

China to Open Up Its Hospital Market to Foreign Investment on a Pilot Program

Article By:

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On August 27, 2014, the National Health and Family Planning Commission (“NHFPC”) and Ministry of Commerce (“MOFCOM”) jointly released [Notice on Conducting Pilot Work of Setting Up Wholly Foreign Owned Hospitals](#) (????????????????????) (“Notice”) dated on July 25, 2014. The Notice allows foreign investors to set up hospitals in the form of wholly foreign owned enterprises (“WFOE”) in Beijing, Tianjin, Shanghai, Jiangsu Province, Fujian Province, Guangdong Province and Hainan Province^[1]. Under the Notice, either setting up a new hospital or acquiring an existing private hospital is allowed. This move marks a significant step of the opening-up of China’s medical markets to foreign investment. Previously, the equity ratio of foreign investment from outside Hong Kong, Macao and Taiwan in a hospital should not exceed 70%^[2].

Background

The opening up of China’s medical markets to foreign investment has undergone a slow process. Back in 2000, when China joined the WTO, the then NHFPC and MOFCOM jointly issued the [Interim Measures for the Administration of Sino-foreign Equity Joint and Cooperative Joint Medical Institutions](#) (????????????????????), according to which foreign investment in hospitals could only take the form of joint ventures and joint cooperatives. Additionally, restrictions related to investment size, shareholding ratio and contract period had to be followed strictly^[3].

With the new round of medical reform launched in 2009, the State Council indicated in its *Notice of Further Encouraging and Guiding the Establishment of Medical Institutions* (????????????????????) that the pilot programs of wholly foreign owned hospitals should be made available to foreign investments on a step-by-step basis. Shortly thereafter, MOFCOM started to allow foreign investors from Hong Kong, Macao and Taiwan to set up wholly foreign owned hospitals, including traditional Chinese medicine hospitals in cities at municipal level. Subsequently, in the Shanghai Free Trade Zone which was newly established in 2013, the scope of wholly foreign hospital investors was enlarged to cover foreign investors from outside Hong Kong, Macao and Taiwan^[4].

Requirements

The Notice outlines four requirements for wholly foreign owned hospitals under the pilot program.

- The foreign investors must be legal persons who are able to undertake civil liabilities independently and who have direct or indirect medical and health care investment and management experience;
- The hospitals must meet the general national standards for establishing a hospital;
- The new approving authority shall be the provincial branch of the NHFPC and MOFCOM^[5];
- The establishment of and the change of registration information of the wholly foreign owned hospitals must follow the procedures and rules provided in related laws and regulations.

Looking forward

Lawmakers in the seven municipalities/provinces under the pilot program are producing their own implementation measures which are subject to approval by the NHFPC and MOFCOM. We will keep a close eye on their further activities. However, the growth of foreign hospitals in China is not expected in the short term due to other policy restrictions, for example, foreign doctors shall not practice in China for more than a year, customs for importing medical devices are very high^[6], and local commercial insurances rarely cover foreign hospitals.

[1] Traditional Chinese medicine hospitals are still not open to foreign investments from areas outside Hong Kong, Macao and Taiwan.

[2] Article 8.3 of *Notice of Further Encouraging and Guiding the Establishment of Medical Institutions (??)* and Article 2 of *Supplementary Provisions II to the Interim Measures for the Administration of Medical Institutions in the Form of Chinese-Foreign Equity or Contractual Joint Venture (??)*.

[3] Article 8 of *Notice of Further Encouraging and Guiding the Establishment of Medical Institutions (??)* provides that the investment size shall not fall below RMB 20million, the equity ratio of Chinese investment shall not fall below 30% and the contract duration shall not

exceed twenty years.

[4] Currently, the first and only wholly foreign owned hospital by foreign investors from outside Hong Kong, Macao and Taiwan is under construction in the Shanghai Free Trade Zone. It is a German hospital funded by the Artemed Group.

[5] Previously under *Notice of Further Encouraging and Guiding the Establishment of Medical Institutions (??)*, the approving authorities of foreign invested hospitals were NHFPC and MOFCOM.

[6] A case in point is that one orthopaedic examination device imported by the German hospital funded by Artemed Group in Shanghai Free Trade Zone is RMB 2.5million in bond price; however, it could reach RMB 5million in duty-paid price.

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