

New Chapter Comes for Wholly Foreign-owned Hospitals

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It is exciting to see that, within less than 3 months after the State Council expressed its mission in *Major Tasks of 2014 of Intensifying the Reform of Medical and Health Care System* that it “will further liberalize the access requirements for private capitals to invest in the medical service sector”, another long await liberalization over wholly foreign-owned medical institution will be rolled out in seven pilot cities.

On August 27, the Ministry of Health and Family Planning (“MH&F”) and the Ministry of Commerce (“MOFCOM”) jointly issued the *Circular on the Commencement of Pilot Projects for Establishment of Wholly Foreign-owned Hospitals* (Guo Wei Yi Han〔2014〕No. 244, hereinafter referred to as the “Circular”), which allows foreign investors to establish wholly foreign-owned hospitals from scratch or through mergers and acquisitions in the municipalities of Beijing, Tianjin, Shanghai, Jiangsu, Fujian, Guangdong and Hainan provinces). Highlights of the Circular include:

-- Foreign applicants shall be independent legal entities with ample experience in directly or indirectly investment or management in the medical and health sector, and shall meet one of the following requirements:

- (1) Be able to provide international advanced hospital management concept, models and service models;
- (2) Be able to provide international advanced medical technologies and equipment;
- (3) Can complement or improve the insufficiencies of local medical service capability, medical technology, capitals and equipment.

Compared to the previous policy where only very limited opening to the investors from Hong Kong, Macao, Taiwan, or those within Shanghai Free Trade Zone (“FTZ”) can be found, the Circular hasn’t placed any requirement on minimum years of operational experience for foreign investors. (Noted that the definition of “Qualified Overseas Investors” in CEPA refers to the investors who shall have at least 3 years substantial operational experience in medical service sector, while the regulation of FTZ requires the foreign investors to have more than 5 years experience in direct operation or management of medical institution).

-- Approval authority for the establishment of wholly foreign-owned hospitals will be handed over to the provincial level. Foreign applicants should submit their applications to MH&F at municipal level of the targeted locality where medical institutions planned to be established. The municipal level of MH&F will then initial preliminary opinion and submit to the provincial level of MH&F for final approval.

However, we also notice that the pilot program will only be implemented in seven cities and provinces. Some developed areas in Central and Western China, such as Chongqing, Chengdu as well as Zhe Jiang Province where investment by private capitals are very active have not been included in the list. Besides, the Circular also requests each pilot area to formulate a detailed pilot implementation scheme on wholly foreign-owned hospitals according to their own situations. Therefore, we estimate that following the development of the pilot program as well as further implementation in those pilot areas, more cities are expected to join the feast in the near future.

Another policy trend reflected from the Circular is that China intends to further open the investment in specialized hospitals for foreign investors. It is mentioned that all wholly foreign-owned hospitals under application for setting up shall meet the basic standards formulated by the State. If there is no such standard to abide by, applicants should follow the requirement specified in the *Circulars on Approval Administration for the Establishment of Specialized Hospitals (Wei Yi Zheng Fa (2011) No. 87)*.

The aforesaid *Circular No. 87* grants MH&F at provincial level great autonomy to formulate urban plans of specialized hospital in different kinds according to their actual needs, especially in the fields that medical resources are in short supply. In addition, from a series of policies recently issued by Chinese authorities, we have found wordings of “encouraging private capital to directly invest in medical institutions, such as rehabilitation hospital, geriatric hospital, nursing home, hospice facility, among others, to satisfy various

demands”. It is therefore expected that more foreign investment might emerge in specialized hospitals of those kinds. What worth noting is that the investment threshold for hospitals of traditional Chinese medicine hospital has not yet been lowered for foreign capital.

Along with other policies recently published in respect to encouraging private capital investment in the medical institution, The Circular also reflects us the following policy directions that foreign investors should be aware of:

—The establishment procedure of wholly foreign-owned hospitals may be further simplified. Recently, we are happy to hear that the “pre-approval” of medical license for the registration of a for-profit medical institution with the local counterpart of Administration for Industry and Commerce will be replaced by “post-approval”, which means the business license will be issued before medical approval has been granted. The procedural reform aims to intensify supervision during and after the license issuing.

-- Foreign capital is able to participate in the systematic reform of public hospitals. Under the background that local governments are fully supporting private capital to participate in the restructuring of public hospitals through different ways, the relaxation policy in the Circular actually paves the way, from regulatory perspective, for foreign capital to take ownership of public hospital by means of merger and acquisition.

-- With the promulgation and improvement of the multi-site practice policy for doctors and the implementation of national treatments for foreign invested medical institutions in the areas of market access, social insurance reimbursement, key specialty construction, professional title evaluation, academic status, grade evaluation, scientific research support, etc., we believe that difficulties and impediments foreign investors now are facing with in their operation will be gradually removed.

-- Services charges in non-public and for-profit medical institutions can be fully determined by the provider through the market mechanism. Besides, foreign-invested hospitals may provide more diversified and personalized medical services to meet different individual demands from their customers according to the market supply and demand ratio, competition status and its own market positioning strategies. As a result, the service charge offered by those medical institutions will tend to be more flexible and competitive.

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