China Senior Housing and Care

Journal Selection 2013

For internal review only

Contents

News Update

▲ Recently, Ping'an Real Property, the company planning to construct "Ping'an Comprehensive Senior Living Service Community" in the city of Tongxiang, Zhejiang Province, initiated a limited partnership equity investment fund for the purpose of investing in its senior living business. The limited partners of this fund are expected to be Ping'an Group, the Pension Fund and other investors. Total volume to be raised will be up to ***RMB 10 billion***, with a first closing fund of ***RMB 2.5 billion***.

▲ This February, Zhongtou Development Co., Ltd, a company incorporated by Greentown, Jianyin Investment and Blackstone Fund acquired in a row two plots in Miyun County, Beijing, at a total price of ***RMB 1.387 billion***. The usage of these plots is combined with residential and senior living. Located nearby the Miyun reservoir, the plots, according to the planning, contain totally ***400,500 square meters*** and can construct properties up to ***384,900 square meters***. Average floor price therefore are calculated as ***RMB 3,600 per square mete***r. It is reported the Land Resource Bureau of Beijing Municipality will continuously release totally ***7 plots*** for comprehensive senior living purpose in 2013.

▲ It was announced by the Shanghai Municipal government that the carrying out effort for realizing better livelihood of local citizens has been fully achieved in 2012, including:

●An addition of ***5,227*** senior care nursing beds, achieved ***104.5%*** of the target.

●Provision of community-based in-home care service to seniors who need daily assistance, up to the amount of totally ***272,000*** individuals, achieved ***100.7%*** of the target.

●New establishment of ***42*** community based catering spots for seniors, achieved ***105%*** of the target.

●New establishment of ***26*** senior day-care centers, achieved ***130%*** of the target.

●Provision of mutual-aid elderly care for ***100,000*** high-aged seniors; and provision of in-home adaption renovation for ***1,005*** seniors' families with low income, both of which have achieved ***100%*** of the target.

Meanwhile, the targets to be achieved for the year 2013, as released, are quite close to that of the previous year, they are: new addition of ***5,000*** nursing beds, provision of community-based in-home care service to ***280,000*** seniors, new establishment of ***40*** catering spots for seniors, new establishment of ***20*** senior day-care centers, provision of mutual-aid elderly care for ***100,000*** high-aged seniors, and provision of in-home adaption renovation for ***1,000*** seniors' families with low income.

▲ The Ministry of Civil Affairs in last November signed a Cooperative Agreement with the China Development Bank to together participate and promote the construction of social senior care service system. According to the Agreement, the China Development Bank will provide project loan of more than ***RMB 10 billion*** each year in line with the cooperate target and planning on specific projects. Beijing Kanglian Co. Ltd will be the major underwriting of such loan. The cooperation aims to support the implementation of pilot projects and eventually establish a financial platform.

▲ Statistics show that there will be an addition of ***76,000*** families each year where parents lost their only child (the "Shidu family"in Chinese), and by far there are more than ***one millon*** Shidu families in China. The figure in Beijing is around ***8,000.*** Recently, a project named the National First Series of Senior Care Bases was kicked off by Beijing Senior Care Extension Center. By means of cooperation with Beijing's ***400*** senior care institutions, one purpose of the project is to provide pledge for the senior from the Shidu families in order for them to be able to be admitted by senior care facilities when they are in need of professional care service.

▲ In order to encourage more private capital to invest into the senior care facilities, the Beijing Municipal Commission of Development and Reform, cooperating with other authorities, has recently released two batches of name lists of private-run senior care institutions that is entitled to acquire capital allowances from the government. The construction allowance allocated to these private operators will vary from ***RMB 8,000 to 16,000 per bed***. This incentive is expected to attract private investment of approximately ***RMB 900 million*** and consequently bring about ***5,228*** new senior nursing beds. As reported, by the end of the 12th five-year period, there will be totally ***120,000*** senior nursing beds in Beijing; and in every one of the ***16 districts and counties***, there will be at least one public run senior care facility with over ***400*** beds.

▲ As the only province in China's tropical area, Hainan has in recent years accommodated around ***450,000*** seniors coming from the Northern and Central areas of the country and Yangtze Delta River in every winter. These "Migrant" seniors live in Hainan by two approaches, one is staying at the apartment purchased or leased or along with their relatives; the other is congregate institutional accommodation in nursing homes and motels. Since 2010, Hainan has signed cooperative agreement with ***16 districts in 9 provinces*** of the Northern China to realize remote reimbursement network for medical expense. To facilitate the seniors' medical needs, Hainan will continue to establish such reimbursement system with other cities like Xinjiang, Fujian, etc.

▲ On March 12, the State Development and Reform Commission held a conference in respect to how to utilize the funds from international financial organizations in supporting China's senior care industry. The World Bank has endorsed around ***USD 500 million*** to support the construction of senior care system in China. At the conference, participants introduced the planning of such project.

▲ On March 26, the Bureau's Chief of Beijing Ministry of Civil Affairs disclosed there will be ***10,000*** new senior care beds to be built this year in the city. In the meantime, standard for construction allowance to not-for-profit senior care facilities founded by private capital is expected to be released and implemented on a basis of ***RMB 20,000 to 25,000*** per bed from the municipal level and of the same amount from the district level, which means there will be ***RMB 40,000 to 50,000*** per newly established bed. Subsidies during the operational period to the facilities will also be increased from the current RMB 200 to 300 per month per individual to the amount of ***RMB 300 to 500***.

▲ Qingdao is the first city in China to implement pilot scheme on long-term care insurance. Since September 2012, the municipal government has raised RMB ***300 million*** to subsidize the pilot scheme. It is expected around ***2.9 million*** participants will benefit from the scheme. Participants can reimburse ***90 to 96 percentage*** of their medical care expense spent in qualified senior care institutions, hospital, or being provided at home.

▲ On April 8, the Beijing's Land Resource Bureau released its provision plan for state-owned constructive land in 2013. According to the construction target of senior care facilities in Beijing and the city's plan to put in place the land use right provision pipeline for senior care facilities, there will be ***100 hectares*** (one hectare is equal to 15 mu) of senior housing land use right being separately listed in Beijing's land provision plan.

▲ Cascade Healthcare, a China-based affiliate of Columbia Pacific, and Sino-Ocean Land, the Chinese developer, have formed a Sino-Foreign Joint Venture to develop and operate their first project together: a senior care facility in southeast Beijing. The ***60,000***-square-foot facility, Senior Living L'Amore – Kaijian, is being constructed in Sino-Ocean's Ocean Palace luxury residential housing community in the Yizhuang area of Beijing. When it opens this summer, the ***110***-bed facility will provide residential senior care services to Chinese seniors, adapting the best international standards of management and care to local Chinese cultural norms. Sino-Ocean Land and Cascade Healthcare will each put up ***50 percent*** of the registered capital of the new facility and jointly oversee project operations.

▲ On June 19, 2013, the Ministry of Civil Affairs published the social services development statistical gazette. According to the gazette, there are ***44,304*** senior care institutions of all types across the country, increasing by 3,436 year on year, the total number of the beds is 4.165 million, growing by 12.8% year on year (21.5 bed per one thousand elderly, increasing by 7.5%), the number of the elderly admitted at the end of the year is 2.936 million, growing by 12.7%, the number of the beds for community accommodation and daily care is 198,000.

From this year, the Ministry of Civil Affairs will work with the Ministry of Finance for allocating the fund of RMB1.0 billion a year and allocating the central special lottery fund of ***RMB3.0 billion*** in three years for supporting the construction of nationwide rural mutual assistance senior care facilities.

▲ Around 9.19 million people in China had dementia in 2010, compared with 3.68 million 20 years before, according to a study on 7 July from the Nature Journal that throws a spotlight on an emerging health crisis.

The study estimates that in 1990, the dementia proportion among seniors at the age of 65 to 69 is 1.8%, while such proportion is 42.1% among seniors at the age of 95 to 99. The two percentages have increased to respectively ***2.6%*** and ***60.5%*** by 2010.

▲ In this May, the investigation samples statistics of the Everbright Endowment Index showed that the living spending of the elderly each month stands between ***RMB2,000*** to ***RMB4,000.*** Among the endowment spending, food and medical care are the biggest items, accounting for 10%~20% of the living spending, spending for the household services, rent, water and electricity fees. Traffic and communication accounts for 5%~10%, these are the biggest expenses of the elderly, the spending for other items accounts for 5%~15%.

▲ On May 27, 2013, the National Bureau of Statistics of the China Shanghai Investigation Team conducted an investigation into the elderly living intent of rural and urban residents. The investigation results showed that nearly 70% of the interviewees prefer aging-in-place, and nearly 70% of the interviewees support the "housing-for-pension". The number of effective samples in this investigation is 2,248, of which the interviewees aged 60-69 account for 58.7%, aged 70-79% account for 41.3%. The investigation result shows that ***67.3%*** of the interviewees prefer the "traditional family security", 21.2% of the interviewees prefer the "community-based senior living", 11.1% of them prefer the "institutional senior care". In selecting the senior care facility, 41.3% of the interviewees regard the "service quality" and 39.7% of the interviewees regard the "fee rate" as the most important indicators. The primary economic source of 36.2% of the rural interviewees comes from the subsidy provided by the children.

▲ According to the plan, ***44*** new senior care facilities will be built in completed and ongoing large residential communities. These 44 senior care facilities occupy the area of 370,000 square meters in total and will provide about 9,000 beds for aged people. Besides, ***41*** temporary senior care institutions will be built in Shanghai with a total area of 115,000 square meters.

▲ On June 16, Taikang Home Yanyuan Senior Living Experience Pavilion was opened in Changping District, Beijing, the initial shape of the first senior living community invested and managed by the insurance enterprise, Taikang Home Yanyuan, came up to the surface. At the same time, Taikang, for the first time, disclosed the physical product model and foundation service standard of Taikang Home Yanyuan, which marks a substantive step to the mergence between the virtual insurance product and physical senior living community services. The leader of the Taikang Home says that all the room types and function spaces are consistent with the standards for future admission. The whole community occupies a land area of 170,000 square meters, of which the building area is ***300,000 square meters;*** it is capable of admitting 3,000 residents. The first 600 households with 800 residents in total will be admitted into the community in 2015.

▲ Recently, the Price Administration Bureau of Guangzhou City issued a notice for soliciting the general public's opinions and suggestions on the fee rate for elderly care services. According to the existing policy, if one elderly person wants to be admitted into a nursing home, the "lump-sum living facilities fee" ranging from RMB several thousand yuan to more than ten thousand yuan will have to be paid first, regardless the time length of living at the nursing home. Now this fee is expected to be cancelled and will be amortized into the room fee, it will be charged on a monthly basis. Accordingly, the room fee and nursing fee will rise dramatically, of which the special care and nursing fee will rise from the present ￥1,171 per month to ￥4,000 per month, rising by ***242%.***

▲ According to the information provided by the personnel of the Shanghai Municipal Civil Affairs Bureau, elderly care is the biggest item among the public services purchased by the government, such as elderly care, poverty alleviation, child care, and disabled assistance, etc. accounting for 60%-70%.

The results of the relevant statistics of the year show that the rehabilitation and nursing services for anergy and dementia in the elderly are still in short supply. According to the statistics, anergy and dementia in the elderly account for ***6.7%*** of the registered population of Shanghai City; the demand for providing the rehabilitation and nursing services such elderly badly needs to be satisfied.

▲ This year, the Ministry of Finance of Jiangsu Province will disburse the fund of ***RMB120.0 million*** by "substituting the subsidy with reward" for supporting the development of the senior care industry; this project will benefit 14.24 million elderly of the Province. The five key senior care services will be put on the top priority, they are: 2,000 community home care service centers; create 250 provincial demonstrative community home care service centers; build 25 "virtual nursing homes"; advance the construction of city small nursing home and rural care homes; increase 10,000 beds for meeting the elderly care demand for the rural and urban elderly, the elderly living alone, disabled and semi-disabled elderly.

Besides, Jiangsu Province plans to introduce commercial insurance into the senior care services for exploring the senior care insurance system, forming the risk sharing mechanism participated in by the individual, government, and insurance company to improve the risk-resistance capability. Before that, Jiangsu Province introduced accidental injury insurance to the elderly, this move made a good start for implementing senior care insurance and institutional accident insurance.

