# An In-depth Analysis of the Newly Implemented State Council's Policy

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This September, the State Council promulgated its long-awaited Opinions on Promoting the Development of Senior Care Service Industry (Circular No. 35) ("Opinions"). This is the most detailed policy statement to date from the State Council, the highest executive organ of State power, similar in composition and powers of the Cabinet in the U.S. and second only to the National People's Congress.

The Opinions have already drawn a lot of attention from the public – both praise and criticism – and from many different interest groups. We have been intrigued to see that some commentary from the media has been drawing attention to some of the less important aspects of the Opinions, rather than focusing on the deeper intent of the Opinions. For example, many reports put a great deal of emphasis on the feasibility of the "house-for-pension" scheme. No doubt, it is a hot topic to discuss as it is relevant to the housing market and citizens' livelihood; however, we believe it is only one part of what the government is trying to address in the Opinions. The overarching purpose of the Opinions, we believe, is to facilitate in comprehensive fashion the government's achievement of the "9073" policy objectives by the end of the year 2015. Any excessive stress on only particular aspects of the Opinions might not result in a proper reading of the Opinions.

Therefore, in this article, we will not analyze all parts of the Opinions; instead, we will focus on what parts private investors and operators should be interested in, and most important, on what business opportunities might arise from the policies set forth in the Opinions.

## Promising future for experienced senior care facility operators

According to the Opinions, private invested facilities can expect:

(a) lower barriers to entry and less red tape in business approval procedures in the areas of capital, premises, personnel, etc.;

(b) encouragement of private investment from foreign capital, supporting family-based, small-sized facilities, as well as large-scale and chain brand expansion – and everything in between;

(c) in addition to some less important exemptions or decrease of administrative charges for facility establishment and operation, the central government urges relevant functional authorities to introduce tax preferential treatment, in particular in respect to the business tax and corporate income tax;

(d) in the more developed cities, hundreds of publicly operated facilities will face restructuring in the near future, and management of these facilities will be handed over to private operators. We applaud this because this can enable the government-invested facilities to be operated in a more efficient and marketable way than before; and private operators will not have to worry about significant investment in the facilities and infrastructure (it will be invested by the government), but will be able to put more focus on the operation and service side. Private operators having more experience and public recognition will have a better chance to win government bidding, and gain sustainable and reasonable profit through this arrangement with the government;

(e) as an extended business for facility operators, training of care-givers and providing guidance to care-givers within the community is also encouraged in the Opinions. Is that a sector of the business that many foreign operators are aiming for? We definitely believe so, since the "9073" policy will require a large number of trained care-givers, of which there is a critical shortage in China today, whether the elderly citizen is part of the 90% that will be cared for in the home, the 7% that will be cared for in community service centers or the 3% that will live in senior care communities.

## Some stimulus for real estate developers. No?

The central government is unequivocally opposed to using senior living as a guise to acquire land use rights to engage in real estate development, and this policy is reflected in the Opinions. However, to some extent and in some cities, developers have obtained land use rights on the promise of providing senior living within their developments; but in many cases, the senior living consists of little more than towers designated for senior citizens, with few of any amenities. From the developers' perspective, though, there are still opportunities that can be found in the Opinions, in that:

(a) there must be at least 0.1 square meter per person of senior service facility in newly built residential communities. This mandatory requirement is the minimal level, and of course developers may choose to build more premises for senior living purposes;

(b) based on pilot schemes in many cities, the central government now urges the State Land Resource Bureau to introduce nationwide the designation of land specifically for senior care service. In addition, the Opinions direct local governments to provide construction land for for-profit facilities "in priority". From the practice in cities such as Beijing, Qingdao, Guangzhou, etc., developers with more experience in senior living will have a better chance to acquire a land use right with senior living purpose at a less expensive price than the market benchmark;

(c) private capital is encouraged to be invested in renewal of existing buildings and facilities for senior care service purposes. For example, factories with the land usage of industrial can be repurposed for a senior care facility. In the progress of upgrading land uses in almost every city, there are many industrial land parcels and buildings being emptied, and they will be the targets for senior housing due to this relaxed policy. The complexity of land issues still remain as to whether acquisition of industrial land from the government (as opposed to utilizing existing buildings) to develop senior housing will be legitimate; or whether it will be possible to sell strata title of apartments being built on such land use right;

(d) a portion of agricultural land located in rural areas and possessed by villagers can also be used to construct senior housing. This also creates a lot of opportunities because with that policy, developers will be able to acquire land use rights directly from villagers or their representative entities, with far less governmental supervision than typical on land acquisition procedures. However, the Opinions do limit the purpose as only "for the benefit of senior residents in rural areas".

