory, it is of great value to prevent social insurance fraud. Section 224 of Criminal Law defines contract fraud as:

"Whoever, during the course of signing or fulfilling a contract, commits any of the following acts to defraud money or property of the other party for the purpose of illegal possession" Section 266 of that law defines defrauding property of individual or unit as: "Whoever swindles public or private money or property, if the amount is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if the amount is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined; if the amount is especially huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined or be sentenced to confiscation of property, except as otherwise specifically provided in this Law.

The 7th Amendment to the Criminal Law was approved on February 28th, 2009, in which 'the crime of tax evasion' was revised to 'the crime of avoiding tax or paying tax less than the amount that should have been paid', with related provisions being updated. It is a good reference for future's social insurance law, which can borrow some rules and principle from the new tax law.

From the perspective of current civil law, tax law and criminal law, there is a

legal foundation of anti-fraud. "Small fraud is not fraud" is a common rule in law enforcement in a large number of countries. For example, in the United States, there are about 500 million tax evasion cases were found each year, the total fine are over billions of dollars, but only 2000 of them were imprisonment. In Sweden, the total tax evasion cases are about 600,000 each year, only 600 cases were implemented in prison. We can see the similar tendency of legislation and alteration of law in China. For example, in the 7th amendment to the criminal law, if a taxpayer is the first time to evade tax, after he has been subject to administrative punishment, he will not be held criminally responsible.

From all above, we can see that there are adequate definitions and sanctions for fraud in contract law, tax law and criminal law, which can be applied to future's social insurance law. The only question is that the definitions are not quite consistent. What we need to do now is to borrow the spirit of fraud definitions from the above laws, to structure concrete regulations to guarantee enforcement. This goal can be achieved by enacting relevant laws and department regulations, to guarantee the security of social insurance funds.

Chapter 4. Relevant legal definitions of Social insurance fraud

Therefore the legal concept of fraud is the foundation of anti-fraud legislation. It is therefore the first priority to define fraud. Take theory and interpretation of Supreme Court for reference, as well as borrowing Zhuhai and Chuxiong local regulation examples, it is suitable to define social insurance fraud as follows: *Any person or organization by deliberately falsifying the subject matter of the insurance to social insurance agencies and other relevant social insurance authorities, by deliberately concealing the real circumstances of any payment claim or contribution declaration or by supplying false information so as to, induce the other party to make decisions which they would not have made if accurate and complete information had been supplied, shall be affirmed as having committed social insurance fraud.*

Because different types of fraud are committed in different social insurance schemes, it is necessary to list components of each kind of fraud as follows:

1. At the contribution assessment and collection stage, individual and unit commit the following that shall be considered fraudulent if he / it :
 - (a) forges or alters social insurance registration card;
 - (b) falsely declares the number or status of employees, the assessable contribution wages and benefits and other files;
 - (c) forges, alters and deliberately destroy social insurance relevant account books files, or does not keep account books be kept, which

leads to impossibility of ascertaining the true social insurance contribution base.

2. In pension payment stage, individual and unit commit fraud: if he / it
 - (a) forges ID or uses somebody else's ID;
 - (b) forges or alters age, period of special work and medical record in documents for the purpose of retire before statutory time;
 - (c) forges or alters personal records for the purpose of increase contribution years;
 - (d) forges or alters employment relation, payroll and other testimonial files and other certificates for the purposes of proving enough pension contribution has been collected;
 - (e) forges or alters receipt certificate of pension benefit;
 - (f) hides the living situation or imprisonment of retirees.

3. In unemployment insurance payment stage, individual and unit commit following acts shall be convicted fraud:
 - (a) forges ID or uses somebody else's ID;
 - (b) forges or alters employment relation, payroll and other testimonial files and other certificates for the purposes of changing the period or amount of unemployment insurance contribution
 - (c) forges or alters receipt certificate of unemployment insurance benefit;
 - (d) hides the situation of being employed

4. In work injury insurance payment stage, individual and unit commit following acts shall be convicted fraud:
 - (a) forges ID or uses somebody else's ID;
 - (b) forges or alters employment relation, payroll and other testimonial files and other certificates for the purpose of proving enough work injury insurance contribution has been collected;
 - (c) forges or alters certificates for the purposes of falsely appraising nature and ranks of work injury;
 - (d) false claim of when the work injury happened;
 - (e) false claim of benefits to support siblings

5. In medical insurance payment stage, individual and unit commit following acts shall be convicted fraud:
 - (a) lend ID or social insurance card to someone else to use when he/she accepts medical care;
 - (b) use someone else's ID or social insurance card when accepting medical care;
 - (c) forges, alters medical records, prescriptions, diagnosis certificates and medical vouchers.
 - (d) forges or alters employment relation, payroll and other testimonial files

and other certificates for the purposes of changing the period or amount of contribution collected

6. In maternity insurance payment stage, individual and unit commit following acts shall be convicted fraud:

(a) forges, alters medical records, prescriptions, diagnosis certificates and medical vouchers.

