

Regulation of foreign-invested medical institutions in China

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A summary of Chinese foreign investment policies on the medical institution sector. It discusses the current regulatory regime and lists the general investment restrictions applicable for foreign investors. It also introduces the preferential policies available to qualified service providers from Hong Kong, Macau and Taiwan.

Scope of this note

China's foreign investment policies on the medical institution sector have consistently changed over time. This note revisits three key stages of these policies, with table summaries of the key restrictive or liberalisation measures introduced at each stage. It discusses the current regulatory regime for the medical institution sector and looks at the general investment restrictions applicable for foreign investors. It also introduces the preferential policies available to qualified service providers from Hong Kong, Macau and Taiwan.

Foreign investment in medical institutions: restricted industry

Under the [Catalogue of Industries for Guiding Foreign Investment \(2015 Revision\)](#) (2015 Foreign Investment Catalogue), foreign investment in medical institutions belongs to the restricted category, with the investee vehicle required to be either a [Sino-foreign equity joint venture](#) (EJV) or [Sino-foreign co-operative joint venture](#) (CJV). Consequently:

- Foreign investors cannot establish any foreign-invested medical institution in the form of a [wholly foreign-owned enterprise](#) (WFOE) in China, (with the exception of WFOE hospitals invested by qualified Hong Kong, Macau or Taiwan service providers (see [Preferential policies for Hong Kong, Macau and Taiwan investors](#))).
- Investment into this sector is caught by the negative list for foreign investment, and therefore the establishment and subsequent changes of any foreign-invested medical institution are still subject to the traditional examination and approval procedure from the central or a competent local office of the [Ministry of Commerce](#) (MOFCOM) (see [Practice note, Establishing a China business: Establishment approval and record-filing](#)).

For more information on the 2015 Foreign Investment Catalogue, see [Practice note, Foreign direct investment law: overview: Foreign investment catalogue](#).

What is a medical institution?

Medical institutions generally include:

- Hospitals.
- Clinics.
- Nursing homes.
- Emergency rooms.
- Other institutions of similar nature.

([Article 3, Implementation Rules for the Regulations on the Administration of Medical Institutions 1994](#) (医疗机构管理条例实施细则) (1994 Medical Institutions Implementation Rules).)

Review of policy development

Foreign capital began direct investment into the Chinese medical institution sector in the late 1980s. Chinese government's policies for foreign investment in this sector consistently changed over time. Initially, the government restricted foreign capital from entering the domestic medical industry. These restrictions were relaxed towards the end of 2010 but were tightened again in 2015 with the release of the [2015 Foreign Investment](#)

Catalogue. These investment policies can be roughly grouped into the following three stages:

- **Prior-2010 restrictive measures.** From April 1997 to November 2010, foreign investors could not establish any WFOE medical institution in China.
- **2010-2015 liberalisation measures.** From November 2010 to April 2015, foreign investors could establish WFOE hospitals in the [China \(Shanghai\) Pilot Free Trade Zone](#) (Shanghai FTZ) and in certain pilot cities, and qualified Hong Kong, Macau and Taiwan service providers could establish WFOE hospitals in cities at or above the prefectural level.
- **Post-2015 retightened measures.** Since April 2015, foreign investors are generally not allowed to establish any WFOE medical institution in China but qualified Hong Kong, Macau and Taiwan service providers still can establish WFOE hospitals in cities at or above the prefectural level.

