

# Regulatory Framework for Entering China's Senior Care Market

Presentation for EUCCC's Workshop  
27 February 2014

ROPES  
& GRAY

# R&G Life Sciences Practice at a Glance

Ropes & Gray is a leading law firm with more than 1,100 lawyers and professionals based in offices in the United States, Asia and the United Kingdom.

We are the counsel of choice for market-leading pharmaceutical, biotechnology, medical device companies, healthcare facilities, research institutes, investment banks, venture capital and private equity firms that invest in the life sciences industry.

We represent these clients in financings, licensing transactions, mergers and acquisitions, healthcare compliances, and government enforcement defenses.

|                    |                            |                        |
|--------------------|----------------------------|------------------------|
| • 3S Bio           | • Goldman Sachs            | • GlaxoSmithKline      |
| • Bain Capital     | • Hao Capital              | • MicroPort Scientific |
| • Becton Dickinson | • Hutchison MediPharma     | • Pfizer               |
| • Eisai Co.        | • Ironwood Pharmaceuticals | • Sequoia Capital      |
| • Essex Woodlands  | • Johnson & Johnson        | • TPG                  |
| • MedImmune        | • Kleiner Perkins          | • Vivo Ventures        |

# Agenda

- Overview of China's Senior Care Market
- Structural Options for Entering the Chinese Market
- Regulatory Framework for Investments in Senior Care Services Industry
- Case Study of Foreign Initiatives in China

# Market Overview

- Potentially one of the largest senior care service markets in the world
  - Huge demand
    - By the end of 2012, senior citizens above 60 years old reached 194 million, representing 14.3% of the total population;
    - By the year 2030, China will surpass Japan to become the most aged country in the world.
  - Short supply of residential senior care facilities in China
    - Only 20.5 beds available for every thousand senior citizens in China, as compared with 50-70 beds for every thousand in developed countries
    - Relatively poor quality of facilities and professional care-givers
  - Estimated market size will exceed RMB 450 billion by 2015
- Drivers for growth
  - Longer life expectancy, aging population, “4-2-1” family structure
  - Growing market awareness and cultural acceptance
  - Increasing urbanization and disposable income
  - Favorable policies to upgrade senior care infrastructure

# Senior Care and Related Sectors



*Some big insurance companies, e.g. Taikang Life and China Life invest in both the upstream insurance sector and the downstream senior care services sector in order to align resources.*

# China's Senior Care Service Providers

- **Public vs. Private (公办vs.私营)**
  - Roughly 50% vs. 50% in first tier cities like Beijing and Shanghai, but public facilities considerably more than private ones in the rest of the country
- **“For Profit” vs. “Not for Profit” (营利性vs.非营利性)**
  - The public facilities owned by governments are all “not for profit”
  - The private facilities can be either “not for profit” or “for profit”
  - Subject to different financial, tax, land, pricing policies, and BMI eligibility
- **Independent Living vs. Assisted Living vs. Living under Medical Care (供养型 vs. 养护型 vs. 医护型)**
  - Independent Living: Seniors not requiring assistance with daily living
  - Assisted Living: Seniors who require assistance with daily activities like medication, eating, bathing, dressing, and toileting;
  - Living under Medical Care: Seniors requiring daily skilled nursing, medical care, and rehabilitation services.

# How is Senior Care Sector Regulated

- **Ministry of Civil Affairs (MCA)**
  - The main government body that oversees the licensing and administration of senior care facilities
- **Regulation from other ministries under the State Council**
  - National Health and Family Planning Commission (NHFPC): administration of healthcare /medical service related issues
  - Ministry of Commerce (MOFCOM): approval for foreign investment in the senior care sector
  - National Development and Reform Commission (NDRC): development of industry and pricing policies; approval of certain new projects
  - Ministry of Housing and Urban-Rural Development (MOHURD): urban planning, including construction of senior care facilities
  - Ministry of Human Resources and Social Security (MOHRSS): qualification of care-givers and approval of Basic Medical Insurance (BMI) coverage where medical services are involved

# Agenda

- Overview of China's Senior Care Market
- Structural Options for Entering the Chinese Market
- Regulatory Framework for Investments in Senior Care Services Industry
- Case Study of Foreign Initiatives in China