(b) forges or alters employment relation, payroll and other testimonial files and other certificates for the purposes of proving enough maternity insurance contribution has been collected;

7. The following acts in designated medical institutions (such as hospitals, out—patient departments, pharmacies) shall be considered fraudulent:

(a) allowing or inducing persons other than the insured accept medical care under the name of the insured;

(b) allowing using medical insurance funds pay for charges that supposed to be paid by the insured;

(c) allowing using medical insurance funds pay for health food, cosmetics and other goods not permitted for refund under the approved medical lists;

(d) providing false disease diagnosis certificates, medical records, prescriptions and medical vouchers;

(e) providing extra medical service and medical care to the insured beyond that which is reasonably required for treating the condition subject to reimbursement

(f) lending medical insurance POS machine to non designated medical institutions to do final accounting of individual medical insurance account funds;

(g) facilitating the insured make false claim of medical insurance funds;

(h) stealing medical insurance individual account funds of the insured;

(i) forging, or altering documents of special disease and chronic disease in order to receive benefits;

(j) charging prices above list price and/or rebranding generic drugs as branded medicine.

The provisions above are relatively clearer and easier to be practiced, as well as stronger to limit Social insurance fraud. Compared to insufficient fraud provisions in Civil Law and Criminal Law they should constitute a powerful deterrence.

Chapter 5. Local examples of fraud reporting and reward system

Since social insurance schemes involve millions of families and children, it is very difficult to rely solely on agencies to find out all frauds. Therefore a public

reward and reporting system can lay an important role in this regard. Until now, there are local regulations implemented in Zhuhai and Chuxiong especially in anti-fraud.

Reporting social insurance fraud is the basic right of citizens. Section 41 of Constitution of the People's Republic of China is: Citizens of the People's Republic of China have the right to criticize and make suggestions regarding any state organ or functionary. Citizens have the right to make complaints to or charges against relevant, or exposures of; any state organ or functionary for violation of the law or dereliction of duty, but fabrication or distortion of facts for purposes of libel or false incrimination is prohibited. Obviously, citizens have the right to recommend the impeachment of authorized officers, not mention to report committed fraud. In order to guarantee enforcement of citizens' constitutional rights, concrete provisions exist in many laws. For example, section 84 of Criminal Procedure Law is about how to report criminal acts, section 85 of this law is about how the relevant authorities are responsible to protect whistleblowers, reporters and prosecutors. In addition, section 254 of Criminal Law affirms criminal penalties for persecuting reporters of such offences. All provisions above protect, promote and encourage citizens and units to report any social insurance fraud.

Among all provincial regulation of report and reward system, Shaanxi Province Interim Regulation on Social Insurance Report and Reward is an example. In this regulation the violation of social insurance funds management acts includes:

- (a) the insured unit or individual forges, hides facts so as to escape submitting contribution;
- (b) the insured unit or individual falsely claims social insurance payment and benefits;
- (c) social insurance agencies forge facts, violate relevant regulations and agreements, therefore bringing loss to social insurance funds; those agencies collude with the insured unit or individual commit fraud, and bring loss to social insurance funds;
- (d) social insurance agencies or their employees violate relevant policies and regulations, decrease contribution rates, reduce or exempt contribution, or collude with contribution units, allow they forge documents to escape contributions, and bring loss to social insurance funds;
- (e) social insurance agencies or their employees taking advantage of their positions forge, revise records, or collude with contribution units, allow they forge documents to escape contributions, and bring loss to social insurance funds;
- (f) social insurance agencies or their employees embezzle social insurance funds, abuse or misuse their power, and bring loss to social insurance funds;

This regulation also sets provisions on rewarding reporting acts. If the r is confirmed to be true, the reporter will be rewarded at the rate of 3% of involved amount. In principle, reward is no less than RMB 200 and no more than RMB 3000. Besides, the social insurance bureau and financial bureau in Ankang city of Shaanxi Province co-published a Regulation of "Report and rewarding on social insurance fraud", informing that whistleblowers are able to receive RMB 3000 at most for his/her report to six kinds of benefit offences.