Prior-2010 restrictive measures: table

Legislation	Restrictive measures	Remarks
<i>Several Provisions on the Operation of Hospitals and Clinics for Foreigners and Overseas Chinese and the Practice of Medicine in China by Foreign Doctors 1989</i> (关于开办外宾华侨医院、诊所和外籍医生来华执业行医的几条规定)	<ul style="list-style-type: none"> • Prohibiting the establishment of any for-profit WFOE hospital or clinic. • Allowing the establishment of non-profit WFOE hospitals and clinics as pilot projects. 	Under the 1995 Foreign Investment Catalogue, foreign investment in this sector was in the permitted category.
<i>Supplementary Provisions on the Establishment of Foreign-invested Medical Institutions 1997</i> (关于设立外商投资医疗机构的补充规定)	<ul style="list-style-type: none"> • Prohibiting the establishment of any WFOE medical institution, either for-profit or non-profit. • Requiring the investee medical institution of being an EJV or CJV, and the shareholding percentage of the Chinese party in the joint venture of not less than 50% generally and 30% in any circumstance. 	Under the 1997 Foreign Investment Catalogue, foreign investment in this sector was shifted back from the permitted category to the restricted category, with the requirement that the Chinese party must be the controlling shareholder or that the joint venture must be led by the Chinese party.
Interim Measures for the Administration of Sino-Foreign Equity/Cooperative Joint Venture Medical Institutions 2000 (2000 Measures on Joint Venture Medical Institutions)	<ul style="list-style-type: none"> • Prohibiting the establishment of any WFOE medical institution. • Increasing the maximum shareholding percentage of foreign parties to 70% generally. 	The subsequent three revisions of the 1997 Foreign Investment Catalogue (that is, the 2002, 2004 and 2007 revisions respectively) kept grouping foreign investment in this sector into the restricted category, alongside the requirement that the investee vehicle must be an EJV or CJV.

2010-2015 liberalisation measures: table

Legislation	Liberalisation measures	Remarks
<p>Notice of the General Office of the State Council on Forwarding the Opinions of the National Development and Reform Commission, the Ministry of Health and other Departments on Further Encouraging and Guiding Social Capital in Setup of Medical Facilities 2010</p>	<p>The notice officially called on:</p> <ul style="list-style-type: none"> • Removing the foreign shareholding cap restriction in the medical institutions sector. • Launching a pilot project for qualified foreign investors to establish WFOE medical institutions in China. 	<ul style="list-style-type: none"> • Subsequently, the 2011 Foreign Investment Catalogue classified the medical institution sector into the permitted category. • Despite of these relaxation policies, at that time, the foreign shareholding cap restriction set out in the 2000 Measures on Joint Venture Medical Institutions still applied across the country.
<p>Provisional Measures on the Administration of Wholly Foreign-invested Medical Institutions in the China (Shanghai) Pilot Free Trade Zone 2013 (中国(上海)自由贸易试验区外商独资医疗机构管理暂行办法) (2013 Shanghai Provisional Measures)</p>	<p>WFOE medical institutions were allowed in the Shanghai FTZ.</p>	<ul style="list-style-type: none"> • No WFOE medical institutions were reported to get registered in the Shanghai FTZ under this policy. • In practice, this policy was not implemented since the release of the Notice of the General Office of the State Council on Printing and Distributing the Special Management Measures for the Market Entry of Foreign Investment in Pilot Free Trade Zones (Negative List) 2015 (2015 FTZ Negative List), where the medical institution sector is a restricted industry and is subject to a joint venture requirement.
<p>Notice of the National Health and Family Planning Commission and the Ministry of Commerce on the Pilot Scheme of Establishing Wholly Foreign-owned Hospitals 2014 (2014 WFOE Hospital Notice)</p>	<p>WFOE medical institutions were allowed in seven pilot provinces or cities (that is, Beijing, Tianjin, Shanghai, Jiangsu, Fujian, Guangdong and Hainan) on a trial basis</p>	<ul style="list-style-type: none"> • No WFOE medical institutions were reported to get registered under this notice. • This notice was not implemented and is not likely to be implemented in future with the release of the 2015 Foreign Investment Catalogue.

Post-2015 retightened measures

In April 2015, foreign investment in the medical institution sector was shifted back from the permitted category to

the restricted category again, alongside the requirement that the investee vehicle must be an EJV or CJV ([2015 Foreign Investment Catalogue](#)). The same rules were adopted in all free trade zones (including the Shanghai FTZ) in 2015 ([2015 FTZ Negative List](#)).

These two 2015 regulations mean that a foreign investor can no longer establish WFOE medical institutions in China, either in or outside the pilot cities once opened under the [2014 WFOE Hospitals Notice](#).

Current regulatory regime

The current key legislation regulating foreign investment in the medical institution sector is the [2000 Measures on Joint Venture Medical Institutions](#).