**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.

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## Combination of medical and senior care

There are numerous lines of connection between medical and care service. The foremost question that will-be residents of a senior care facility will ask is the medical care that will be provided. The Opinions require that:

(a) local authorities shall support senior care facilities to establish their on-site clinics, provided that the facilities meet mandatory requirements. Also, hospitals above grade two are required to increase the number of beds for senior patients;

(b) cooperation between hospitals and senior care facilities are about to be more active, and innovative models, such as remote diagnoses and in-home services, are expected to appear in the marketplace;

(c) social insurance coverage in senior care facilities is expected to be broadened; and implementation of cross-region social insurance reimbursement will encourage more seniors to choose to living in other cities—particularly good news for the tourism industry;

(d) physicians, nurses and other professional staffs in senior facilities are expected to enjoy the same policies as those in hospitals in respect to qualification requirements, performance exams, etc. This will provide opportunities in career development in a senior care facility as those are in a hospital.

## Back to the topic of "reverse mortgage" scheme

The Opinions mark the first time that the government has used the words "reverse mortgage"—it was usually referred to as "house-for-pension" scheme. There are differences between these two, as a reverse mortgage, as implemented in many western countries, is by definition a more formal legal arrangement whereby a bank or other lender is granted a mortgage on real property. The reverse mortgage scheme has been advocated by experts in China for many years; but so far there has been no supportive legislation on reverse mortgages, so in the Opinions, it is only referred to as a "pilot" scheme.

As opposed to the long term care (LTC) insurance which we expect will have a large market in the future, the reverse mortgage is, in our opinion, likely to be attractive only to a very small minority of seniors, probably those living alone with no spouse or children. One may argue it is a good approach to unlock paper appreciation of the real property owned by the elderly to provide support for themselves in retirement life, and there are survey results indicating the willingness of seniors to accept this concept, but we believe that this will not be a good segment for insurance companies or foreign invested companies to tap into. A large portion of the wealth of many elderly Chinese has been invested in real property, due primarily to the lack of alternative investment opportunities, and they want very much to leave their properties to their families, a desire that could be thwarted by mortgaging their property. Also, we note that the experience with reverse mortgages in Hong Kong and Taiwan has not been at all encouraging.

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A practicing attorney for over thirty years, the primary focus of his practice has been representing institutional investors and developers in commercial real estate transactions across the U.S. and in Asia. A specialty of his practice since 2000 has been the senior housing industry in the U.S., and since 2009, the senior housing industry in China. He lived and worked in Hong Kong from October 2008 to December 2011, where he co-headed the Asia real estate group of a global law firm.

Mr. Christian is an expert on the senior housing industry in China. He has chaired, presented and spoken on panels at several senior living conferences in Shanghai and Hong Kong. Mr. Christian is a member of International Association of Housing and Services for the Ageing (China).

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## And, some other takeaways

-- the Opinions are following a characteristically Chinese way to introduce policies from pilot scheme in some cities to nationwide implementation. Therefore, it is advisable to look at the local policies that are and will be introduced in the pilot schemes.

-- the Opinions emphasize the development of the whole senior care industry rather than only several specific segments. It will include the whole chain of the industry, in which the senior products, finance or entertainment services, among others, are also listed as priorities to be developed. Companies with superior integration capability and resources will have a chance to grow to be real giants in the industry, if our expectation is right.

-- functions among different governmental departments are expected to be clarified. Among others, the Ministry of Civil Affairs is positioned in the dominant role; the Development and Reform Commission is mainly responsible for industrial planning; the Finance Department is responsible for financial support; and the Aging Committee is in a coordinating role with all other departments. In addition, industrial associations will play a self-discipline role as they do in many other countries.

-- last but not the least, the in-home care networking. The Opinions urge local government to encourage companies in providing seniors with e-commerce platform, social service networking, call-centers, healthcare consulting service, etc. We believe that, with the development of technology, in-home care service is expected to introduce more innovative ways to care for seniors. ■

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Richard Blewitt is the CEO of HelpAge International, a global network striving for the rights of disadvantaged older people. Blewitt has held senior positions with the British Red Cross Society, Save the Children, and the UN Office for Co-ordination of Humanitarian Affairs. Prior to his appointment with HelpAge International in late 2006, he served as director of policy and communications with the International Federation of Red Cross and Red Crescent in Geneva. His work in disaster relief and development has taken him to Sudan, Palestine, Afghanistan, North Korea and Myanmar.

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Gregor Rae is Chairman and Chief Executive of the UK-based research consultancy BusinessLab. A strategist with over 20 years experience in corporate and product positioning, marketing and communications, he has worked extensively in sectors such as energy, food, finance and education in the UK, Scandinavia and North America. He has also advised governments in the UK and overseas on competitive strategy and public-private sector partnership. He leads the development of the ActiveAge: Solutions for an Ageing Societys collaborative research program.

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