▲ From this year to 2015, Shandong Province will invest a special fund of not less than RMB one billion a year for supporting the construction of senior care service institutions. According to the preliminary estimate, this investment will drive the non-government investment of RMB10.0 billion. To this end, the government of Shandong Province allocated the land of ***5,625mu*** for the project (Qingdao is not included).

▲ Recently, Wenzhou City published "Several Opinions of on Encouraging Social Strength to Hold Senior Care Facilities", i.e. the ***(1+5) policy.*** This document removes the investment and financing system barrier for private capital, and encourages the non-government forces to participate in the community home care services through various forms.

This year, Wenzhou City will build 201 community home care centers for achieving full coverage of community home care service centers in the city. By 2014, all the communities will have community home care service centers. The non-government forces will be guided to explore the diversified modes of operating the community home care services. The modes of "government funds, private run", "private funds, government supports", "government purchase service", and other community-based home care modes will be piloted so as build the nearby "nursing homes" for the community residents.

▲ The Planning and Land Resources Commission of Shenzhen City recently published "Special Plan for Senior Care Service Facilities (2011-2012),". According to the Plan, by 2020, there will be 3 senior care beds for per one hundred elderly in Shenzhen. If private capital invests in the senior care facility, the land for it can be provided by agreement without any land premium, but the property right of the facility belongs to the government. The Plan outlines ***70*** institutional senior care facilities with 23,400-24,000 senior care beds, in which, there will be 20 existing senior care facility being remodeled and expanded and 8,300-8,600 senior care beds will be provided; 27 places being provided through city renewal and landbanking that 8,100-8,400 senior care beds will be provided.

▲ On 1 August 2013, China Jiuhao Health Industry Corporation Limited announced that Yan Feng People's Government and the Investment Invitation Center entered into the Framework Agreement in relation to their proposed cooperation on the development of the China Jiuhao (Haikou) Health Town on the Land located at Yan Feng Zhen, Meilan District, Haikou City, Hainan Province (海南省), the PRC with a total site area of approximately ***2,600 mu*** (equivalent to approximately 1,733,000 square meters).

Pursuant to the Framework Agreement, the Land shall be developed into the Haikou Health Town, which will encompass a health and regimen-themed community comprising the following:

- premier club and sports facilities rooted on the concept of Bayhood No. 9 Club operated by the Group;

- a health and regimen-themed boutique hotel and resort near mangroves to be equipped with various premium facilities including a health center, dining, hot springs and SPA with ecological farming and cultivation activities;
- a wet land park emphasizing environmental protection and conservation; and
- regimen and elderly-care villas and apartments with gross floor area of approximately 300,000 square meters.

▲ First National Standard for Senior Living Community

The Standard for Elderly Friend Living Community (the Standard) was published in Beijing on October 18th. It is the first of its kind standard promulgated by China Silver Industry Association and National Institute of Standardization, under the guidance of National Committee on Aging (CNCA) and Standardization Administration. The Standard is formed in due procedure according to the 12th Five-year plan on senior living. It is applied to high-end elderly friend living communities that is newly constructed, repurposed or expanded in respect to the areas of construction, care service, operational management and IT construction, etc. The China Silver Industry Association will first organize trial implementation with some companies and then try to extend the Standard to the senior care facilities all over the country.

According to the Standardization Law, the standardization procedure includes three steps, i.e. setting up, implementation and supervision. Being set up by different bodies, a standard can be national, industrial, regional, or inter-enterprise or association standard. It can be either compulsory or recommended pursuant to the different nature of the standards. As for the implementation and supervision of standards, usually government or competent authorities will be in charge.

▲ First BOT Senior Care Facility Constructed in Jiangsu Wuxi

On October 10th, the second phase of Wuxi Welfare Center Project was officially commenced construction by means of BOT. BOT (Build, Operate and Transfer) is a special model of investment and finance, in which private capital undertakes investments and operates the facility for a fixed period of time after which the ownership of the property and affiliated infrastructure reverts back to the public sector. According to the news, the municipal government has provided land use right for free and handover by contract to a private investor for construction and operation. The private company can also enjoy all types of preferential policies from Jiangsu and Wuxi. The whole project, the private sector can operate for 40 years before handover to the government, will consist 400 beds in its total construction areas of 18,000 ㎡. Designed as a four-star high-end senior care facility, it is scheduled to complete and open by early 2015.

▲ The First Listed Senior Care Company from Shandong on Shanghai OTC Market

Early this May, the first private-owned senior care company named Rong Cheng Shen Quan Senior Living Co., Ltd was successfully listed in the Shanghai Equity Exchange Center. It is a good example of financing through capital market for small-to-mediate sized enterprises. As reported, Rong Cheng is a company specialized in providing management service for senior facility, community care solution and in-home care service.

Shanghai Equity Exchange Center is a national OTC capital market. After being listed in the Center, companies can rapidly realize direct and small-sized financing with lower cost by means of private equity fundraising and issuing of additional shares, or, they can indirectly raise fund by means of equity pledge or mortgage.

Market Feasibility Study for Development of Senior Housing in China

By: *Jim Moore*, Founder, President and CEO of Moore Diversified Services, Inc., Fort Worth, Texas,
Contact information: jimmoore@m-d-s.com
Joseph J. Christian, Senior Foreign Lawyer, Law View Partners, Shanghai, China
Contact information: joseph.christian@lawviewer.com
Michael Qu Qin, Managing Partner, Law View Partners, Shanghai, China
Contact information: quqin@lawviewer.com

Introduction

Real estate development is a complicated business. It requires the assembly of a team of highly skilled professionals, each possessing unique expertise and specialties – design, planning, construction, construction management, financing, legal, and sales and marketing, to name a few; and management of the team by a developer with the professional skills and capabilities to coordinate the work products of the team members throughout the process. Before the actual development team begins work, however, the developer needs to determine the demand for the contemplated project. A thorough review and understanding of the market for the project and its overall feasibility will influence the planning, design and ultimate construction of the project, and is essential to its likely success. We refer to the project's "likely" success because even with the best, most thorough market feasibility study, there is no guarantee of success; but without a market feasibility study prepared by a consultant with the appropriate skills, failure of the project will be far more likely.

There are many examples of unsuccessful projects, which have failed or are foundering due to lack of demand for the product, across China. A few of the more notable examples are:

- The New South China Mall in Dongguan, a city of 10mm people in Guangdong Province, is the largest mall in the world based on gross leasable area, with 7.1mm square feet of leasable space, plus an amusement park. However, due primarily to its suburban location and lack of access by public transportation and highways, coupled with the largely non-affluent, albeit large, population of Dongguan, its shops have been almost entirely vacant since its opening in 2005. Its amusement park does attract visitors, but too few to generate sufficient demand for the shops.

- There are numerous other "Ghost Cities" or "Phantom Projects" that have been built, but so far, have not attracted occupants:

    - In Chenggong in Yunnan Province, 100,000 apartments stand vacant

    - The Wonderland Amusement Park, in Nankou Town, Changping, north of Beijing, and Thames Town, in Shanghai. Each attracts not its intended visitors, but interested students, photographers and artists

    - The new business district of Yujiapu, Tianjin was envisioned as a Manhattan-like international finance center - "the next Shanghai" - but will likely require a quarter of a century for its office space to be absorbed, according to an article in *Forbes*.

There are many other projects in China that are, to put it kindly, "under-utilized." There may well be many reasons why some of these projects went forward seemingly without regard for their success, such as the hubris of the developer, the desire to acquire the land use rights whatever the outcome, the over-availability of cheap debt capital during the property bubble, or the government's zeal for spreading urbanization into the interior of the country. Whatever the reason, in these projects, demand for the product clearly fell far short of the supply.

What should a developer do to avoid developing a failed or troubled project? As we already pointed out, there is no guarantee that any amount of pre-development analysis and study will guarantee the success of a project, but without rigorous analysis of the proposed development, there is a far better than even chance that the project will fail. So, the answer is to engage an experienced, first-class firm to conduct a thorough market feasibility study before spending any significant amount of money on planning and design of the project; and certainly before putting a shovel in the ground.

Purpose of a Market Feasibility Study

The essential questions that a market feasibility study aims to address are, "if I build it, will they come?" and a closely related question, "if I build it, will it be worth it?" As such, the studies aim to objectively and rationally uncover the strengths and weaknesses of an existing business or proposed venture, opportunities and threats as presented by the environment, the resources required to carry through, and ultimately the prospects for success. In the simplest of terms, the two criteria to judge feasibility are cost required and value to be attained, both of which should be carefully assessed before significant amounts of money are invested in a project.

As shown later in this article, a market feasibility study prepared by an experienced professional provides a great detail of involved and detailed analysis that can be used to make important internal risk-bearing decisions as well as providing objective and credible external communications to third parties, such as lenders and investors performing due diligence or loan underwriting.

Senior housing

The development of housing for China's elderly citizens presents a particularly compelling case for a strenuously conducted market feasibility study, in that the product type is still very new in China, and thus is relatively unknown in most regions of the country. Market rate, private pay projects that have been built by domestic developers and operators, such as General's Garden and Yanda in Beijing, and Cherish Yearn in Shanghai, have so far ranged from highly unsuccessful to just barely successful, owing in large measure to the developers' lack of understanding of the market for their products, and of the operating complexities of the projects. To be fair, this is quite understandable due to the newness of market rate senior housing in China, but the need for a comprehensive market feasibility analysis of the proposed project cannot be overstated in these circumstances.

The market feasibility study should address the regulatory environment and preferential policies that will apply to the project. The senior care industry is an emerging market in China, and most of the applicable laws and regulations are outdated and under revision, and many new ones are or will be promulgated in the future. The developer needs to be sure that the market feasibility analysis takes into account this dynamic regulatory environment, and the policy preferences that will help the project to achieve better performance. An analysis of policies applicable to the project is essential to integrate the regulatory environment into the structuring, pricing and market positioning of the product.

Objectives of a market feasibility study for a senior housing development

A market feasibility study for a senior housing development prepared by a skilled and experienced consultant such as MDS will meet the following objectives and produce the following outcomes:

Establish Overall Market Feasibility. Establish the overall market feasibility for the project.

Make Risk-Bearing Decisions. Assist the Development/Sponsor Team in making the right internal risk-bearing decisions.

Define Business Mission. Provide a clear understanding of the Business Mission - the products and services which can be provided and the specific markets that these products will serve at the subject site.

Project Capture Rates. Determine the required capture rates or size and depth of the age and income qualified market for each of the products/services to be provided.

Establish Project Absorption Rate. Develop realistic and achievable unit absorption projections to reach stabilized project occupancy.

Determine Project Phasing. Where relevant, determine how phasing can be implemented and risks hedged in order to optimize the overall development of the project.

Identify Strengths and Weaknesses. Evaluate the project's strengths and weaknesses within the market area and with respect to the existing and announced competition.

Provide Objective Communications Document. Provide an objective and professional communication package for professional staff, board members and lenders. It may also be necessary to submit the study results to planning and zoning panels and bond inducement committees.

Provide Executive Summary Report. Provide detailed technical analysis, Executive Summary information, professional opinions, and implied strategies for consideration by the Development/Sponsor Team and other interests.

Develop Project Success Profile. The market feasibility study results and recommendations - properly executed by the client - forms the basis for a successful project.

The methodology for achieving these objectives that MDS would employ is discussed in the following section of this article.

Outline of Market Analysis/Feasibility Study

1.Conduct Demographic/Economic Base Study

The economic base study consists of a complete analysis of past population and housing trends, along with projections for the future - with special emphasis on senior market segments. It will include an evaluation of the mix of the market area population and households by age cohorts, income cohorts, owner vs. renter mix and other key demographics. The end result of this task will provide the basis for determining the relative size, depth and quality of the potential market for the proposed senior housing products and services. In addition to the senior market, MDS will also evaluate and express a professional opinion regarding the potential impact of the very important decision influencer market or adult children of seniors.

MDS will obtain current demographics for the project's primary and secondary market areas from its data base and from available sources in China, and utilize the data from these demographic reports in a computer demand model in order to determine the required capture rates/demand for independent living, assisted living and health care products and services.

Specific tasks will include:

- Determine total number of age & income qualified households
- Conduct age cohort segmentation/projections
- Establish qualifying income (affordability) criteria
- Determine impact of senior’s home equity on income thresholds/affordability
- Identify other forecasting safety margins - utilizing conservative assumptions

2.Determine Relevant Market Areas

This effort specifically determines where the majority of the unit absorption will come from for the subject project. By properly defining the primary, secondary, and, in some cases, tertiary market areas, MDS will establish clearly and succinctly where project absorption or fill will originate.

