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# Shanghai Gives Green Light To Wholly Foreign-Owned Hospitals

For the first time, a specific legal framework is in place for foreign investors to invest in medical institutions in China through a wholly foreign-owned enterprise (**WFOE**).

On 29 September 2013, the China (Shanghai) Pilot Free Trade Zone (**SFTZ**) was officially launched and is being seen as a crucial testing ground for Chinese economic reforms in order to create a more open economic system. Shortly before the opening of the SFTZ, the State Council announced the General Plan for the SFTZ ([中国（上海）自由贸易试验区总体方案](http://www.gov.cn/zwgk/2013-09/27/content_2496147.htm)) (**General Plan**) ([see archive](general_plan.pdf)). The General Plan includes a list of 6 industrial sectors which are open for foreign investments in the SFTZ and medical services fall within the social services sector where foreign investors are allowed to invest through WFOEs.

Further, on 13 November 2013, the Shanghai government released the Tentative Measures for the Administration of Wholly Foreign-Owned Medical Institutions in the SFTZ ([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](http://www.shanghai.gov.cn/shanghai/node2314/node2319/node12344/u26ai37471.html)) (**Tentative Measures**) ([see archive](tentative_measures.pdf)).

Although the Foreign Investment Industrial Guidance Catalogue (外商投资产业指导目录) was updated by the Ministry of Commerce and the National Development and Reform Commission in 2011 to place foreign investment in medical institutions into the restricted category, up from the prohibited, the lack of implementation rules made it extremely difficult for foreign investors to enter into the medical market without taking the form of a joint venture.

The Tentative Measures now provide a legal framework governing foreign investment in the area of medical services.

## Establishment Requirements under the Tentative Measures

According to the Tentative Measures, foreign investors applying to establish a wholly foreign-owned medical institution in the SFTZ are required to meet the following requirements:

1. be legal persons with the capacity to bear civil liabilities independently;
2. have five years or more direct experience in the investment and management of medical institutions; and
3. satisfy one of the following conditions:
   * being able to provide internationally advanced management experience, management models and service models of medical institutions
   * being able to provide internationally advanced medical technologies and equipment
   * being able to supplement or improve the capacity, quality, skills, funds and facilities of local medical services.

A wholly foreign-owned medical institution to be established in the SFTZ is further required to satisfy the following conditions:

1. it must be an independent legal person;
2. the total amount of investment must not be lower than RMB 20 million; and
3. the permitted period of operation is limited to 20 years but is renewable.

## Application process

Application for establishment of a wholly foreign-owned medical institution in the SFTZ should be made to the Department of Industry and Commerce of the SFTZ (DIC) with the following documents:

1. written application material for the establishment of the medical institution;
2. proposal for the project with a feasibility report;
3. copy of registration certificate of foreign investors, identification certificates of the legal representatives and bank credit certificate;
4. proposed project site report, land use lease certificate and construction plan;
5. evidence demonstrating five years or more direct experience in investment and management of medical institutions of the foreign investors;
6. articles of association of the wholly foreign-owned medical institution;
7. list of board members of the wholly foreign-owned medical institution;
8. pre-approval notice of the institution’s name;
9. application materials for the registration of the enterprise; and
10. other materials required by laws and regulations.

The DIC will issue an acknowledgement of receipt of application if all required application documents are filed. Within 40 days following the issue of the acknowledgement of receipt, the Department of Health and Family Planning of Shanghai Municipal, the Management Committee of the SFTZ and the DIC will issue their decision on the application.

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