



## CLIENT ALERT

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### CHANGES TO FOREIGN INVESTMENT REGULATIONS WITHIN THE MEDICAL SECTOR IN CHINA

*On November 26, 2010, The Chinese State Council (国务院办公厅) promulgated the "Circular on Further Encouraging and Guiding Social Capital to Investing in the Foundation of Medical Institutions" (in Chinese, "关于进一步鼓励和引导社会资本举办医疗机构的意见"), essentially allowing foreign investors to establish both profitable and non-profit medical institutions in China.*

#### **Background**

Foreign investors must first ascertain whether the Chinese government has imposed any restrictions on the industry in which they plan to invest, or what services or products the Chinese government encourages them to provide. In view of this, they should consult three investment catalogs:-

- the Guidance Catalog of Industries with Foreign Investment;
- the Catalog of Encouraged High and New Technological Products for Foreign Investment; and
- the Catalog of Advantageous Industries with Foreign Investment in the Middle and Western Regions.

Foreign investment projects can be broadly categorized: encouraged, permitted, restricted, and prohibited. Encouraged projects tend to enjoy preferential treatment provided by the relevant laws and administrative regulations. Anything not listed in the catalogues is assumed to be permitted.

## **Analysis of Changes in this Circular**

Previously, foreign investment projects within the medical sector were “limited to equity and cooperative”, meaning that only Sino-foreign equity joint ventures or cooperative joint ventures (“JVs”) in conjunction with a Chinese partner were permitted. The previous limit on foreign investment in medical institutions was a maximum of 70 percent of the total investment.

However, this newly declared Circular issued by the central government will soon turn the overseas-invested medical sector from the "limited (towards foreign investment)" category into a category that permits foreign investment. Approval procedures will be simplified and standardized, and restrictions on foreign equity capital will gradually be loosened, while wholly foreign-owned enterprises will also be permitted, pending a trial period and approval by the PRC Ministry of Commerce and the PRC Ministry of Health.

As part of the simplification, the approval process for opening JV hospitals or clinics will be undertaken at the provincial level, and this should result in greater efficiencies and a more streamlined recovery period.

In addition, foreign investment in medical sector within the central and western regions of China will be heavily encouraged, while investment projects originating from the Hong Kong and Macao Special Administrative Region and Taiwan will also enjoy priority support.

## **Implications on the future**

It is hoped that these liberalization policies will attract more foreign medical operators, private funds to be channeled into the medical sector in order to fulfill the country's increasingly diversified demands on health care, including the need for sophisticated medical resources, as well as the privatization and restructuring of certain clinics and hospitals. The influx of foreign-funded hospitals within the country will also lead to a more competitive market, especially within the private sector. These policies, as part of the wider picture of medical reform, are expected to alleviate the growing burden and cost of healthcare, by making private or foreign-funded hospitals a more attractive proposition.

In the area of foreign investment in Chinese medical sector, our professional team of lawyers has an integrated professional background. We are familiar with the best practices overseas as well as the practical issues in medical institutions in China.

**Bao Rui Legal** represents large and well-established foreign investors, listed companies, private equity funds, venture capital funds, industrial funds, as well as sovereign wealth funds in their investments and acquisitions in China. Ordinarily, our work scope include:-

- ✧ setting up of legal entities including representative offices, equity joint ventures, contractual joint ventures, wholly foreign owned enterprises and foreign invested companies limited by shares;
- ✧ merger, division, restructuring, transfer of equity, liquidation and dissolution of enterprises and their representative offices;
- ✧ share acquisition, asset acquisition, leveraged buyout, takeover by tender offer;
- ✧ designing the deal structure of foreign investment and merger & acquisition cases;
- ✧ advising the corporate governance structure and exit strategies;
- ✧ legal due diligence, negotiation, documentation, completion of delivery, and issuance of legal opinion;
- ✧ mergers & acquisitions of listed companies or unlisted companies;
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- ✧ incorporation of offshore companies, structuring of offshore investment;
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