# Major Options

- Options are not exclusive and can be used in combination
  - Contractual Relationships
  - Representative Offices (RO)
  - Joint Ventures (JV)
  - Wholly Foreign Owned Enterprises (WFOE)
- These are major options and there are many nuanced variations

# Comparison of the Key Features

|                   | Contractual Relationships              | ROs   | JVs   | WFOEs                                     |
|-------------------|--|---|---|---|
| <b>Investment</b> | Process costs only                     | No contribution of registered capital required                    | Contribution with cash, in-kind, or equity                    | All equity & working capital              |
| <b>Return</b>     | Royalties, service fees, supply profit | Bus. liaison, market research, & other “indirect” bus. activities | Profit participation & margin on in-kind support              | All profits, & margin on in-kind supplies |
| <b>Control</b>    | Contract specifications                | Via appointment of chief reps                                     | Governance rights, contract specifications on in-kind support | Complete governance control               |
| <b>Remedy</b>     | Breach, termination                    | N/A   | Deal unwind, JV contract breach                               | N/A                                       |

# Agenda

- Overview of China's Senior Care Market
- Structural Options for Entering the Chinese Market
- Regulatory Framework for Investments in Senior Care Services Industry
- Case Study of Foreign Initiatives in China

# China Keen to Upgrade the Senior Care Services Industry

- The National People's Congress
  - Promulgation of *The Law on Protection of Senior Citizens' Rights and Interests* (Dec 2012)
- The State Council
  - *The 12th Five-year Plan on Senior Care Development in China* (Sep 2011)
  - *The 2011-2015 Master Plan on the Establishment of Senior Care Services System* (Dec 2011)
  - *The State Council's Opinions on Promoting the Development of Senior Care Services Industry* (Sep 2013)
- The MCA
  - *The MCA's Implementation Opinions on Encouraging and Guiding Private Capital to Invest in the Senior Care Services Industry* (Jul 2012)
  - *The MCA Notice on the Pilot Reform of the Public Senior Care Facilities* (Dec 2013)
  - *The MCA and NDRC Notice on the Comprehensive Pilot Reform of the Senior Care Services Industry* (Dec 2013)

# Supportive Policies and Measures

- Encouraging private investments in the senior care services industry
  - To double the number of beds within the period of the 12<sup>th</sup> five years and upgrade the quality of 30% of the existing beds, aiming at 30 beds for every thousand senior citizens by 2015;
  - Local governments are required to include senior care facilities in their master development plans;
  - The priority is to build more “not for profit” senior care facilities, and to upgrade the existing public facilities with private investments;
  - Supportive measures
    - More definite and streamlined regulatory approval / licensing process;
    - To allow private facilities to benefit from preferential policies on land use, taxation, infrastructure costs /utility charges, and financial subsidies (民办公助);
    - To encourage public facilities to outsource operations to private management companies and encourage the local governments to procure private services (公建民营);
    - To require local health departments to support the senior care sector with medical resources (医养融合).

# Foreign Ownership in Senior Care Facilities

- Foreign investment in senior care facilities is in principle encouraged and not restricted by central government.
  - *The 2011 Catalogue for the Guidance of Foreign Investment Industries*
  - *The 2013 Catalogue for Preferred Foreign Investment Industries in Middle and West China*
- Wholly foreign owned senior care facilities are now expressly allowed upon approvals by relevant provincial MCAs, or municipal MCAs which are entrusted by provincial MCAs.
  - *The Measures for Licensing of Senior Care Facilities* promulgated by the MCA, effective as of July 1, 2013
  - Premier Li Keqiang's address on State Council meeting on Aug 16, 2013
- In practice, foreign investors usually form joint ventures with Chinese partners for easier acquisition of land use right.

