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Foreign Investment in Hospitals in China: a Proactive, Gradual and Open Environment

By Wayne Chen and Baker Chen

The National Health and Family Planning Commission of the People's Republic of China ("NHFPC") and the Ministry of Commerce of the People's Republic of China ("MOFCOM") jointly issued the "Circular on Carrying out the Pilot Programme for the Establishment of Wholly Foreign-owned Hospitals (Guoweiyihan [2014] No. 244", hereinafter the "Circular"), pursuant to which the authorities are set to launch a pilot programme to establish wholly foreign-owned hospitals in seven provinces (and municipalities) including Beijing. This sees China taking a major step forward in further opening up medical institutions to foreign investment and gradually forming a diversified hospital operation structure. This paper discusses and explains the policy background behind foreign investment in Chinese hospitals, previous practice, as well as key laws and regulations that assist investors in better understanding the medical services market.

Policy background

Opening of China's domestic medical institutions to foreign investment has been a long and gradual process. This process began with the Catalogue of Industries for Guiding Foreign Investment, amended in 1997, where it was stated that the setting up of wholly foreign-owned medical institutions was prohibited and that a Chinese partner shall hold the majority of shares of or have a controlling interest in a medical institution. However, in the process of negotiation regarding China's accession to the WTO, China committed to allowing foreigners and their Chinese partners to set up joint-venture hospitals or clinics in the medical sector, which saw a quota imposed as per China's needs as well as foreign partners being allowed to hold a majority of shares. On 1 July 2000, the Interim Measures for Administration of Chinese-foreign Joint-Venture and Cooperative Medical Institutions (the Measures), jointly issued by the former Ministry of Health and the Ministry of

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Foreign Trade and Economic Cooperation, further clarified that, any person applying to set up a wholly foreign-owned medical institution would not be approved however the Measures further relaxed foreign ownership restrictions. This saw the removing of the requirement to that Chinese partners either held a majority of shares or a controlling interest in the joint venture. It also provided that the Chinese partner shall hold 30% or more shares or equities in a Chinese-foreign joint-venture or cooperative medical institution, which meant that the foreign partner was allowed to hold up to 70% shares or equities in a Chinese-foreign joint-venture or cooperative medical institution. Further revisions of the Catalogue of Industries for Guiding Foreign Investment in 2002, 2004 and 2007 still maintained that China-foreign joint-venture and cooperative medical institutions were still allowed, however, wholly foreign-owned medical institutions in China were still prohibited.

Since 2010, there have been a number of breakthroughs in policies regarding the establishment of wholly foreign- owned medical institutions in China:

- On 26 November 2010, with the consent of the State Council, the National Development Reform Commission, Ministry of Health, Ministry of Finance, Ministry of Commerce and Ministry of Human Resource and Society Security jointly issued the Opinions on Further Encouraging and Guiding Social Capitals Investment in Medical Institutions, which saw foreign capital investment in medical institutions encouraged, the restrictions on foreign ownership would be gradually removed and eligible foreign investors were allowed to set up wholly foreign-owned medical institutions on a trial basis. Accordingly, the Catalogue of Industries for Guiding Foreign Investment, amended in 2011, altered foreign investment in medical institutions from the restricted to the permitted catalogue.

- On 28 September 2013, the State Council issued the Opinions of the State Council on Promoting the Development of the Health Care Industry, which required “further relaxation of the requirements for establishing Chinese-foreign joint-venture and cooperative hospitals and gradual expansion of the pilot programme for eligible foreign investors to set up wholly foreign-owned medical institutions.”