This evaluation will be conducted in part during MDS's field trip to the market area. Migration propensities, natural/man-made geographic barriers and psychological or other types of barriers will be considered in this analysis.

Specific tasks will include:

- Definition/philosophy for establishing the primary and secondary market areas
- Impact of adult children mobility trends on seniors
- Determine impact of decision influencers (children)

3.Conduct Specific Site Analysis

A detailed analysis of the physical and qualitative characteristics of the site - clearly defining both superior advantages and competitive market challenges. An analysis will be conducted of the overall compatibility/suitability of the site with respect to the immediate surrounding neighborhoods and overall primary market area.

Specific tasks will include:

- Existing site evaluation and analysis
- Development description
- Surrounding development; impact on subject site, site challenges and opportunities
- Site supporting amenities
- Evaluate and rank alternative sites - where applicable

4.Conduct Comprehensive Regulatory Analysis

There are a number of legal issues – particularly local issues – that have the potential to significantly affect the feasibility – and success or failure – of a project. Careful review of these make-or-break issues as part of the market feasibility study by skilled and experienced counsel is an essential part of the market feasibility study.

Local Master Planning. A careful legal analysis will determine whether and to what extent local master planning for senior facilities will affect the occupancy and profitability of the project. In many jurisdictions, senior care facilities are currently in short supply, but some local governments have already instituted master planning on where future senior facilities are to be built, in very specific locations and detailed scale (for example, in Beijing and Chengdu). This analysis can help the investors to estimate the supply-demand trend in the long term and determine the product positioning strategy in differentiated segments of senior housing.

Local Restrictions on Pricing. Some local authorities have specific requirements or restrictions on pricing, market entry or licensing on their for-profit and not-for-profit business registries. Understanding the pricing model is crucial to determining profitability, ratio among mixed-use properties in the contemplated project, and so forth. In addition, in cities that prohibit lump-sum or life-time entrance fees, such as Wuhan, and provide no guidance on pricing of services, these issues will be identified and appropriate deal structures devised in the course of the market analysis process.

Local Reimbursement System. The local medical reimbursement system needs to be taken into consideration. For example, whether a hospital should be built in the project will depend on the outcome of market research on the range of medical coverage and the targeted residents' preferences and habits. In designing a product, there will also be many elements to be considered in calculating the consumers' income level, their needs and consumption capabilities. Building what they need is the first step, and investors need to find way to attract elderly to come and stay. Prior research has shown the elderly focus heavily on availability of medical care close by and the reimbursement system in the senior care community; but that does not necessarily mean that a hospital must be included in every project. The market feasibility report, including the analysis of legal issues, will advise on how to design the project for optimal acceptability - profitability - and meet the needs of the consumers, based on the combined factors of the nature of the project, the results of the market analysis and local policy.

Preferential Treatment. Whether preferential treatment, such as a tax preference or the contribution of infrastructure cost, is available from the local government, and if it is, to what extent, should be carefully investigated, as it can affect the financial performance, market/sales strategy, the investment model – e.g., for profit or non-profit, the model for acquiring the property from the local partner – e.g., purchase, lease or entrustment, etc. in a competitive market. Even a minimal difference can make a noticeable difference in the profitability of the project. In China, preferential policies are introduced almost every day in every city.

Evaluation of Construction and Service Standards. Whether the local government has construction or service standards, or a certain accreditation system to be followed, needs to be considered. For example, in Shanghai and Beijing, there are government-run assessments for senior care facilities to accredit their service levels, based on the facility's scale, faculties, services, etc. As a result, the market positioning and pricing can be totally different for different levels of service. To meet all these requirements, analysis and planning need to be done at the very beginning of market research.

5.Conduct Analysis of the Major Competition

Having a clear definition of the competition (if any) in terms of number of units, as well as size, design, pricing characteristics and services and amenities, is necessary in order to develop a unique and effective market positioning strategy for the project being contemplated.

A comprehensive evaluation of the competition will be conducted using a number of approaches/techniques:

- Analysis of MDS's internal China database
- Review of data provided by the client
- "Mystery shopping"/visit to key competition during MDS's field trip to the market area

Competitive projects analyzed will include:

- Independent living/congregate care
- Assisted living/personal care /Alzheimer's-dementia
- Nursing homes
- Community-based services
- Other senior housing products/services
- Hospital/acute care/managed care impacts - where relevant
- Analyze both existing and announced competition

6.Estimate Overall Project Capture Rates

The consultant will estimate the required project capture rates for the subject project - giving consideration to net available age and income qualified households, both existing and announced competition and unit turnover or natural attrition which will occur at existing communities. The estimate of these capture rates will also give consideration to the expected absorption to be realized from each key age cohort, as well as the units estimated to be absorbed from the primary market area, secondary market area, and, in some cases, tertiary market areas.

MDS, for example, has developed a computer demand model which utilizes a combination of accepted industry factors/ratios and specific market area data such as number of households and income screening percentages by age cohort. Using its model, MDS will run several scenarios that show the impact of changing one or more of the factors (such as qualifying income criteria or number of units to be absorbed) and quantify the impacts of forecasting safety margins - such as home equity impact or the potential impact of the adult children decision influencers.

Capture rates will be estimated:

- By age cohort
- By qualifying income criteria
- Primary market area vs. secondary market area impacts
- Considering existing and announced competition

- Considering resident turnover

7.Conduct Project Fill-Up/Unit Absorption Scenarios

The economic base study and competitive analysis will establish supply and demand trends. The study will establish three unit absorption scenarios - a pessimistic, an expected, and an achievable or optimistic schedule of unit absorption over time. This will provide the project team complete visibility as to realistic prospects for the project in terms of construction phasing and relative risks during the fill-up period.

The absorption rate analysis will be influenced by absorption rates of existing major competitors, if any.

Obviously, there will be other qualitative factors that will surface during the feasibility analysis. These factors will be given consideration in determining the most realistic absorption scenarios.

The analysis will include:

- Initial absorption/net fill-up per month
- Estimate time to reach stabilized occupancy

8.Develop Product/Project Definition and Market Positioning

Where appropriate, MDS will offer complete product mix recommendations, including the types of products to be offered at a particular site, specific design and pricing details and services/amenities to be provided by these products. In addition, MDS will offer recommendations regarding how to strategically position such products in the competitive marketplace and when to appropriately sequence their development and introduction into the marketplace.

Specific tasks will include:

- Establish/recommend appropriate product mix:
  - Independent living
  - Assisted living
  - Alzheimer's-dementia
  - Memory care
  - Active adult
  - Nursing - if applicable
  - Other products
- Recommend Specific Living Unit Characteristics:
  - Mix of living arrangements and unit types
  - Sizes/living areas
  - Pricing structure(s)
- Recommend services and amenities vs. pricing
- Suggest alternative pricing systems

9.Prepare Final Report

Results of all of the above research tasks will be documented in a final report. This report will summarize market feasibility and provide supporting data with both clarity and comprehensiveness. One of the purposes of the report should be to communicate with other external interests, such as lenders and joint venture partners. The report will be written in that context.

The report will include:

- Technical exhibits
- Detailed narratives
- Professional opinion of project feasibility

Special Strategic Consulting Tasks

As part of the normal scope applied to feasibility studies, MDS will also include certain strategic consulting efforts that are of high value to the client. These include, but are not necessarily limited to, the following:

Special Emphasis on Affordability and Pricing Models

In today's complex marketplace, senior consumer affordability and willingness to pay must be carefully integrated with project cost analysis to insure that the market research results are consistent and realistic. Each market area has unique responses and propensities to accept the variety of pricing models that exist in the industry. MDS will determine affordability versus size and depth of the market by applying the sponsor/development team's cost estimates to appropriate pricing analysis models. MDS will also suggest alternative pricing models - consistent with both the market and the sponsor/development team's objectives.

Design Concept Critique

MDS will perform a design concept critique for the project - based on available design concepts that will exist and are provided to MDS during the market feasibility period. While we do not practice architecture, our significant experience allows us to help the team evaluate design concepts in order to clearly show what works and what does not in this very selective market sector.

Provision of Miscellaneous Resources

MDS retains a complete file of hundreds of beneficial items to an emerging congregate project. These items include:

- Design and campus "footprints" & building elevations
- Innovative living unit design configuration
- Typical common area amenities and features
- Sales aids and marketing brochures
- Typical advertising campaigns
- Sample residency contracts
- Key industry financial factors/ratios
- Lists of qualified architects, interior designers and marketing/management firms.

MDS will make these resources available as part of its consulting engagement involvement.

Conclusion

We trust that this article has provided useful information and guidance to our readers. Senior housing is a complex product type – perhaps more than any other real estate product type – and the involvement of a top-notch, first-class advisory firm, early in the planning process and continuing through opening of the development, is critical to the potential success of the project. ■

Where is China's CCRC Industry?

By: Joseph J. Christian, Senior Foreign Lawyer, Law View Partners, Shanghai, China
Michael Qu Qin, Lawyer, Law View Partner, Shanghai, China

Continuing care retirement communities (CCRCs) are a unique senior living product in the U.S. A common definition of CCRCs is that they are age-restricted properties – some times described as "lifestyle" projects - that include a combination of independent living and assisted living and/or skilled nursing services available to residents all on one campus.[1] Memory care units are increasingly being included in the mix as well. The majority of the units typically are not licensed skilled nursing beds.[2] Resident payment plans vary and include refundable, partly refundable and non-refundable entrance fees, condominium and cooperative ownership and rental programs. While industry observers differ in their assessment of whether the market in China will accept a senior living product the same as or even similar to U.S.-style CCRCs, some investors are currently developing or planning a Chinese model of CCRCs that bears great similarity to the U.S. model. We believe that it remains to be seen whether this product type will be accepted in the Chinese market; but we also believe that it is worthwhile to consider the question, as its raises many other interesting questions about the state and direction of the still very new senior living industry in China.

What's happening in the marketplace in China?

Looking at the market, there are early CCRC-type products like Cherish Yearn in Shanghai and Yanda, General's Garden and Sun City in Beijing, and additional similar projects have been announced as under construction or in the planning phase. Many insurance companies, in particular, are moving in this direction. Union Life has been in construction of a large CCRC in Wuhan, and Ping'an last year announced it will invest up to RMB17 billion to construct a comprehensive senior living community of around 1.5 million square meters in the city of Tongxiang in Zhejiang Province (浙江桐乡). Also in Tongxiang Wuzhen (乌镇), YaDa International Holding (雅达国际控股) is planning to invest RMB10 billion in the next five years to build a health ecological park. Projects like these are mostly found in cities that are tourism destinations or are close to affluent populations.

These projects are essentially a type of CCRC. Even in the extremely huge projects like the above in Wuzhen, which is being planned as a healthcare park with mixed uses: a hospital, senior university, senior living, hospitality and commercial center, a very dominant part of the park is a senior living community for both independent and assisted living. The most recent land granting case in Beijing of comprehensive usage of senior care community also reflects this trend. A cooperative bidder founded by Greenland (绿城), Jianyin Investment (建银投资) and Blackstone (黑石) purchased two plots in Beijing Miyun County (密云县) where, according to the master planning, mixed use of properties for the purpose of residential, tourism, nursing home and kindergarten are to be built, consisting of approximately 400,000 square meters. With this initial test case from the capital, other cities are expected to follow suit. The land usage, its size and location, and further preferential policy treatments are important elements to determine where the senior care industry in China will head to in the future—whether it will favor the development of communities much like CCRCs in the U.S., or evolve a type of senior housing unique to China.

At this point in the evolution of the senior housing industry in China, the authors are unsure what direction – or directions – the industry will take. However, we can predict with some confidence that the product will be uniquely Chinese. We can also say that there seems to be a tendency to over-build senior care properties, with some communities as large as 10,000 units.[3] Even though projects of this size can present significant

1 In U.S. nomenclature, to be considered a CCRC, the community must offer independent living and nursing care. *NIC Investment Guide – Investing in Seniors Housing & Care Properties*, Second Edition 2012.
2 https://www.seniorshousing.org/filephotos/Classifications_for_Seniors_Housing_Property_Types.pdf
3 See a previous version of this Newsletter [http://www.lawviewer.com/upload/file/13668882641425.pdf] in which the authors, along with Jim Moore of Moore Diversified Services, discussed at length the wisdom and necessity of commissioning a seasoned professional team to perform a detailed market feasibility study as part of the planning and development of a senior living project.

management challenges, the trend in China still seems to be ever larger developments.