For-profit foreign-invested medical institutions are [foreign-invested enterprises](#) (FIEs) and the regulatory framework governing FIEs (including the [Sino-Foreign Equity Joint Venture Enterprise Law of the People's Republic of China 2016](#) and the [Sino-Foreign Co-operative Joint Venture Enterprise Law of the People's Republic of China 2016](#) and their respective implementing rules) apply to these medical institutions as well.

In addition to the FIE laws, foreign-invested medical institutions are subject to those general industry rules applicable to all medical institutions, with the most important two being:

- [Regulations on the Administration of Medical Institutions 1994](#) (医疗机构管理条例).
- 1994 Medical Institutions Implementation Rules.

All medical institutions in China (including any joint venture medical institution) must also comply with the [Basic Standards on Medical Institutions \(Trial Implementation\) 1994](#) (医疗机构基本标准(试行)). These standards are the minimum thresholds that a medical institution must meet to apply for a Medical Institution Practice Permit from a competent office of the [National Health and Family Planning Commission](#) (NHFPC), including requirements about:

- The number of beds.
- The setting of departments.
- The number of various healthcare professionals.
- Medical devices and equipment.
- Robust internal rules and policies, and recognised health care technical operation manuals.
- Minimum registered capital, which is subject to corresponding local rules for the specific category of the medical institution and may vary from one province to another.

General restrictions on foreign investors

The [2000 Measures on Joint Venture Medical Institutions](#) set out several requirements that must be met before a foreign-invested medical institution can be established, including requirements on the investor qualification and certain establishment thresholds on investee institutions.

Requirements on investor qualification

In addition to those statutory basic standards applicable to both foreign-invested and domestic-owned medical institutions, both the Chinese and foreign investor of a joint venture medical institution must have direct or indirect

healthcare investment or management experience and satisfy one of the following:

- Be able to provide internationally advanced management experience, modes, and service modes of medical institutions.
- Be able to provide internationally advanced medical technology and equipment.
- Be able to make up or improve the inadequacy of local medical service capacity, medical technology, funds, and medical facilities.

(Article 7, [2000 Measures on Joint Venture Medical Institutions](#).)

However, it is not mandatory for the investors to submit materials evidencing their satisfaction of these investor qualification requirements to set up a joint venture medical institution. Consequently, some local approving authorities may not strictly review whether these requirements are fully satisfied in certain cases and the local practice may vary from one city to another.

Restrictions on investee institution

A foreign-invested medical institution must meet the following conditions:

- It must be an independent legal person.
- Its total investment should not be less than RMB20 million.
- The proportion of equity interests or the rights and interests of the Chinese party to the joint venture should not be less than 30%.
- The operation term of the joint venture should not exceed 20 years.

(Article 8, [2000 Measures on Joint Venture Medical Institutions](#).)

Minimum investment amount

The investment amount for a Sino-foreign joint venture medical institution should not be less than RMB20 million ([Article 8, 2000 Measures on Joint Venture Medical Institutions](#)). In contrast, Chinese law does not set up a uniform minimum registered capital or investment amount for domestic-owned medical institutions.

Maximum foreign shareholding cap

For foreign investment in medical institutions, a foreign investor must have a local partner and may establish a foreign-invested medical institution solely in the form of an EJV or CJV. Meanwhile, the proportion of equity interests or the rights and interests of the Chinese party to the joint venture should not be less than 30%. In other words, the foreign shareholding ratio in the joint venture is capped at 70%. ([Articles 2 and 8, 2000 Measures on Joint Venture Medical Institutions](#).)

Under the [Interim Provisions on Investment Made by Foreign-Invested Enterprises in China 2000](#) (2000 FIE Re-investment Provisions), an FIE's onshore investment activities must comply with the provisions of the [2015 Foreign Investment Catalogue](#). Taking a look-through approach, a foreign investor may not circumvent the 70% foreign shareholding limitation by establishing any intermediary holding vehicle, to eventually hold the target

medical institution through the onshore intermediary vehicle.

However, neither MOFCOM (the central competent authority regulating foreign investment) nor the NHFPC (the central competent authority regulating medical institutions) has made any formal interpretation on whether the 2000 FIE Re-investment Provisions must apply when implementing the 2000 Measures on Joint Venture Medical Institutions.

