



China Regulatory Updates

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■ FOREIGN INVESTMENT / 外商投资

China to Amend Joint Venture Rules Governing Medical Industry

卫生部拟修订中外合资、合作医疗机构管理办法

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CSRC Introduced New Policies to Rationalize IPO Pricing

证监会 IPO 新政多举措促进新股合理定价

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FOREIGN INVESTMENT / 外商投资

China to Amend Joint Venture Rules Governing Medical Industry

卫生部拟修订中外合资、合作医疗机构管理办法

China's Ministry of Health has recently issued the draft *Measures for Administration of Sino-Foreign Joint Equity/Cooperative Medical Institutions* for public comments (the "Draft Measures") with an aim to replace its predecessor (i.e., the *Interim Measures for the Administration of Sino-foreign Equity/Cooperative Joint Medical Institutions* and its supplementary regulations (the "Interim Measures")) which was issued and took effect in 2000. Compared with the Interim Measures, the Draft Measures does not make significant breakthrough in terms of the foreign entry policy in the medical industry as the maximum 70% foreign shareholding restriction is still applicable. It is noteworthy however, that the Draft Measures have stated in the appendix that "the restriction on the equity ratio between the Chinese and foreign investors of a medical company could be appropriately relaxed according to practical conditions and wholly foreign-owned hospitals would be gradually allowed", which has generally reflect the country's recent trend to further opening up the medical industry to foreign investors. Pursuant to the current applicable laws and regulations, only Hong Kong and Macau investors are permitted to set up wholly foreign-owned clinics in Guangdong province and wholly foreign-owned hospitals in municipalities and provincial level of cities in mainland China.

In addition, the Draft Measures have significantly raised the capital investment requirement for a new EJV/CJV hospital from RMB20 million to RMB100 million (or RMB50 million for a new hospital in central and western regions), and prolonged the maximum operation term for such joint ventures from 20 years to 30 years. Meanwhile, the approval authority for the establishment and major change of an EJV/CJV medical institution will be delegated from the central Ministry of Health to its provincial level counterparts (provided that the traditional Chinese medicine (TCM) medical JVs are still subject to the approval of the Ministry of Health); and the approval time is shortened to 20 working days.

Note that the Draft Measures have reaffirmed that non-profit Chinese medical institutions shall not establish any profit oriented medical joint ventures, and the medical joint ventures shall not establish any branches as a matter of applicable PRC laws.

日前，卫生部颁布了《中外合资、合作医疗机构管理办法》(征求意见稿) (“征求意见稿”)。相较于此前的《中外合资、合作医疗机构管理暂行办法》 (“暂行办法”) 及其补充规定，《征求意见稿》在外资准入方面并未实现实质性突破，仍要求中外合资、合作医疗机构的外资持股比例不得超过 70%。但附则关于“双方股权比例要求根据实际情况可适时调整，并逐步放开外资独资医院的设置”的规定，则体现了近年来放宽外商投资医疗行业的整体趋势。根据目前的相关法律规定，除部分港澳服务提供者可在所有直辖市及省会城市设立独资医院以及在广东省设立独资门诊部外，我国不允许设立外商独资医疗机构。

除上述变化之外，《征求意见稿》将设立中外合资、合作医疗机构的投资总额下限由人民币 2000 万元大幅提高至 1 亿元（但在中西部等地区设立合资、合作医疗机构的，下限为 5000 万元）；合资、合作上限将由原来的不超过 20 年延长至 30 年；同时，中外合作、中外合资医疗机构的设立/变更的审批权限统一由卫生部下放至省级卫生部门（除中外合资、合作中医医疗机构仍需卫生部审批以外），审批时间缩短至 20 个工作日。

另外，《征求意见稿》重申，合资、合作中方为非营利性医疗机构的，不得举办营利性合资、合作医疗机构，中外合资、合作医疗机构不得设置分支机构。

MOFCOM Allows HK and Macau Investors to Set up Grain Distribution WFOEs

商务部允许港澳投资者试点设立独资粮食经销企业

On April 26, MOFCOM publicized the *Supplementary Provisions V for the Administrative Measures on Foreign Investment in the Commercial Sector* (the "Supplementary Rule"), allowing HK and Macau investors who have opened 30 or more stores in the mainland selling grains of different brands and from different suppliers to set up WFOEs within the pilot area, Guangdong

4月26日，商务部公布了《外商投资商业领域管理办法补充规定（五）》（“补充规定五”），就同一香港或澳门的投资者在内地累计开设超过 30 家店铺、销售来自多个供应商的不同种类和品牌粮食的，允许其以独资形式在广东省范

province.