Over-building is just one of the risks facing investors and inexperience is definitely another. Many investors have come to appreciate these risks. However, notwithstanding the risks, there are multiple incentives for investors to enter the market at this moment: (a) local governments are supportive due to the real-estate-driven economy – a large portion of many local governments' revenues derives from the sale of land use rights; (b) local governments are also eager to respond to the mandate set forth in the 12th five-year plan to provide comprehensive care to their senior citizens; (c) senior housing is thought to be attractive to consumers as a blend of an aging-in-place solution and a real estate investment; and (d) investors from all fields see a promising future for senior housing in China, for reasons that are by now well-known to the readers of this Newsletter. Therefore, the more land acquisitions are secured by investors now, the greater the chance will be to win in the future competitive market.

Whatever the reasons are, the risks cannot be overlooked; but when we look at what happened in the CCRC industry in the U.S. and what can be learned from that experience, we believe that it is possible to predict and avoid these risks.

CCRCs in the U.S.

There are approximately 2,000 CCRCs in the U.S., the oldest dating back over 100 years, many having evolved from nursing homes or homes for the aged. They emerged in the 19th century, as homes for widows and orphans from the American Civil War, which ended in 1865. During the Great Depression in the 1930s, CCRCs were mainly charitable endeavors, in which would-be residents turned over their assets to a charitable institution that operated the old age home in exchange for care for the remainder of their lives. In some ways, the financial model of these 1930s-era facilities has been carried over into modern CCRCs, as we will see below.

The industry has experienced steady growth since the 1960s, as parents of the "baby boom" generation grew older. The first major growth period was in the 1970s and early 80s, but growth slowed as projects faltered, owing in some measure to unsophisticated lending practices and inexperienced developers, factors that are common in a nascent industry like the CCRC industry. CCRCs essentially had to reinvent themselves, and the 1990s through the mid-2000s saw another very substantial growth period, as the capital markets began to understand and accept the product type and developers grew more experienced and sophisticated. But there was a sharp decline in the number of new CCRCs in the aftermath of the global financial crisis (GFC) in 2008. It should be noted, though, that CCRCs survived the financial crisis quite well. There were a few notable bankruptcies of CCRCs, but by all reports, no residents were deprived of their residency or of the services they bargained for when they entered the CCRC.

CCRCs in the U.S. are typically fewer than 300 units, with about one-third of CCRCs having more than 300 units and only about 8% having over 500 units. 150 units is considered the minimum optimal size to achieve operating efficiencies.[4] CCRCs can be found in urban, suburban and rural locations.

Joseph Christian is a fellow at the Harvard Kennedy School in Cambridge, Massachusetts, where he is researching and writing on the senior housing industry in China, with particular focus on the applicability of the U.S. experience in the industry to China's nascent industry.

A practicing attorney for over thirty years, the primary focus of his practice has been real estate, representing institutional investors and developers in large commercial transactions across the U.S. and in Asia. A specialty of his practice has been the senior housing industry in the U.S., where he has represented institutional investors in the sector since 2000. From October 2008 to December 2011, he was based in Hong Kong, where he co-headed the Asia real estate group of DLA Piper. During that time, he worked closely with several U.S.-based operators and investors, as well as Chinese developers and insurance companies, in their exploration of the senior housing market in China.

His professional experience has earned Mr. Christian the reputation as an expert on the senior housing industries in the U.S. and China, and he has chaired, presented and spoken on panels at several senior living conferences in Shanghai and Hong Kong. A speaker and writer on U.S. and Asian real estate issues, Mr. Christian is an Instructor at the Harvard Graduate School of Design's Executive Education program.

Mr. Christian is a member of IAHSA and of the Pacific Council on International Policy, based in California. While in Hong Kong, he was a member of the Asia Pacific Real Estate Association; the Asian Association for Investors in Non-Listed Real Estate Vehicles; the Urban Land Institute – Asia Pacific, where he served on the Executive Committee; and the American Chamber of Commerce, where he served on the Real Estate Committee.

Contact information:

joseph.christian@gmail.com

[4] *Independent Living and CCRCs,* Jim Moore (2009). Of course, more units may be appropriate, but care must be taken not to overbuild.

Eighty percent of CCRCs in the U.S. are operated as not-for-profit institutions, and half of the CCRCs are affiliated with faith-based organizations.

Fee Structures for CCRCs in the U.S.

The fee structures employed by CCRCs in the U.S. have evolved with the industry, but essentially consist of a combination of entry fees and monthly service fees. The entry fee assures the resident that he or she will be entitled to remain in the CCRC for as long as his or her needs for care do not exceed the ability of the CCRC to provide the care.[5] Depending upon the type of contract between the CCRC and the resident, the entry fee will also assure the resident that the full spectrum of care offered by the CCRC will be made available to the resident for the remainder of his or her life: without any increase in cost – a so-called "life care contract" ("Type A"); without any increase in cost, up to a specified number of days in the assisted living or skilled nursing portions of the CCRC – a "Type B" contract; or with a charge for daily care in the assisted living or skilled nursing portions, at a specified or market rate – a "Type C" contract. Entry fees will vary greatly depending upon the type of contract a resident chooses, and can be quite substantial - particularly if a Type A contract is chosen, so much so that typical residents would need to sell their homes to pay the fee. In 2010, the average entry fee was approximately $145,000, but some high-end projects charge over $1 million.[6] Monthly fees typically cover non-care related expenses, such as debt service, management and maintenance expenses, and similar expenses of operating the property, but may also cover care-related expenses under a life care contract. Needless to say, there are many, many variations in how the fees are structured, not only from CCRC to CCRC, but within a CCRC and even for the same unit in the CCRC.

A Sampling of Issues

CCRCs are very complex projects, in many ways. Here are a few highlights --

From the developer's point of view, designing the fee structure can be quite challenging. The developer needs some degree of certainty that the entry fees and fixed monthly fees will provide sufficient funds to cover the expenses of operating the facility and the expense of the care promised to each resident. In essence, particularly in the case of a "Type A" contract, the CCRC will be providing health and long-term care insurance, not to a very large pool as a commercial insurance company would do – thus spreading the risk across a large pool of insured, but to a small pool consisting of the residents of the CCRC. Luckily, there are actuarial firms that can provide guidance on this, but the risk remains. Refundability of the entry fees also pose a risk to the owner, especially if the refund of the fee is not conditioned upon "resale" of the unit.

Regulatory complexities can also pose difficulties for the operator of the CCRC. As noted above, the arrangement between the CCRC and the residents potentially can be seen as a prepaid health plan, a health maintenance organization, a continuing care arrangement, an insurance contract, or a combination of any or all of these. These multiple layers can create confusion – which regulators have jurisdiction? Some owners may try to structure their programs to avoid a particular kind of licensure, only to find themselves subject to more burdensome regulations. Other owners may enter into joint ventures with license holders, such as a hospital, to avoid the need to be licensed themselves.

Resident contracts are quite complicated. Forms that we have seen in the U.S. are often 40 – 50 pages or more. They address myriad issues, including the terms and conditions of the entry fee and its refundability, services and services fees; but one of the more thorny issues is the transfer of a resident – voluntarily or involuntarily – from one care level to another. While the typical contract covers this issue in great detail, the CCRC operator also needs to be cognizant of federal and state laws, which may be in conflict, that would apply to moving a resident from, say, independent living to assisted living without the resident's consent, which the CCRC operator needs to have the right to do to maintain the integrity of the applicable portion of the project. For example, there could be issues under the U.S. Fair Housing Act for moving a resident prematurely, and state law and regulatory issues for

[5] As noted above, CCRCs at a minimum provide independent living arrangements and skilled nursing, and may also provide assisted living and/or memory care units.

[6] Entry fees are correlated with housing values in the market area of the CCRC, in recognition of the fact that most seniors will sell their homes to pay the entry fee.

not moving the resident soon enough.

Financial Assistance and Tax Deductions

Federal and state government programs, such as Medicare and Medicaid, respectively, may be available to assist a resident to pay the health care portions of the fees charged to the resident. A resident may also have private pay long-term care insurance to help defray the costs of assisted living and the occupancy costs of skilled nursing facilities in the CCRCs, as needed.

Portions of the resident's fees that are allocated to medical care may also be deducted from the resident's federal and state income for taxation purposes. Depending on how the entry fee is structured, a portion of it may be deducted from the resident's income as prepaid health expenses.

Regulation of CCRCs in the U.S.

Regulation of CCRCs occurs on two levels: the assisted living and skilled nursing components are required to be licensed as any assisted living or skilled nursing facility would be; and the CCRCs themselves are subject to regulation. Each state imposes its own regulatory scheme – there is no uniform set of regulations across the states. A primary reason – political factors aside - for the lack of uniformity is that circumstances differ from state to state - what might be an appropriate set of regulations for, say, California would not be right for Mississippi. While assisted living and skilled nursing facilities are required to be licensed in every state, not all states regulate CCRCs.[7]

CCRC regulations typically address several aspects of the operation of a CCRC:

- As discussed in the "Fee Structures" section above, most CCRCs promise in their contracts with residents to furnish health care or assisted living services for the life of the resident, in exchange for an entry fee, a fixed periodic fee, or both. This promise is in many ways similar to a prepaid health plan, a health maintenance organization, a continuing care arrangement, an insurance contract or a combination of any or all of these, each of which is regulated, and subjects the CCRC to regulation in most states.

- **Virtually all** states require that a number of disclosures be made to prospective residents, and often to the state regulatory authority as well, as part of the entry documentation and payment of the entry fee. These disclosures may include: information about the business entity that will operate the CCRC and its owners; audited financial statements; budgets with actuarial analysis; a feasibility study for the CCRC; marketing projections; forms of resident agreements; and advertising copy.[8] These disclosures are intended to protect the resident, who, as noted above, may be about to deposit the equity in his or her home with the CCRC operator with the expectation that the operator will make good on its promise to provide the resident with appropriate levels of care for the remainder of the resident's life. The resident needs to be assured that the CCRC will open for business as projected and have the wherewithal to maintain itself as a going concern, which depends in

[7] As of 2010, twelve states had no CCRC-specific regulations.
[8] *Seniors' Housing and Care Facilities,* Paul A. Gordon, Urban Land Institute

Michael Qu Qin is a PRC-qualified lawyer and managing partner of Law View Partners based in Shanghai, China, where he practices in the areas of real estate, foreign investment and mergers and acquisitions. He has extensive experience as a lawyer for over ten years. Since 2010, he has specialized in the senior housing industry, representing foreign and domestic investors in the sector. Prior to co-found Law View Partners, he worked in Co-effort Law LLP and was in-house counsel in METRO Group China. Prior to that, he had been practicing in another law firm since 2002. In his practice, Michael has successfully represented investors in the real estate, senior housing, asset management, retail and hospitality sectors in dealing with commercial transactions and disputes.

Michael is active in the senior care industry, and he regularly publishes the China Senior Housing and Care Newsletter, a legal publication that provides valuable insight into the development of the China senior housing and care industry and helps investors doing business in China. He is a frequent speaker at real estate and senior care seminars.

A legal professional who has been involved in the emergence of the senior care industry for years, Michael is now focusing primarily on assisting private investment in the field, providing counsel regarding company and capital formation, project development and acquisitions, regulatory issues on operation, corporate finance, and related issues.

Contact information:
quqin@lawviewer.com

part on the CCRC's ability to sell memberships to other potential residents in accordance with its marketing plan.

- The regulatory effort often takes the form of requiring a certificate of authority or obtaining a license before the CCRC may enter into a resident contract, collecting fees, advertising or beginning construction. The application fee for the license or certificate is nominal in most states, but some states charge a fee based on a percentage of the total cost of the facility to pay for the costs of engaging consultants to review the feasibility of the project. Some states also require evidence that licenses to operate the assisted living and skilled nursing (as applicable) portions of the project have been applied for.

- States also regulate the handling of residents' deposits, often requiring that they be escrowed or some times requiring a surety bond. The CCRC developer typically is permitted to use the deposits to retire construction debt or to pay part of the construction costs of the facility. Deposits are important not only in that they provide funds to the operator to pay development costs, but they also indicate a potential buyer's interest. Consequently, all or a portion of the deposit may be non-refundable, as long as the CCRC operator performs its obligations.