- On 30 December 2013, the NHFPC and the State Administration of Traditional Chinese Medicine jointly released the Opinions on Accelerating the Development of Social-funded Hospitals, which required “further loosening of the range of wholly foreign-owned hospitals in Mainland China, and based on the gradual opening-up and risks controllability principles, service providers from Hong Kong, Macau and Taiwan are allowed to set up wholly-owned hospitals in cities at prefecture level and above; and other eligible foreign investors are allowed to set up wholly-owned medical institutions in the China (Shanghai) Pilot Free Trade Zone (hereinafter “Shanghai FTZ”) and other designated regions. The ratio of foreign investment in Chinese-foreign joint-venture and cooperative medical institutions should be set on a reasonable basis, and provincial health and family planning authorities are responsible for the approval of wholly foreign-owned hospitals.”

In the context of the above policies, the NHFPC and the MOFCOM officially released the Circular and intended to launch a pilot programme to establish wholly foreign-owned hospitals in selected provinces and cities.

Practices of establishing wholly foreign-owned hospitals by Hong Kong, Macau and Taiwan investors and in the Shanghai FTZ

Actually, prior to the issue of the Circular, as per the closer economic partnership arrangements reached between the Mainland and Hong Kong, Macau and the Cross-Straits Economic Cooperation, a Framework Agreement was entered into between the Mainland and Taiwan, under which the former Ministry of Health and the MOFCOM issued the relevant rules and regulations, which allowed service providers from Hong Kong, Macau and Taiwan to establish wholly-owned medical institutions in the Mainland. Further, in accordance with the Framework Plan for the China (Shanghai) Pilot Free Trade Zone, it is permitted to establish wholly foreign-owned medical institutions in the Shanghai FTZ.

The table below indicates the rules and regulations relating to the establishment of wholly-owned hospitals by Hong Kong, Macau and Taiwan service providers in the Mainland:

S/N	Promulgation date	Regulations	Main contents
1	22 October 2010	Circular of the Former Ministry of Health and Ministry of Commerce on Promulgating the Interim Administrative Measures on Establishing Wholly-owned Hospitals by Taiwan Service Providers in the Mainland (Weiyizhengfa[2010] No.110)	Regions: Shanghai, Jiangsu, Fujian, Guangdong and Hainan
			Criteria for investors: they must be independent body corporates; have direct or indirect medical and healthcare investment and management experience; and can provide advanced management concepts, management models and service models or provide medical technologies and equipment at the leading international level
			The total investment for such hospital must be a minimum of CNY50 million in the case of a Class III hospital, and CNY200 million in the case of a Class II hospital
			Approval authority: approval of the MOH; or approval of or filing with the MOFCOM (for profitable or non-profitable hospitals)
2	22 December 2010	Circular of the Former Ministry of Health and Ministry of Commerce on Promulgating the Interim Administrative Measures on Establishing Wholly-owned Hospitals by Hong Kong and Macau Service Providers in the Mainland (Weiyizhengfa [2010]No.109)	Regions: Shanghai, Fujian, Guangdong, Hainan and Chongqing
			The criteria for investors: total investment for hospitals and approval authorities are consistent with the provisions of the aforesaid “Weiyizhengfa[2010]No.110”

S/N	Promulgation date	Regulations	Main contents
3	21 March 2012	Circular of the Former Ministry of Health and Ministry of Commerce on Expanding the Territorial Scope of Hospitals Wholly-owned by Hong Kong and Macau Service Providers in the Mainland (Weiyizhengfa [2012]No.19)	Regions: Hong Kong and Macau service providers are allowed, as of 1 April 2012, to set up wholly-owned hospitals in all municipalities and cities of provincial capitals instead of only in Shanghai, Chongqing, Guangdong, Fujian and Hainan
4	22 October 2012	《 Circular of the Former Ministry of Health and Ministry of Commerce on Several Issues concerning Establishment of Medical Institutions Wholly-owned by Hong Kong and Macau Service Providers in the Mainland (Weiyizhengfa[2012] No. 72)	Regions: expanded to all regions of the Mainland
			Criteria for establishment and requirements: for the establishment of wholly-owned medical institutions and joint-venture and cooperative medical institutions other than wholly-owned hospitals and wholly-owned nursing homes, investors shall undergo formalities for establishing medical institutions by Mainland individuals and entities
			Approval authority: the establishment of wholly-owned medical institutions and joint-venture and cooperative medical institutions other than wholly-owned hospitals and wholly-owned nursing homes is subject to the approval of provincial health authorities (wholly-owned hospitals established by Hong Kong and Macau service providers in Guangdong province shall be approved by the provincial health authority of Guangdong)
5	12 December 2013	Circular of the National Health and Family Planning Commission on Adjusting the Approval Authority for Establishment of Wholly-owned Hospitals by Hong Kong, Macau and Taiwan Service Providers in the Mainland (Guoweiyifa [2013]No.37)	Approval authority: the approval of the establishment of wholly-owned hospitals and change of founders, legal representative, address, total investment amount, business scale (beds, dental chairs), treatment and preparation period of wholly-owned hospitals that have been established by Hong Kong, Macau and Taiwan investors is delegated to provincial health and family planning authorities