In practice, uncertainty does exist regarding whether the 70% foreign shareholding cap should apply where the investment is structured through an indirect ownership. For example,

- In May 2013, in connection with the listing of Phoenix Health (凤凰医疗, 01515.HK) in the [Hong Kong Stock Exchange](#) (HKEx), the Beijing Healthcare Bureau replied to the Beijing Municipal Commission of Commerce (Beijing MOFCOM) that, a hospital co-invested by a domestic company and a WFOE is not an EJV medical institution by definition, therefore should not be subject to the 70% foreign shareholding cap restriction under the 2000 Measures on Joint Venture Medical Institutions. The Beijing MOFCOM accepted that opinion and approved the pre-listing restructuring of Phoenix Health on that basis.
- In May 2016, however, in connection with the listing of NC Healthcare (新世纪医疗, 01518.HK) in the HKEx, the Beijing MOFCOM opined that any indirect ownership of a hospital must also comply with the shareholding cap requirement under the 2000 Measures on Joint Venture Medical Institutions, and therefore rejected the pre-listing restructuring of the NC Healthcare.

Note that these two conflicting opinions were issued from the same government authority, but in different industry policy stages, with the former granted in 2013 when the tone of foreign investment policy was to liberalise investment restrictions in the medical institution sector (see [2010-2015 liberalisation measures: table](#)), and the latter granted in 2016 when the government had tightened up its control in this sector (see [Post-2015 retightened measures](#)).

Maximum operation term

The duration of a Sino-foreign joint venture medical institution should not exceed 20 years ([Article 8, 2000 Measures on Joint Venture Medical Institutions](#)).

In comparison, Chinese law does not impose a maximum operation term for domestic-owned medical institutions. In practice, many local hospitals were registered with an operation term of more than 20 years.

No branch hospitals or clinics

Sino-foreign joint venture medical institutions cannot establish branch hospitals or clinics ([Article 17, 2000 Measures on Joint Venture Medical Institutions](#)).

Higher level of approving authority

The establishment of a foreign-invested medical institution used to require an approval from the central office of the NHFPC and MOFCOM respectively ([Articles 11 and 13, 2000 Measures on Joint Venture Medical Institutions](#)). However, the approval right has been delegated to the provincial counterparts of the NHFPC and MOFCOM since 2011 and 2012 respectively ([Notice of the Ministry of Health on Adjusting the Examination and Approval Authority](#)

of *Sino-Foreign Equity or Cooperative Joint Venture Medical Institutions 2011* and *Decision of the State Council on the Sixth Batch of Cancelled and Adjusted Administrative Examination and Approval Items 2012* (国务院关于第六批取消和调整行政审批项目的决定)).

In comparison, the establishment of a domestic-owned medical institution should be approved by the local counterparts of the NHFPC and MOFCOM at the county, prefecture or provincial level.

Preferential policies for central and western China

The investor qualification requirements and establishment criteria (see *Requirements on investor qualification* and *Restrictions on investee institution*) may be relaxed appropriately where both of the following conditions are met:

- Where the foreign-invested medical institution is to be established in central and western China or in the old revolutionary-base, minority-inhabited, remote or poor areas (老、少、边、穷地区).
- Where the service scope and items to be provided by the joint venture medical institution belong to a service field encouraged by the state.

(Article 14, *2000 Measures on Joint Venture Medical Institutions*.)

Under the *Central/Western Foreign Investment Catalogue (2017 Revision)* (and the previous 2013 revision), the foreign-invested medical institution sector is listed as an encouraged industry in 21 central and western provinces. However, the scope of the preferential treatment and its local enforcement are still subject to a promulgation of corresponding local regulations. Only a few of the 21 provinces have actually formulated their local implementation rules so far.

For example, the Sichuan provincial counterparts of the NHFPC and MOFCOM jointly promulgated the *Administrative Measures of Sichuan Province for the Sino-Foreign Equity/Co-operative Joint Venture Medical Institutions 2012* (四川省中外合资、合作医疗机构管理办法), which relaxed the 70% foreign shareholding limit in the 2000 Measures on Joint Venture Medical Institutions and raised the cap up to 90% instead.