- States may place conditions on the release of the deposits to the developer. For example, regulations may require that potential residents have made deposits for a certain percentage of units before any deposits can be released; and as the percentage of units increases, more of the deposit can be released. The goal of conditions like these, of course, is to provide assurance of the completion and viability of the project before funds are released to the developer. Some states require that long-term financing be in place before deposits can be released. Reserve requirements are also common.

- Pre-sales are very important to the success of a project, and they are a significant indicator of the likelihood of its success. Accordingly, some states require a certain level of pre-sales before permitting construction to commence or accepting an application for approval of the project.

Accreditation of CCRCs

As can be seen from the discussion above, regulations addressing CCRCs tend to be focused more on consumer protection, primarily at the outset of the relationship between the prospective resident and the CCRC, and less on the quality of the operation of the CCRC and of the services provided. To address the latter set of issues, the American Association of Homes and Services for the Aged has established an independent Continuing Care Accreditation Commission to develop and implement a comprehensive accreditation program that includes a self-evaluation process in the areas of governance and administration, finance, health care and resident protections. The process includes a review by a visiting team and evaluation by an accreditation committee.

To be eligible for the accreditation process, a CCRC must have been open for business for at least one year and have achieved stabilization – or be able to demonstrate financial viability. Compliance with state regulations is also reviewed during the process. The process is repeated annually, and the CCRC must maintain its status to remain accredited.[9]

Accreditation focuses on quality and results[10] and essentially supplements and augments state regulations. In doing so, it also provides valuable guidance to consumers choosing a CCRC; and presumably, being accredited gives a CCRC a marketing advantage over its non-accredited competition. However, accreditation is voluntary and is not universal. Only 15% or so of CCRCs in the U.S. are accredited.

The Verdict on CCRCs in the U.S.

In summary:

[9] *Seniors' Housing and Care Facilities,* Paul A. Gordon, Urban Land Institute
[10] See http://www.carf.org/home/.

- CCRCs in the U.S. have a long history and are well-established as a senior living product type. However, while the CCRC industry is well-developed and quite mature in the U.S., it is fair to say that it is always evolving and changing, to meet the changing needs and desires of the target population. Today's seniors have very different attitudes about lifestyles and expectations for their retirement years than did their parents; and the senior living industry constantly takes these differences into account in developing and operating senior living facilities of all types including, of course, CCRCs.

- CCRCs that offer the full spectrum of care provide seniors with the comfort that they can live out their years in one community, without having to move as their needs for assistance and health care increase; and, depending on the type of contract they enter into, without ever having to pay more than a level monthly fee. If the entry fee is of the refundable type, the resident's children or other heirs would be able to inherit it, just as they would inherit their parents' home.

- Many of the CCRCs in the U.S. are so-called "lifestyle" communities, offering residents a variety of social and recreational activities to keep them socially engaged and occupied, as well as dining options, housekeeping, transportation and, of course, health care services, all in one community. While this model has been quite successful in the past, the current trend has been for seniors to enter senior housing in general at higher levels of acuity; most seniors will not enter a community until they have had a health event that awakens them to the need to plan for a future that may require ever more intensive care, with activities of daily living – as offered in assisted living, or skilled nursing.

- Regulations provide a good level of protection to the residents, mostly from a financial and consumer protection point of view, as they are focused primarily on disclosures and financial viability. The accreditation process provides comfort with respect to quality and results.

- Federal welfare programs will reimburse the portions of the entry and monthly service fees that are allocated to health care costs. Private pay insurance programs may cover the occupancy costs of assisted living and nursing homes. A portion of the resident's medical expenses may be deducted from the resident's income for tax purposes.

- CCRCs have experienced annual turnover rates far lower than that of other senior living products, primarily because residents do not need to move out when their need for care increases – they simply move to another portion of the CCRC.

- An important development in the senior housing industry occurred in 2005 with the introduction by the National Investment Center for the Seniors Housing & Care Industry of a map database that accurately measures performance and communicates that performance to key stakeholders in the industry, such as institutional investors. The database covers the largest 100 metropolitan statistical areas in the U.S., which collectively account for approximately 67% of the U.S. population. Reporting performance of properties greatly improved transparency, which in turn has led to increased liquidity in the senior housing market.

- Finally, CCRCs, like other senior housing product types, fared relatively well in the financial crisis. There were a few notable bankruptcy filings in the sector, resulting from potential residents' inability to sell their homes and to pay the entry fees upon which CCRCs rely. From all reports, however, no residents were forced to leave the affected CCRCs, and all received the care that they bargained for and expected.

The verdict? CCRCs in the U.S., when conceptualized, developed and operated by experienced and professional developers and operators, can be a very attractive living arrangement to a large segment of the senior population. And they can be very attractive investment opportunities.

Will U.S.-style CCRCs Flourish in China?

We think that at this stage in the development of the senior housing industry in China, it is nearly impossible to predict what product type or types will succeed in the marketplace. We expect that the type of projects that will meet with greatest acceptance in the near future will be those that are need-based – that is, residents move in because they have to, not necessarily because they want to. Will this lead to acceptance of U.S.-style CCRCs? Perhaps if it can be positioned not as a purely "lifestyle" project, but one that stresses that it offers peace of mind to Chinese elders, knowing that they will be able to remain in their community for the rest of their lives, with guaranteed access to the assistance and health care that they need. CCRCs may also have an advantage over rental models, as are typical in assisted living projects, in that the entry fee provides a kind of "ownership" of the resident's unit, which would likely be attractive to Chinese elders – as the refundable entry fee would be inheritable by their children.

That being said, it is hard to imagine that the U.S.-style CCRC would be "adopted" wholesale by the Chinese marketplace. The projects we mention at the beginning of this article do seem like typical U.S. CCRCs, regardless of whether the developers or operators admit they are in fact copying the model. But if this is what they were planning—actually we have found many projects in construction are also holding themselves out as "China's CCRCs"—they must have adopted many features from the U.S.'s practice.

However, what cannot be learned and adopted from the U.S. are those essential elements that help developers to foster the whole industry: the highly regulated environment in most states, the well-established internal discipline and external overseeing mechanisms to ensure consumer protection, the acceptance and incentives for seniors to move into senior housing, and others as we discuss in the above article. It is important to note that all of these attributes of the industry were not built in one day, not even in a decade.

In China, while many are concerned about the quality of service in those CCRC-type communities (they are right to be concerned, but we anticipate that as more foreign operators stretch their arms into the Chinese market, the burden and worry will lessen gradually), we believe it is more important not to overlook the disconnects in fee structuring in those communities, in that many developers are choosing fee models based on the nature of land use right, rather than on financial soundness.[11] From those choices in fee model, the membership (entry fee) model is the most popular one, thanks to its flexibility by nature. But such a "flexible model" in a less regulated market[12] is not an optimal solution by any means. While more projects are emerging into the market, many issues that the U.S. has encountered will undoubtedly occur in China as well. Standing on the giant's shoulder and making fewer mistakes is what this article aims to provide. We expect that certain best practices in the U.S. industry, many of which were discussed above, will be adopted by CCRCs in China, but ultimately, if CCRCs do catch on in China, they will be CCRCs "with Chinese characteristics," to borrow a phrase from Deng Xiaoping. ■

Resources:
American Seniors Housing Association
Independent Living and CCRCs, Jim Moore (2009)
Seniors' Housing and Care Facilities, Paul A. Gordon, Urban Land Institute
American Association of Homes and Services for the Aged
Carf International

11 We note that most developers are trying to sell more and get as much upfront return as they can, but with some restriction in developing different types of land use right, they have to resort to various fee structures. For example, houses and facilities built on allocated or collective-owned land are not allowed to be sold—not even for leasing without prior approval in some cases. So developers will figure out ways to charge in terms of entry or membership fee. And in some other cases, houses built on granted state-owned land, where the owner possesses 40 to 70 years' right to use, are also restricted from being sold in separate set if the usage of such land is, for example, infrastructure or tourism. It is unlike the fee structures in the U.S. where developers put financial soundness in priority.

12 As understood by the authors, currently in China, activities in developing a CCRC-style community are mostly regulated by real estate regulations, which do not address the selling of membership cards. Only facilities within the community that intend to provide nursing care or rehabilitation or medical services will fall into some regulatory administration from the Ministry of Civil Affair and Ministry of Health, where supervision of the selling of memberships is hard to find as well. We do note, however, that some cities have been taking a hard look at memberships/entry fees, with an eye toward minimizing the risks that they potentially pose to the elderly residents of CCRCs.

Legal Alert

Grade Administration Standard for Senior Care Institutions Carrying Out in Some Cities

By Michael Qu Qin

Recent years have seen the implementation of grade administration standard for senior care institutions in some cities or districts. On last September, Qingdao, as the first city in Guangdong Province trial on the STAR ranking for nursing homes, released the Measures for Grade Administration of Senior Care Institutions (the Measures) by the Civil Affairs Bureau. According to the Measure, both public and private run facilities are welcomed to voluntarily participate in the grade assessment upon application. The grade ranges from one to five stars according to the differences in bed amount, greenery rate, living areas and internal equipment, infrastructure for medical, rehabilitation and activities, operational system, personnel, catering and other operation status. At the meantime, the Measure also stipulates the responsible organization in charge of the assessment activities and its rules and procedures, along with the administrative approach on utilization of the ranking result.

Similarly, Beijing has in 2011 implemented the Classification and Assessment Standards for the Service Quality in Senior Care Institutions， while in Shanghai Pudong, the assessment work for senior care facilities was also started as of 2011.

From the contents of these measures or standards, there are highlights worth noting. For example, in the Qingdao's Measure, more emphasis is putting on the construction and execution of the service and operation system, besides the requirement on hardware construction. The Measure especially focuses on the medical service within the facility. It requires the facilities above three star should equipped with internal clinic and rehabilitation room, while facilities at four or five star level shall have standardized and personalized service—for example in a five star facility, seniors with Alzheimer's disease should be kept in record when treatment and assessment is rendered, and psychological counseling for such seniors is also a must have on a regular bases.

However, it is still far from to say these practices have realized the purpose to encourage more senior care institutions to participate and eventually taken shape a standard for the whole industry. The first priority is to address the problem on how to attract more participation from the private-run facilities. Even though in Beijing, facilities granted with stars will acquire funding rewards from tens to hundreds thousand, and Shanghai Pudong government will provide certified facilities with more opportunities of project development and funding resources, apart from certain amount of subsidies, the fact remains that many private-run facilities are inactively echoing to the government's advocate.

That being said, we've seen what the government has initiated in unifying the operational management system for senior care facilities, especially, the government has started to consider making use of the resource of industrial association. Such practice is similar to the accreditation procedure in other countries that is conducted by third party organizations. More important is these non-compulsory rules and procedures maybe in the future evolve into compulsory regulation by some local authorities. For instance, the government may categorize the pricing in the senior care institutions in accordance with the accredited grade. So investors should be well aware of these local regulations in doing the senior care business. ■

Encouraging Regulations on Licensure and Administrative Measures for Senior Care Facilities

By: Michael Qu Qin, Managing Partner, Law View Partners, Shanghai, China
Joseph J. Christian, Senior Foreign Lawyer, Law View Partners, Shanghai, China

As of 1st July, the Ministry of Civil Affairs ("MCA") has implemented two Measures to regulate the establishment and operation of senior care facilities, as required under the amendment, adopted in December, 2012, of the Law on the Protection of the Rights and Interests of the Elderly ("Law"). The Law went into effect in 1996 and had not been amended until the end of last year, despite the ever-increasing awareness of issues facing the elderly as demographic and cultural changes have been taking their toll. The amendment is perhaps best known for urging family members to care for the elderly, but it also requires governments at all levels to incorporate planning for the elderly into their overall economic and social development plans and ensure that funds are available to implement the plans; and mandates that the government ensure a basic living and basic medical care for the elderly.

The two Measures - Measures for the Establishment and Licensing of Senior Care Facilities (the "Licensing Measures") and Administrative Measures for Senior Care Facilities (the "Administrative Measures") - are the most current and complete regulations providing guidance to domestic and foreign operators in respect to the establishment and operation of senior care facilities[13].

Our careful review of the Measures provided some comfort and some surprises, as well as some confusion and some concerns, but generally speaking, these are very welcome and encouraging regulations, echoing the national strategy of attracting more private capital into the industry. The Measures are far more general and less stringent than regulations in effect in many other countries, also reflecting the strategy of attracting investment into the industry. We will discuss the pros and cons of this approach later in this Newsletter.