According to the newly promulgated *Catalogue for Guidance on Foreign investment industries* (2012 version) and the *Administrative Measures on Foreign Investment in the Commercial Sector*, where a foreign investor (including Hong Kong and Macau investors) opens 30 or more stores in China for the distribution of grain of various brands and from different suppliers, the shareholding ratio of such foreign investor in such stores shall be capped at 49%. The Supplementary Rule has lifted the above limit by permitting Hong Kong and Macau investors to set up wholly foreign-owned grain distribution enterprises in the pilot place of Guangdong Province. Investors from other countries and regions shall still abide by the 49% investment restriction in the grain distribution business.

围内试点设立粮食经销企业。

此前，根据《外商投资产业指导目录》（2012年）和《外商投资商业领域管理办法》的规定，同一外国投资者（包括港澳投资者）在境内经营粮食等商品、累计开设店铺超过30家以上的，且上述商品属于不同品牌，来自不同供应商的，外国投资者的出资比例不得超过49%。《补充规定五》适当地放宽了上述限制，港澳投资者将被允许以独资方式经营粮食经销企业，但该等试点将仅限于广东省范围内，且来自其他国家或地区的投资者依然受限于前述投资比例不超过49%的限制。

SECURITIES / 资本市场

CSRC Introduced New Policies to Rationalize IPO Pricing

证监会 IPO 新政多举措促进新股合理定价

On April 28, CSRC issued the *Guiding Opinions on Further Deepening the Reform of Initial Public Offering* (the "Guiding Opinion") which amended the current IPO systems in various aspects in an effort to curb the overvalued IPO price and improve the IPO pricing mechanism.

4月28日，证监会发布了《关于进一步深化新股发行制度改革指导意见》（“《指导意见》”），对新股发行制度进行了多方面的修改，以抑制新股发行价格过高、促进新股合理定价。

Among the multiple measures taken by CSRC, one notable change is that the Guiding Opinion has for the first time set forth a mechanism allowing some old shares to be transferred to off-line institutional investors during the IPO process, i.e. shareholders holding shares more than 3 years before the IPO could somehow be "exempted" from the one or three-year lockup period upon the IPO and transfer some of the old shares held by them to the off-line subscribers during IPO process. To prevent the transfer of old shares from adversely affecting the company's stable operation and profitability, the Guiding Opinion further requires that such transfer should not result in any change of control of the company concerned, and the proceeds derived from such share transfer should be deposited in a designated account, operation of which is subject to strict supervision and restriction.

在证监会的多项举措中，尤其值得注意的是，《指导意见》首次确立了在新股发行时“推动部分老股向网下机构投资者转让”的制度，即允许新上市公司持股期满3年的老股东可不受此前A股上市公司股东1-3年的锁定期的限制，在公司首发时将其持有的部分老股向网下投资者转让。同时，为了防止老股转让影响公司后续的稳定经营和盈利能力，《指导意见》要求该等老股转让不得导致发行人的实际控制人变更，并且转让所得资金须保存在专用账户内；根据转让方是否为控股股东/实际控制人，该等资金从专用账户转出须受到不同程度的限制。

Additionally, the Guiding Opinion also includes the following new initiatives: (a) the proportion of shares allocated to off-line subscription will no longer be linked to the aggregate amount of IPO shares and is unified to 50% in the maximum; (b) the 3-month lock-up period applicable to off-line subscription is cancelled; and (c) the "25% rule" is newly introduced, which will subject the issuer to additional disclosure obligations if the price/earning ratio is 25% higher than the average PE level in the market.

除了上述推动老股转让的举措之外，《指导意见》的主要内容还包括：不再区分新股发行量大小，统一增加网下配售比例下限至50%，并取消网下配售股份的3个月锁定期；引入“25%规则”，明确发行人在发行价格市盈率高于同行业平均市盈率25%的情形下的补充信息披露义务等。

For further information, please write us at inquiry@hanyilaw.com

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