According to media reports, foreign wholly-owned hospitals operating in the Mainland include Shanghai Landseed International Hospital, a Taiwan-invested hospital and C-Mer (Shenzhen) Dennis Lam Eye Hospital, a wholly Hong Kong-invested hospital; in addition, foreign investors including German-based Artemed Group and Silver Mountain Capital agreed to establish Artemed Hospital, which is expected to become the first wholly foreign-owned medical institution in the Shanghai FTZ.

Interpretation of the main points of the Circular

The Circular provides the following direction regarding wholly foreign-owned hospitals:

- **Scope of the pilot:** wholly foreign-owned hospitals are allowed to be established in Beijing, Tianjin, Shanghai, Jiangsu province, Fujian province, Guangdong province and Hainan province; only Hong Kong, Macau and Taiwan investors can establish Chinese traditional medicine hospitals in the aforesaid provinces (or municipalities).

- **Means of formation:** by way of new establishment or merger and acquisition.

- **Criteria for investors:** foreign investors applying to establish wholly foreign-owned hospitals must be body corporates that can independently assume civil liability and have direct or indirect healthcare investment and management experience, and meet the following requirements such that they are able to: (1) provide international advanced management concepts, management models and service models; (2) provide medical technology and equipment at the leading international level; and (3) supplement or improve local efficiency in terms of medical services competence, medical technology, funds and medical equipment.

- **Approval authority is delegated to provincial authorities:** an application for the formation of a wholly foreign-owned hospital by a foreign investor should be submitted to the local counterpart of the MOH in the city where the hospital is to be located, the city-level health and family planning authority will propose preliminary opinions and submit the application to the provincial health and family planning authority for approval. Provincial health and family planning authorities, based on the administrative approval of the provincial health and family planning authorities, approve the formation of wholly foreign-owned hospitals according to the foreign investment laws and regulations.

- **Formation and alteration procedures:** foreign investors should follow the procedures and requirements as prescribed in the Administration Regulations on Medical Institutions, the Implementing Rules for the Administration Regulations on Medical Institutions and the Measures for the Administration of Foreign Investment in Commercial Fields.

Compared with the provisions relating to the establishment of wholly-owned hospitals by Hong Kong, Macau and Taiwan service providers, the Circular delegates the approval authority to provincial health and family planning authorities and provincial commerce authorities, indicating the decentralization and organizational streamlining of government bodies. In the meantime, the Circular provides a variety of options for foreign investors. For instance, if an investor can "supplement or improve local efficiency in terms of medical services competence, medical technology, funds and medical equipment", it is deemed to have met the requirements, which allows for more flexibility in determining the eligibility of foreign investors. However, a word of caution, the territorial restrictions on wholly foreign-owned hospitals have not been completely loosened and only selected coastal cities and provinces have been given the green light. However, on the whole the Circular has provided an avenue for foreign investors wishing to deeply participate in China's medical institutional development.

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