Below are some highlights of the Measures:

1、 New establishment requirements and allocation of approval responsibility among different government authorities

--county level of the MCA will carry out the licensing and administration duties for those activities within its territory;

--approval from the MCA to obtain an Establishment License for Senior Care Facility is a condition precedent for an operator to open for business. Approval requirements are:

(i) proper facility name, facility article of association and internal rules;

(ii) premises, equipment and places for activities in compliance with relevant specifications in construction standards, environmental protection, fire safety and sanitation;

13 Pursuant to the Measures, a senior care facility is an institution where congregate accommodations and care service are provided. As for the service to be provided, it refers to living care, rehabilitation nursing, spiritual comfort, cultural and entertainment, etc.

(iii) employ management, professional and service personnel commensurate with the services to be provided;

(iv) proper funds to support the facility's service and scale;

(v) more than 10 beds;

(vi) other requirements pursuant to laws and regulations..

--senior care facility can set up its own medical institution or establish cooperation with other medical institutions nearby in order to be qualified to provide medical services in the facility. Approval and due procedure from the local bureau of the Ministry of Health ("MoH") is required if a medical institution is to be set up;

--examination and acceptance of the condition of the facility will be one of the most important criteria in the licensing procedure. For example, operators must apply for and obtain approval or acceptance of construction completion, environmental protection, fire safety and sanitation from different authorities before a license is granted.

A point to be noted is that the regulators require facilities that have already been established to meet the requirements of the Licensing Measure within 1 year after the effective date of the Measures (in some cases in rural areas within 2 years). So we advise facilities now under operation to look carefully at the requirements set forth in the Measures.

2、Fully open to foreign capital

Foreign investment in a senior care facility using the corporate form of wholly foreign-owned enterprise ("WFOE") was previously prohibited. However, given the fact that the Guidance Catalogue for Foreign Investment long ago put senior care service in the "encouraged" category, the restriction that a only joint venture investment vehicle is allowed is out of date. Pursuant to the Licensing Measures, both foreign individuals and organizations can invest in a domestic facility through a WFOE.

The Licensing Measures have created an anomalous and probably unintended situation that is worth mentioning. The Mainland and Hong Kong Closer Economic Partnership Arrangement ("CEPA"), which applies to service providers from Hong Kong and Macau, requires that operators have a track record of relevant experience for more than 3 years in Hong Kong or Macau before they can be qualified to open facilities in Mainland China. However, the Licensing Measures contain no requirement for special expertise on the part of foreign investors or operators, as long as they employ qualified professionals in accordance with the Measures. As a result CEPA, a measure that is aimed at facilitating and attracting investors in senior care from Hong Kong/Macau, actually imposes a stricter requirement on those investors than the Licensing Measures impose on investors from other countries and regions.

3、Low barriers to entry will bring more business opportunities

Apart from the liberalized policy on foreign investment, the Measures also lower some entry thresholds for senior care facility investors. We see it reflected in three aspects: (a) there is no master plan zoning or planning for senior care facility to comply with as pre-condition of licensing although that is required in establishing a medical institution[14]; (b) the minimum number of beds is 10, far less than was previously required (for example Shanghai currently requires at least 50 beds); and (c) personnel qualification, such as that of caregivers, technical staff or management people, is only required to the extent in compliance with the services to be provided within the

[14] We noticed that in the Administration Measure, local authorities have the responsibility to promulgate and implement construction planning for senior care facilities, but there is no mention of reviewing any master zoning or planning in licensing procedure.

facility. And the number and working experience of personnel is not specifically required.

We can see that the government is trying to attract more private investors into the senior care facility business. Developers formerly dedicated a portion of their self-owned community infrastructure facilities for the use of catering, entertaining or accommodation. Now, with the barriers lowered, other choices and opportunities emerge for the developer or landlord to turn these properties (even just a small portion of them as long as the building specifications can meet the needs) into small or medium-sized senior care facilities. Also, with these elderly service functions available around a community, where almost 30% of the residents will be elderly people by year 2050, the operator/developer of such a facility can definitely achieve more than just getting some profit from the senior care facility. If that is the direction the regulators have in mind, we couldn't agree more.

4、An established facility can open branches in other cities

This is very important, as it broadens the options for investors to structure their capital. When speaking with a government official half a year ago I raised the question whether a branch is allowed and it was not clearly answered; instead, I was asked why it would be beneficial for investors to consider opening a facility as a branch instead of as an independent enterprise. The answer is simple. Even though a WFOE is allowed for foreign investors, many will still choose to set up facilities as joint venture enterprises, since cooperation with a Chinese partner will usually bring more advantage than disadvantage at this moment. A headquarter/branch structure can definitely simplify shareholder structure at the partnership level. Of course, there is preference from local governments for another JV or WFOE for a new facility establishment other than just a branch, due to the investment and tax revenue consideration. That is another topic of bargaining power with local governments we will be happy to discuss on another occasion.

It should be noted that the establishment of branches will also be subject to the approval procedures as required in the Measures.

5、A less regulated pricing administration

The Administrative Measures have only one provision on pricing administration, which is that a "senior care facility should determine the price standard of its service in accordance with its organization type, business nature, the hardware condition, operational standard, service quality and level of care, etc., and abide by relevant national price regulation."

It is disappointing to see that the pricing supervision is so incomplete in that (a) although the final release of the Measures add the "organization type and business nature" as another element in determining price, it still doesn't provide details as to the difference in pricing mechanisms for for-profit and not-for-profit facilities. In practice, some domestic investors will choose to establish not-for-profit facility in order to enjoy substantial subsidies and other preferential policies. With the possible opening up policy[15] for foreign investment in not-for-profit facilities (like what foreign-invested hospitals do), not-for-profit facilities will definitely be another option for foreign investors. While there is no distinguished pricing regulation in place, the market is obviously less regulated; and (b) it is silent on the legitimacy of entrance fees, membership fees or deposits, be they lump-sum or paid monthly, refundable or non-refundable.

We may anticipate that such pricing models as lump-sum entrance fees, transferrable membership cards and deposits will still prevail in the marketplace, and the Measures seem content to leave more room for local governments to regulate these pricing models.

Admittedly, there are many issues that need to be clarified in practice. They are, for example:

15 We note that investors from Taiwan have just been allowed to establish not-for-profit senior care facilities in the provinces of Guangdong and Fujian, according to the agreement between the two Straits.

- We mentioned above that the generality and relaxed nature of the Measures have good and bad points. On the "good" side of the ledger, the Measures seem intended to assure investors that governments will not be putting obstacles in the way of their investment, and we applaud this. On the opposite side of the ledger, though, we worry that the lack of specificity might result in confusion and inconsistencies in the application by local governments of the principles embodied in the measure.

- There are different types of senior care facilities, but now they are only categorized as one type, hospitals being the only other option, and the Measures make no attempt to differentiate among the different types of senior living products. How will the regulators deal with different forms of facilities, like the U.S. deals with assisted living, skilled-nursing home or memory care, etc. is unclear. In addition, many CCRC-type of senior communities, some of which include all product types, are under construction right now. Specific licensing requirements for those communities should be in place, but are still unseen.

- We find in the final version of the Measures versus the drafts, that MCA deleted some valuable points, which we believe its initiative is to clarify and simplify the entire licensing and registration procedure[16]. However, in the final Measures, some of the provisions in the drafts with respect to approval responsibility and sequence among different authorities—such as the most problematic issues as to whether and to what extent MoH and AIC[17] will be involved in the licensing and registration—have not been preserved. We would have liked to have seen a more comprehensive effort, drawing all Ministry and departmental stakeholders into the process, so that cross-departmental procedures could have been laid out, and all product types and services offered in each product type could have been addressed by the appropriate governmental bodies. We hope that something along these lines can develop soon.

- a related point - how to deal with conflicts between national and local regulation, and deviation of understanding and practice among different functional authorities (as the Measures are promulgated solely by MCA). For example, the definition and distinction between care services and medical services – what constitutes "medical services"? - are still unclear, which may result in an arbitrary decision on whether a specific service, for example, some kinds of rehabilitation assistance, should fall under the administration of MoH.

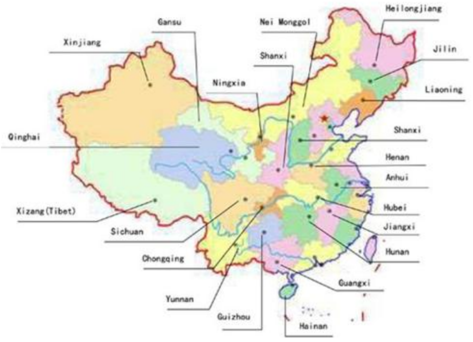
- government-led accreditation seems to be just a pro forma procedure. The Administrative Measures only require that the local MCA to establish an accreditation mechanism covering the areas of personnel, equipment, service, management, credit, etc., and release the overall appraisal of senior facilities to the public. No further implementation detail is provided.

In closing, we would say that the Measures were a good step forward, both in substance and for what they symbolize, but more work needs to be done to bring a coherent and comprehensive set of regulations into effect to achieve the goal of truly stimulating the growth of the senior living industry in China. We are not by any means suggesting over-regulation; merely an appropriate level of regulation so that investors and operators know the rules that they are playing by and feel confident that they will be consistently applied. ■

[16] In the draft of the Measures, registry of a business license for a facility is a step after the issuing of Establishment License from MCA; and approval from local counterpart of MoH is not a condition precedent for MCA in approval procedure if no medical service is intent to be provided in the facility. However, in the final Measures these two aspects have deleted or rectified.

[17] The "Administration of Industry and Commerce".

New Preferential Policies for Foreign Investment in Senior Care Facility



By Michael Qu

Recently, National Development and Reform Commission and Ministry of Commerce promulgated the Catalogue of Priority Industries for Foreign Investment in Central and Western China (revised in 2013) (《中西部地区外商投资中西部目录(2013年修订)》) (the "Middle and West China Catalogue"), whereby senior care service and medical institution industry are listed in parallel as preferential industries for foreign investment in middle and west China, and 22 provinces and regions as illustrated in the above picture may enjoy relevant preferential policies according to the catalogue thereto. The Middle and West China Catalogue has become effective on June 10, 2013.

What exactly is the Middle and West China Catalogue?

According to the provisions of the State Council, both the Middle and West China Catalogue and the Catalogue of Industries for Guiding Foreign Investment (《外商投资产业指导目录》)(the "Guidance Catalogue") are the basis for guiding the approval of foreign investment projects and application of relevant policies to the foreign-invested enterprises. Both catalogues cooperate with each other and are wind vane of the State for attracting foreign investment. However, there are also some differences. First, the application scopes are different. The Guidance Catalogue are applicable to the projects of any Chinese foreign equity joint venture enterprises, Chinese foreign cooperative enterprises and other wholly foreign-owned enterprises established in the PRC, while the Middle and West China Catalogue is applicable only to the foreign investment projects established in middle and west China. Second, the formations are different. The Guidance Catalogue is divided into such items as encouragement, permission, restriction and prohibition (industries under permission item is not specified in detail), while the Middle and West China Catalogue is formed according to each province (city and district) in middle and west China. The items included in the Middle and West Catalogue may enjoy the preferential policies for foreign investment projects. It is reported that with respect to attracting foreign investment, middle and west China accounts for 17.2% of the total State volume, and this percentage is expected to increase continuously in the following years.

In the 2011 version of Guidance Catalogue, the senior care institutions are listed as encouraged industry, and medical institutions are listed as permitting industry (neither as encouragement nor as restriction). While in the previous version of Middle and West China Catalogue, medical industry has already been a key point of each region for attracting foreign investment, the new Catalogue puts the senior care service industry paralleled with medical industry as items that require urgent development in the said 22 provinces and regions in middle and west China.

What are the preferential policies?

According to the current policies of the PRC, the foreign investment projects that are included into the Middle and West China Catalogue generally may enjoy the following two tax preferential policies:

1. Equipment import duties and import related taxes are exempted, and value-added taxes are refunded with respect to purchasing domestic equipment etc. In addition, according to the provisions of Certain Opinions of the State Council on Further Facilitating the Utilization of Foreign Capital (Guo Fa [2010] No. 9) 《国务院关于进一步做好利用外资工作的若干意见》(国发〔2010〕9号）, the preferential policies regarding enterprise income tax will continuously be applied to the qualified domestic or foreign enterprises in west China.