Note that the Sichuan local measures were adopted at a time when the tone of macroeconomic policy was to encourage foreign investors to set up WFOE medical institutions in China. Since April 2015, the policy has again become retightened (see *Post-2015 retightened measures*) and it is difficult to anticipate whether this preferential policy in Sichuan province would be actually implemented by the local government.

Preferential policies for Hong Kong, Macau and Taiwan investors

Investors from Hong Kong or Macau can receive preferential policies under the:

- *Mainland and Hong Kong Closer Economic Partnership Arrangement 2003* (内地与香港关于建立更紧密经贸关系的安排) and its subsequent supplements.
- *Mainland and Macau Closer Economic Partnership Arrangement 2003* (内地与澳门关于建立更紧密经贸关系的安排) and its subsequent supplements.

(Collectively, the CEPA.)

Similarly, investors from Taiwan can receive preferential policies under the *Cross-strait Economic Co-operation Framework Agreement 2010* (海峡两岸经济合作框架协议).

Subsequently, subordinate legislation was issued to implement these economic partnership or co-operation arrangements, the most important being:

- [Interim Administrative Measures for the Establishment of Wholly-owned Hospitals by Hong Kong/Macau Service Providers in the Mainland 2010](#) (2010 Measures on HK/Macau-invested WFOE Hospitals).
- [Interim Administrative Measures for the Establishment of Wholly-owned Hospitals by Taiwan Service Providers in the Mainland 2010](#) (2010 Measures on Taiwan-invested WFOE Hospitals).

No foreign shareholding cap

Hong Kong, Macau or Taiwan service providers can set up WFOE hospitals in China and the 70% foreign shareholding cap applicable to general foreign investors does not apply.

In December 2011, the first wholly Taiwan-owned hospital, Landseed International Hospital (上海禾新医院), was established in Shanghai. In January 2013, the first wholly Hong Kong-owned hospital, C-MER (Shenzhen) Dennis Lam Eye Hospital (深圳希玛林顺潮眼科医院), was established in Shenzhen.

Place of location extended across China

Initially, WFOE hospitals can be established by:

- Hong Kong or Macao service providers solely in Shanghai, Fujian, Guangdong, Hainan and Chongqing.
- Taiwan service providers solely in Shanghai, Jiangsu, Fujian, Guangdong and Hainan.

These were subsequently extended to all cities at or above the prefectural level in China ([Notice of the Ministry of Health and the Ministry of Commerce on Expanding the Scope of Regions Where Service Suppliers from Hong Kong and Macau May Establish Wholly-owned Hospitals in the Mainland 2012](#) and [Several Opinions on Accelerating the Operations of Medical Institutions with Social Capital 2013](#) (关于加快发展社会办医的若干意见)).

Higher establishment conditions

WFOE hospitals are subject to higher establishment conditions, including:

- Reaching the standards for a class II hospital with respect to the facilities, medical devices, physicians and management system.
- Having a total investment of at least RMB50 million in the case of a class III hospital or RMB20 million in the case of a class II hospital. The total investment requirement may be appropriately reduced if the WFOE hospital is to be established in the old revolutionary-base, minority-inhabited, remote or poor areas.

([Article 10, 2010 Measures on HK/Macau-invested WFOE Hospitals](#) and [Article 10, 2010 Measures on Taiwan-invested WFOE Hospitals](#).)

Stricter investor qualification review standard

To establish a WFOE hospital, the investor must submit application materials to prove that the investor can provide:

- Internationally advanced hospital management experience, management models and service models.
- Internationally leading medical technologies.

These materials are not required in the application set for a joint venture hospital ([Requirements on investor qualification](#)).

In addition, for Hong Kong or Macau investors to qualify for the benefits under the CEPA arrangements, they must meet certain conditions (see [Practice note: overview, Regulation of telecommunications sector in China: overview: Qualifying as a Hong Kong or Macau service provider under CEPA](#)).

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Resource History

Recourse created.

This practice note was published on 25 May 2017. If the law stated in this practice note changes, or if there are changes in legal practice that affect its content, we will update and republish this resource and record those changes here.