Similar to the regulation in Shannxi Province, reward regulations in Zhuhai and Chuxiong practiced at the rate of 4% of the amount involved, and no more than RMB 5000, which is a little higher than that in Shaanxi.

Chapter 6. Liability of Social Insurance Fraud

Penalties are vital to secure the implementation of law. and therefore the legal framework needs to make penalties match offences..

Civil Law and Contract Law (based on section 198 of insurance fraud offences, section 224 of contract fraud offences, section 266 of fraud private and public property in Criminal Law referred to above) provide suitable exemplifications for the punishment of fraud in social insurance..

During the collection stage, if an employer evades contribution, labor insurance administrative bureau should order it to correct, as well as, depending on the extent of the evasion charge fines both to the company and its authorized officers ; if they commit criminal offences, then the case should be transferred to department of justice, handling depend on degree of acts based on relevant provisions in General Principals of Civil Law, Contract Law and Criminal Law. The 1995 Law on the Administration of Taxation had relatively weak sanctions but these have been strengthened by further regulation

The Unit or individual who obtains social insurance benefits (pension, unemployment insurance, medical insurance and maternity insurance) illegally, shall be ordered to return the amount to the social insurance agencies, and be fined at least the equivalent in the amount fraudulently claimed up to a maximum of 3 times the amount claimed by the labor insurance administrative section.

For those who refuse to neither return benefits nor pay fines, authorities are able to claim compulsory execution to court. For those committing offences and the case transferred to department of justice, handling depends on degree of the severity of the act based on relevant provisions in General Principals of Civil Law, Contract Law and Criminal Law.

Social insurance designated medical institutions and its employees for the purposes of defraud social insurance funds, shall be considered to have breached medical service agreements, and be subject to fines on the same basis as above. For severe offences, it shall suspend qualification of being designated medical institution; and for medical staff who commit severe offences, their qualification shall be suspended temporarily; for those extremely severe which satisfy the provisions of the Criminal Law, the case shall be transferred to the Department of Justice

Chapter 7. Conclusion: Enacting by regulation

Since reform and opening up 30 years ago, together with the rapid increase and innovation in the financial area, there have been more and more financial offences. To adapt the situation, Criminal Law has been amended several times, as a result, so as to curb spread of financial crime. At present, there is no specific legislation relating to social insurance fraud. In order to deter social insurance fraud offences, it is necessary to add the offence of “social insurance fraud” to Criminal Law, and clarify criterion of imposing penalties, so that to deter the spread of social insurance fraud.

For now, based on analysis of legal theory, fraud definition and reward system on social insurance fraud, together with borrowing successful local experiences of enacting social insurance anti-fraud regulation in selected cities in China, we propose accelerating speed of national uniform anti-fraud legislation. At present, the draft of *Social Insurance Law* has passed its second reading. Section 81 of this draft is as follows: whoever commits fraud of social insurance funds payment by using forged or altered certificates or any of other means, the department in charge of social insurance administration shall order he/she returns the benefits, imposes a fine at an amount equivalent to two to five times the amount of involved money; where social insurance service institution commits the fraud, the service agreement shall be canceled; and practicing requirements of the persons who are directly in charge and the other persons who are directly responsible for the crime shall be revoked. Section 82 of that draft is: whoever commits fraud of social insurance benefits by using forged or altered certificates or any of other means, the department in charge of social insurance administration shall order he/she returns the benefits, imposes a fine at an amount equivalent to two to five times the amount of involved money.

As a complementary regulation to Social Insurance Law, anti-fraud is an important part of future's *Regulation of Supervision and Management of Social Insurance Funds*. Besides relevant laws, we must draft a nationwide uniform *Social Insurance Anti-fraud Regulation* by management authorities of

social insurance which in China is Ministry of Human Resources and Social Security. It means we can enact regulation to unify nationwide anti-fraud execution. As the Social Insurance Law is expected to be approved by the National People's Congress in 2010, it will constitute the primary law and together with the Social Insurance Anti-fraud Regulation, it should represent a well designed legal system of social insurance anti-fraud in China. Every social insurance benefactor's future will be better safeguarded if the safety and integrity of social insurance funds can be ensured through powerful deterrence to the committal of social insurance fraud offences.