2. With respect to land use, it may also refer to the above Circular No. 9 from the State Council. The foreign investment projects that use land in an optimal way (simply put, that is effectively and reasonably use of land) and are encouraged by the State will be provided with land in the first place, and may enjoy the preferential treatment of no less than 70% of the National Minimum Price Standards for Granting Industrial Land (《全国工业用地出让最低价标准》) for corresponding class of land when deciding the minimum grant price of land. While the foreign-invested medical and senior care facilities projects are not industrial projects, the above provision may not be applicable. However, we noticed that the above provisions were promulgated in 2010 when it was at the preliminary stage of the policy adjustment to national industries and structure, and introduction of the supportive policy to service industry. As the modern service industry rises in middle and west China gradually, the future foreign investors may also obtain land at prices less than the standard prices according to similar policies, or enjoy rewards or subsidies from local government after land acquisition.

A few more thoughts on land use policy of senior care projects

The land use policy of senior care industry is always a central point of the whole industry, which involves the profitability of investors, and is also closely related to local government's land finance.

Recently, the officials of Ministry of Civil Affairs repeated on several important occasions that we need to carefully differentiate senior housing and senior care facility, so as to not only protect the positivity of real estate industry to participate in the private-run senior care service industry, but to avoid simply taking senior housing as senior care facility. However, commercial real estate development or other operations in disguised form of senior care facility occur frequently everywhere. According to the current legislation, it is impossible for the Ministry of Civil Affairs to discern such phenomena. Therefore, the task is left for each local government.

At present time, it is popular policies in each region that the non-profitable private senior care facility may obtain land through allocation, that is, they are not required to pay any land grant premium or land use fee. When the senior care facilities are closed, the government will reclaim the land without any compensation. Such policies will continue to be effective, and we have read similar expressions in the documents promulgated recently, such as Management Opinions of Luoyang on Land and Property of Senior Care Service Facilities (《洛阳市社会养老服务机构土地及产权管理意见》) and Several Opinions of Wenzhou on Encouraging Social Strength to Hold Senior Care Facilities (《温州市关于鼓励社会力量兴办养老机构的若干意见》).

However, whether for-profit senior care facility can enjoy the land use preferential policies? And what about the preferential extent? In addition to the land use preferential policies projects in the Middle and West China Catalogue may enjoy, each region promulgates encouragement policies one after another. For example, Chengdu City promulgated at the end of 2011 the Opinions of Chengdu People's Government on Promotion of Social Senior Care Facility (《成都市人民政府关于加快社会养老机构发展的意见》), which provides for that with respect to the construction project land of any significant private-run senior care facility newly held through attracting foreign investment, the government may research and resolve by means of "one matter, one resolution"; the enterprises, social organizations, individuals and other private strengths are encouraged to use their own lands and real estates compliant with city planning to establish senior care facilities. Where the city planning changes the land use conditions (including increase of plot ratio) and causes such land used for senior care facility, the land grant premium will be charged at 60% of the difference between the appraised prices before and after the change of land use conditions. In another city of Shenzhen, the Municipal Planning and Land Committee issued the Special Plan for Senior Care Service Facilities in Shenzhen (2011-2012) (《深圳市养老设施专项规划（2011-2020）》), which provides for that with respect to the land use of for-profit senior care facilities held by private capital, the Planning and Land Committee will give priority to include such projects into the annual implementation plan of recently construction and land use planning, and the land use price will be calculated at 30% of the benchmark price of office land.

In practice, when a developer or insurance company purchases land for senior care projects, it is common to obtain land use right at prices less than the market price. The specific operation is relatively flexible out of the local interest of "land finance". However, we are concerned that it is impossible to differentiate between the senior care projects and commercial real estate projects, which will eventually result in the over development of real estate projects, but the supply of real senior care facilities is behind the demand. ■

Local Legislation

A snapshot of the legal updates in Shanghai

By Michael Qu

As of the release of the Law on Protection of Senior Citizens' Rights and Interests (the "Elderly Law"), we put more focus on the legal updates from the central and local aspect. As we understand, these new regulations will generally clarify the government's role and responsibility in the administration and supervision of senior care institutions, how incentive policies will be implemented to attract private investors, and industrial standards on construction, competence/care need appraisal and senior care service, etc.

One thing to conclude a bit is, placed itself in the highest hierarchy of legislation in the senior care industry, essentially the Elderly Law sets the tone on how elderly care business is positioned as one of the national strategies, which is briefly in six angles:

- To tackle the challenge of providing affordable social insurance for seniors, in which the government has a big role to play and tends to phase out a series of measures;
- To tackle the risk of sickness and disability of the seniors, the government will gradually establish long-term care mechanism;
- To develop elder-friendly environment for seniors. The target is to improve the living standard for seniors. Constructing more senior houses, developers will get benefits in the course of the new round of urbanization construction, which is happening now in every cities of China;
- To protect the seniors' rights;
- To care for the mental wellness of seniors;
- To tackle the service needs from seniors by developing professional service, including skilled nursing care in facilities, in-home care, among others.

Having analyzed the two Measures promulgated by the Ministry of Civil Affairs in respect to the licensing and administration of senior care facility in our previous article, we believe that to understand the national law will help us to better understand what local legislations can be expected, and more important, to what direction they might affect the senior care business. Among all the cities that surge a wave of new legislation, Shanghai and Beijing is undoubtedly the hottest destinations for investors, not necessarily to emphasis more on the demographic or economic reason again here. So we start right from what happens in Shanghai in this article.

The home care territory

This February, Shanghai promulgated the Assessment Standards of Level of Care for the Seniors (《老年照护等级评估要求》)（DB31/T684-2013）, which will be implemented as of this May 1st. This Assessment Standard is the first of its kind in China. It uses the international appraisal tool of Activities of Daily Living (ADL) and appraisal table for cognition to set up main factors that may affect seniors' daily living competence in the parameters of independence, cognition, emotional behavior and vision. It will also set up background parameters of living environment. All these parameters will contribute to a preliminary conclusion of a senior's daily living competence, which leads to four types of appraisal results and three levels of care needs. The main purpose of the appraisal mechanism is to technically identify whether the need of care really exits, and then to associate it corresponding service (either community-based home care or institutional senior care). Another purpose is to provide technical basis for reasonably allocating the senior care resources, for example, indigent and disabled seniors can be accordingly assessed of their level of care in need, so that related subsidy will be determined and differentiated by the assessment result.

On the other hand, Shanghai is exploring a pilot scheme of senior care social security in order to solve the payment source of in-home care service. According to the scheme, urban seniors above certain age, who either stay at home or reside in senior care facility, will be assessed of their level of care in need. Those who turn out to reach the need level of mild, moderate or severe, and those left-alone seniors who have chronic disease will be provided with special subsidies. As of the first quarter of this year, the scheme has been implemented in six sub-districts. Qualified high-age seniors will be provided with professional home care service, cost of which will be borne by the government or reimbursed mostly from medical insurance.

Obviously, shortcoming of such pilot scheme is that it only provides single fund-raising way, narrow coverage and insufficient subsidy. So introduction of Long-term care insurance (“LTCI”) is usually a solution to tackle these problems—Elderly Law has stated the necessity of exploring the LTCI. However, under the current situation that labor costs for enterprises have increased dramatically, it might not be an optimal solution to implement compulsory LTCI contribution mechanism. On the other hand, it is also unforeseeable whether the market can accept the concept of commercial LTCI product provided by insurance company. Therefore, a more viable way to introduce LTCI might be a combination of government support and commercial insurance product.

Of Course, in the home care territory, day-care centers and temporary senior care institutions are also encouraged to be built and operated by private investors by means of self-built and operation, selling service to the government or acquiring entrustment from government.

Need-based facilities—more clarification for medical institutions

In a recent Implementation Opinions on Promoting the Development of Private-invested Medical Institutions (《关于进一步促进本市社会医疗机构发展的实施意见》) (“Implementation Opinion”) that issued by the Shanghai Municipal government, more emphasis is put on the encouragement for private capital to invest in specialty medical institutions that are in scarcity, such as senior medical skilled-nursing or rehabilitation hospital. Notwithstanding a new addition of 14 private-run senior nursing hospitals recently, it is still hard to meet massive and increasing medical and rehabilitation needs from the seniors. Therefore, from the Implementation Opinion, we see the government is trying to attract more private capital into the senior care medical institutions.

The Implementation Opinion states that:

- private capitals are treated in priority given it fulfills setting up requirement, entrance standard and bed control of medical institutions;
- encourage private capital to invest in high-ending medical institutions;
- encourage foreign capital to invest in medical institutions. Equity restriction of foreign investment will be gradually relaxed and approval procedure for private-invested medical institution will be optimized.

Support private capital to participate the reform of public medical institution, or to manage public medical institution by means of hospital management arrangement.

Meanwhile, specialty medical institutions established by private capital that provide basic medical service such as senior medical care or rehabilitation have the priority to be included into the designated medical insurance hospitals. In examining such qualification of designated hospital, the government will treat equally among different investment bodies or profitable nature of medical institutions. As long as private invested medical institutions can comply with relevant zoning as required by Health Bureau, and execute government-regulated pricing policy of service and medicine, they are all deemed as meeting the requirements of designated hospitals, so can enjoy the same medical insurance reimbursement policy as public medical institutions.

Detailed measures for senior care facility

In the senior care facility operation and management area, Shanghai has promulgated as of the end of last year Several Opinions on Promoting the Construction of Senior Care Facility in the 12th Five-Year Period (《关于推进本市“十二五”期间养老机构建设的若干意见》), which has been implemented in districts all over the city. In the Opinions, Although the voice is clear to encourage private capital to invest in senior care facility construction, preferential policies are still limited only to non-profitable facilities that meet the requirements of (a) self-owned land use right and property by the private investor, (b) not-for-profit nature is not allowed to change, and (c) such facilities is qualified to be included in the basic social welfare system and execute governmental guidance of pricing policy. Facilities meet these requirements can enjoy a maximum subsidy of RMB 80,000 per newly constructed bed in the pilot period of time. Other private-run facilities with not-for-profit nature can enjoy subsidy around RMB 20,000, which differs in every district. As for the facility with for-profit nature, the Opinions only note that the government “will provide on an overall consideration in policy making”, but no concrete detail is provided. Therefore, we now only find preferential policies for non-profitable facilities in Shanghai.

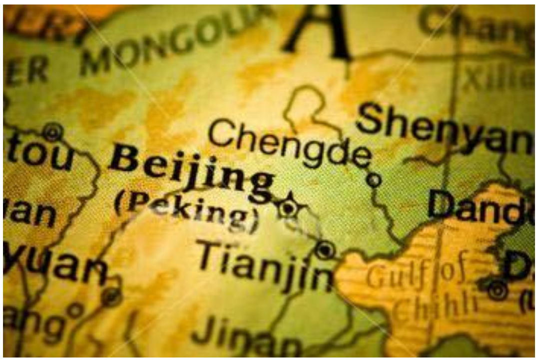
Another local standard executed as of 1st June is Facility and Service Requirement for Senior Care Institution (《养老机构设施与服务要求》DB31/T685-2013), which stipulates detailed facility standards, service and management requirements in senior care facility. It particularly establishes basic hardware equipment requirement such as entrance and exit, step ramp, handrail at corridor, stair railing, and specified data for the construction of bedroom, bathroom and dinning room. Apart from the above local standard, further local legislation is also under active planning by the regulators. We notice that Shanghai Municipal government has initial a legislation research on the revision of Shanghai Provisional Measures for Senior Care Institution (《上海市养老机构管理办法》); and Regulation on the Service and Management in Senior Care Facility (《养老机构服务与管理条例》) has duly gone through the suggestion, drafting and discussion procedure and is expected to be promulgated within this year.

Opportunities

Then, what is the goal of Shanghai municipal government? It is reported during the 12th five-year period, there will be incremental 30,000 senior care beds in place, in which 20,000 will be constructed by government and the other 10,000 be held by private capital. Generally, senior care beds in central downtown shall cover 2.5% of seniors and the figure is 3.5% in suburban areas.

Shanghai will try to integrate senior service resources such as family sickness bed, in-home care service and senior care facility by 2015. The government aims to preliminarily establish a senior care social security system that rooted from basic medical insurance, supported by scientific assessment and assisted with service management. What have you found from all these signs? ■

A City Sample of the Recent Policies on Senior Care Industry



By Michael Qu

Having introduced the regulatory landscape in senior and health care industry in Shanghai in our last edition of newsletter, we, this time, find it very necessary to take a look at the policies in Beijing. For many investors, it is no longer a question of whether to invest or not, but the question of which city to choose from for their starting point. Beijing and Shanghai are definitely two places they are struggling in choosing from. Obviously, there will be economic, demographic, or even political reasons, among others, to be factored in. And, don’t overlook the regulatory factor—always staying ahead of the curve of the regulatory environment will help you to make the business decision in a more rational way.