# Government Approvals

- Foreign investment in a senior care facility may be subject to several levels of approvals by the MCA, NDRC, and MOFCOM, and a “Senior Care Facility License” will be granted upon satisfactory governmental reviews.

| 养老机构设立许可证            |               |
|----------------------|---------------|
| 机构名称:                | 法定代表人（主要负责人）: |
| 住 所:                 | 服务范围:         |
| 证书编号:                |               |
| 有效期限: 自 年 月 日至 年 月 日 |               |
| 该养老机构经审查批准, 准予设立。    |               |
| 发证机关:                |               |
| 中华人民共和国民政部制          | 发证日期: 年 月 日   |

# Where Medical Services are Involved

- A senior care facility can work with hospitals next door on contractual basis to provide its residents easier access to medical services. Or it can also choose to obtain a “Medical Institution License” and offer the residents in-house medical services via internal clinics.
  - Foreign investment in PRC hospitals is in principle encouraged and not restricted by central government
  - However in practice, foreign ownership is limited to 70%, due to the lack of implementing regulations for the master national policy (100% is allowed in certain piloted areas such as Shanghai Free Trade Zone)
  - In general, the “Medical Institution License” is a very onerous, costly and time-consuming license to obtain



# Agenda

- Overview of China's Senior Care Market
- Structural Options for Entering the Chinese Market
- Regulatory Framework for Investments in Senior Care Services Industry
- Case Study of Foreign Initiatives in China

# Investment in a Senior Care Facility

- To establish and own a full-fledged senior care service facility
  - To obtain land use rights (granted through bidding vs. allocated), or to lease the premise from a landlord and re-purpose the land
  - Difference between “for profit” and “not for profit” facilities in establishment procedures and entitled preferential policies
  - In compliance with specifications of construction standards and requirements for environmental protection, fire safety, sanitation, staff qualifications

## Fosun Group & Fortress

- Star Castle, a joint venture formed between Fosun and Fortress
- Fortress owns Holiday Retirement and a portion of Brookdale Living, two of the largest senior housing operators in the United States, and Fosun is a private group mainly engaged in real estate and healthcare businesses
- Leased a premise in Shanghai, repurposed for 150 units of independent living & 47 beds of assisted living; a new Beijing facility to be opened soon
- Monthly rental varies from RMB 8000 to 30,000, operated by an in-house team to ensure quality

# Operation of a Senior Care Facility

- To operate a senior care facility in return for management fees
  - Provision of facility management services can be accompanied by equity investment in the project, sometimes required by the Chinese partner
  - IP protection, terms for licensing of trademarks and SOPs, etc.
  - Upfront payments, annual payments, performance related bonuses
  - Potential conflicts in management philosophy

## Taikang Life & Cornerstone

- Cornerstone operates 43 communities in California, Arizona, Nevada, Washington and Idaho, and established a joint venture project company in Tianjin to provide management services for senior care facilities in China
- Contracted by Taikang Life in 2013 to operate the Continuing Care Retirement Communities (CCRC) invested by Taikang Life in Beijing
- Policy holders of Taikang Life's annuity products can cover their living costs at Taikang's own CCRCs

# Consulting for a Senior Care Facility

- To offer consulting services on operation or staff training
  - Little upfront investment and less operational risks
  - Many real estate developers, insurance companies and local governments are in need of all kinds of senior care expertise
  - Opportunities in facility design & development, training of care-givers, assessment of client needs & formulation of personalized care plans
  - Program localization to suit local needs may prove key to success

## VCanland vs. Life Care Services (LCS)

- VCanland is a Chinese real estate developer in Tianjin, now venturing into new promising niche markets such as elderly care and bio-pharmaceutical businesses
- LCS is a leading developer and manager of continuing care, assisted living retirement communities throughout the U.S.
- VCanland opened an Alzheimer memory care facility in Tianjin called “Friendship House”, for which it contracted Smith Group of the U.S. for facility design and LCS for business consulting

# Questions?



Katherine Wang  
Chief China Life Sciences Advisor  
Ropes & Gray LLP, Shanghai  
+86-21-6157-5256  
[katherine.wang@ropesgray.com](mailto:katherine.wang@ropesgray.com)

## Practice

Katherine assists life science companies, healthcare service providers, and institutional investors in life science and healthcare sectors on a wide range of commercial and regulatory matters. Before moving into private practice, she served at McKinsey & Co., and subsequently as the head of AstraZeneca's legal functions in China and the Asia Pacific. She is named the International Who's Who of Life Sciences Lawyers (2013) and Chambers Asia's Leading Lawyers in life sciences (2011 - 2014).