The capital city's strategy

Looking into the regional strategy is always the first step we evaluate the business opportunities in one particular city. Slightly different from the national strategic goal of "9073", Beijing's goal is "9064", resulting in more senior care facilities to be built—approximately totally 160,000 beds by year 2020. In light of this target, the government will provide more guidance and support to attract private investors. Indeed, private capital is expected to be the dominant players in the marketplace. As a recent Measure ("Implementation Measure on Speeding up the Construction of Senior Care Facility", hereinafter referred to as the Measure) from the Beijing Municipal government stipulates, facilities constructed by the government is to meet the ends need for citizens as the minimum social security, while the private-invested facilities are to meet the diversified needs from various seniors. Actually, Beijing is the first city that echoes to the central government's recent polities on the development of senior care industry (*please refer to our analysis on these policies here http://www.lawviewer.com/upload/file/13811127441866.pdf*). We may expect many other cities will introduce and implement their detailed measures very rapidly, and more important, some initiatives the capital city has taken might become what the others will follow suit.

The land acquisition regime for senior housing

We are all aware that land price in Beijing is far more expensive than many senior care operators can afford to run a profit business. The government has obviously realized the situation as well. The Measure requires that only three types of land use right can be used for new construction of senior care facilities. The first type is land planned for institutional facility, which is defined as for the construction purpose of social welfare infrastructures. In some cases it means land use right can be allocated to operators without any land premium to be paid. The second is land planned for community-based senior care facility, which is also been categorized in the social welfare system as the city infrastructure of residential communities. Moreover, in the future, the government will set out a capped price in bidding for a residential plot, the winner will be the one who promises to build the most areas for senior care facility in the community, instead of the one offers the highest purchase price in a normal procedure. Such areas will be handover to the government for free for senior living purpose. The third type is land planned for facilities of other services, which is categorized as one type of commercial land use right. For land use right falls out of these three types, certain approval from the Planning Bureau is needed before it can be used for senior living purpose. However, in order to encourage investors to build more senior care facilities, the restriction will not apply to the circumstance where owners repurpose their existing properties for operation of senior care facilities.

Another reform is also expected to the "two pillars" system of China's land ownership. It is used to be a must step for a collective-owned land to be requisitioned by the government before it can be granted to private owners for commercial purpose. The just wrapped up Third Plenary session of the 18th CPC Central Committee set out a reform plan on this land system, along with other significant transformative approaches. It is then expected that collective-owned land use right can, in the future, be circulated at a marketable price as state-owned land use right. According to a national statistic from year 2010, there are approximate 250 million Mu (around 41 million acres) areas of constructional collective-owned land use right, out of which there are an estimated 50 million Mu (over 8 million acres) areas can be used for profitable construction purpose should this alleged land reform been spread out. The relaxed principle to use collective-owned land for senior care purpose, together with the unleashed huge bulk of land use right, will definitely have profound implication to the supply market for real estate—that to the senior housing market should not be overlooked as well.

Subsidies will be increased, but be aware of its adverse effect

Subsidies and preferential policies are the most frequently asked question from investors. To answer it simple, it is now in almost every city only applies to not-for-profit senior care facilities. It will usually lead to another question of whether not-for-profit facility can be "profitable", or in other words, investors can earn from the not-for-profit business. To answer that question, we must firstly look at what preferential policy can a not-for-profit facility enjoy.

Under the Beijing's circumstance, the Measure specifies that a not-for-profit facility can: (a) receive a construction subsidy of RMB 40,000~50,000 per newly-built bed; (b) monthly operation subsidy of RMB 300 (for independent seniors) and RMB 500 (for semi-disabled seniors) per resident; and (c) exemption of relevant taxation, i.e. business tax, corporate tax, real estate tax, land use tax and stamp duty, and relevant government charge arising from construction. In order to enjoy so, operators usually are subjected to government supervision on pricing and operating. In response to the rising subsidies as introduced by the Measure, the government will pay more diligent attention to their routine supervision on the operation of facilities to make sure all subsidies and residency charge are put in the right place.

What about family-based small business

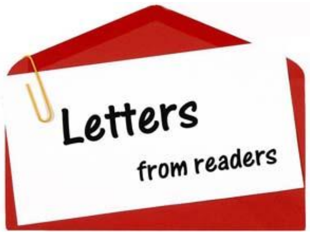
Running a small business is never as easy as it can be pursuit in other western countries. Adding to the complexity of licensing and land issues, family-based facility may not be an attractive business model for many entrepreneurs. However, with the lowered threshold of minimum nursing beds in a senior care facility, a place that can accommodate over 10 residents is qualified to apply for a facility license. The enthusiasm might be ignited soon.

The Measure encourages private investors to open more community-based boarding facilities for seniors (托老所), in the form of either for-profit or not-for-profit. The Measure permits private investors to use residential houses to open boarding or day-care facilities. The concept looks more like family-run residential board and care facilities in the U.S.—similar business model also plays well in other Asia countries, such as Japan. This initiative from the Beijing government will definitely broaden investment channels—in home care providers will have more needs stem from those community-based facilities, real estate developers can use scattered residential properties they possess for this purpose, and there might be opportunities for realtors as well. Furthermore, those facilities can also enjoy monthly operation subsidies as we discussed above. Of course, the government has already realized the urgent need to put in place further administrative approaches, setting-up requirements and operational standards for those small facilities.

Further legislation expected

Pricing is yet to be regulated. Usually senior facility infrastructure is designed to serve three levels of senior citizens. The lowest level is the indigent and disabled group, who are supposed to receive social support as their need of care arises, and usually government shall born all or majority of the cost for care service. The highest level is those from affluent families who can afford living in all kinds of private-run, and mostly high-end facilities, where pricing is freely decided by operators and will be adjusted by the market itself. And, the mid-level group in between the above two, who represents the biggest market need, actually is very sensitive to the price. In order to supervise the mid-level market, the Beijing's Measure requests all private not-for-profit facilities to follow the government-guided price, while leaves other private-run facilities with more freedom in pricing. We are disappointed not to find any regulation on the selling of membership or lump sum entrance fee. Some investors and developers, as we find, are selling membership card for illegal fundraising before any construction of project commenced; many investors are selling it without consumer protection mechanism in place. The territory needs more supervision, sooner than later.

The Measure also schedules to introduce more rules in respect to assessment mechanism for government-invested facilities, market entry requirements and operation evaluation mechanism for private-invested facilities. More surveillance is also expected on land acquisition regime. Specified land use right for senior care facilities will be subject to certain limitation in usage—usually properties built upon it are unpermitted to sell, and the government is able to enforce it. Can we then expect less real estate development in disguise of senior care projects? Not until the market is maturely regulated. ■



After the publication of the article "Where is China's CCRCs Industry", we've received quite a few letters from readers, below we share with you some of the feedback.

Hello Michael,

I just read your CCRCs piece in the China Housing Care newsletter (I have stumbled across a couple other pieces of your work before as well). Very good piece. What I wonder though is whether the US is really the best country to be looking for in search of a direction for China's elder care industry. With the issues the Chinese industry is facing, (especially the cost of care versus elders ability to pay), should we not look to countries where government support has played a Larger role, such as certain European nations?

Ryan McKinney
CBN Care Group

Dear Ryan,

Thank you for your feedback. I agree with you that other countries will also be good choices when we study the senior care industry. The reason we choose the US's practice for this article is that CCRC in the US is unique in the world and many Chinese developers are following suits. Similarity is both CCRCs in the US and such type of communities in China are for the affluent population with self-finance solution. But many other issues need to be sorted out.

We've made some introduction on the Australia's practice in our previous newsletter. And we will have another chance to look into practice in other countries, for example, in-home care support in England or Germany (if I am right about the countries), or long-term care insurance from Japan. Variety of topics is really what we cherish.

Thank you again for your advice and any contribution you think appropriate is welcome to our newsletter.

Best Regards

Michael Qu

Michael and Joe,

Thanks for the attribution to my book in this article. I am under the impression that there is a great deal of interest among Chinese companies [and consumers?] in CCRCs and entrance fee, membership and ownership types of structures. It seems that many of the American companies seeking to do business there are focused on rentals. Do you agree?

PAUL A. GORDON
Hanson Bridgett LLP

Dear Paul,

Nice to see your response and comments. I see the CCRC-type community of interests among Chinese companies in that it caters to the needs of seniors and the scale/complex function of many real estate projects in China, plus active parties in the market now are from the US (Joe and I have the opportunities to represent several)--they are more familiar with what they've done in the US. As I read from your book, there will be evolution to the industry as you witnessed in the US, what we probably can not foresee exactly is the future of the market preference, or even the regulatory trend. We see now in the market, there will be rental portion in a senior living community, but the percentage differs; and quite a huge amount of investors will still consider selling ownership—it's not a necessary structuring component, but it to some extent reflects the preference of the Chinese consumers.

Regards,

Michael Qu
Lawyer
Co-effort Law LLP

Hi Michael and Joe,

My background is healthcare investment and management. I have been to many senior living places (Yanda, Golden Hights, Hiking Group…) but still feel it's kind of risk to investment these mega projects. I have discussed with lots of so-called "China Expert" but they have different views on it. Anyway, we all agree the market is booming and moving now. CCRC is an American style product and it is also changed now (like NORC or Virtual CCRC…). I have participated in different senior living projects of different countries (Denmark/Japan/Singapore/France…) for the past few years and I do believe China will have their owned style of senior living soon.

Bruce LIU
CEO
55TONE INTERNATIONAL CORP.

Dear Bruce,

I agree with you that there is a great deal of risk in investing in mega-projects like Yanda and other large projects that are being developed in China. To my knowledge, with the possible exception of Cherish Yearn in Shanghai, none of these large, CCRC-type projects have been particularly successful. I think there are many reasons for this, but the developers' failure to accurately gauge the demand in the marketplace for what they built has to be among the top two or three. In their defense, it is very early in the evolution of the China senior housing industry, and what product types will be acceptable to the population is still mostly unknown. That is why you see operators aiming at the higher acuity, need-based facilities, rather than elective, lifestyle communities, and why have limited their investment by keeping their projects on a smaller scale and by leasing and repurposing buildings rather than acquiring land use rights and developing from the ground up. Some have limited their exposure by entering into consulting agreements, presumably as a way to test the market for future investment opportunities.

Michael is correct that, so far, developers and investors in China have preferred the US CCRC model, probably because the model is compatible with developers' penchant for large projects, and with the typical for-sale residential model, which satisfies both the developer's and the consumer's desires. As noted above, foreign operators have taken a different approach. As the market in China evolves, we will see how it takes shape. I expect that, as in the US, a variety of product types will emerge, at different times, in different places, borrowing from models in other countries as well as creating a unique Chinese model in each product type. The market in the US is dynamic and constantly changing with shifts in consumer demand, and there is no reason to think that the Chinese market will not do the same.

Joe Christian
Asia Fellow,
Harvard Kennedy School
Senior Foreign Lawyer,
Law View Partners Shanghai

If you want to know more about our newsletter, please contact:

Michael Qu Qin **Managing Partner, Law View Partners**

Tel: 86-21-63770228*802

86-13817878607

E-mail： quqin@lawviewer.com

Law View Partners is a boutique law firm in China that specializes in providing services to foreign investors and companies in high-growth sectors. The firm's resources and services span foreign investment and trade, M&A and finance, construction and real estate, corporate compliance, as well as market-leading experience advising clients in corporate transactional advice, intellectual property and commercial litigation. The Firm's strengths are in the fields of senior housing and healthcare; hotel and retail real estate; corporate compliance; and merger and acquisition.

Having represented international companies in their investment in the Chinese senior living market, our clients can benefit from our deep industry knowledge and experience, and from our creative, solution-oriented and responsive approach. Especially we can assist senior care investors and developers with the following issues:

- Advice on structuring business models
- Conduct legal due diligence on project acquisition
- Business incorporation and licensing and negotiate with joint venture partner
- Draft and standardize documents on (i) construction, operation and business transaction; (ii) third-party agreements and vendor's contracts; (iii) policies and procedure for residency
- Advice on finance, tax and government relation
- Deal with issues on intellectual property, licensing, general liabilities and employment.