



# A Typical Legal Feasibility Report

for Senior Living Community in China

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In recent years, investors in the Senior Living industry have become well aware of the importance of a legal feasibility report to the life-or-death of a project. A typical study has evolved from general comments of the macro-legislations to the very down-to-earth Dos and Don'ts which requires lawyers to understand not only the industrial regulations, but also the nuance and trends of this industry. Before elaborating how such a legal feasibility report can be unfolded, let's first take a look at the latest updates of the industry environment:



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Michael Qu Qin is the managing partner of Law View Partners based in Shanghai, China, where his legal practices cover the areas of real estate, foreign investment and mergers and acquisitions. He has extensive experience as a lawyer for over 16 years. In his practice, Michael has successfully represented investors in the real estate, senior housing, retail and hospitality sectors, asset management, in dealing with commercial transactions and disputes.

Being a legal professional that has involved in the development of real estate and senior housing for years, Michael can serve for varied investors in the field, providing sound service on the full spectrum of issues in project development which can arise during the site selecting, acquisition, feasibility studying, construction, financing, pre-opening preparation, post-opening operation and disposal of senior care or hospital facilities.

Prior to co-found Law View Partners, Michael has a wide variety of working experiences as in-house counsel in multinational group and private law practice in both domestic and international law offices.

- Elderly people at 60 years old and beyond have reached 194 million at the end of 2012, accounting for 14.3% of the total national population; and by the end of 2016, that number has reached 230 million, making up 16.7% of population. Generally, the number and proportion of the elderly has shown an upward trend each year.
- Senior care institutions have been developed in the old regime where most of them are government funded and non-profitable. In recent years, the government has been encouraging private investment into the industry by introducing many policies relating to taxes and subsidies, licensing procedures, foreign investment, etc.
- Legislation to streamline and relax requirements for senior care institution establishment continues to attract private capitals. The Ministry of Civil Affairs (MCA) has cancelled the request for property construction completion certificate for the establishment of senior care institutions under certain scale level, among 3 other requirements. Fire protection regulation for senior care facilities has been more specific especially regarding the requirements on building height. More relaxation such as abandoning the National Qualification of Caregiver, as well as cancelling of Establishment Permit of senior care institution, are on the way.
- According to the Xinhua News Agency, over the last five years, new construction of senior care institutions in China has seen an impressive increase. According to the statistics from MCA, total senior care institution number has reached 144.6 thousand by September 2017, representing a 226% increase over the amount of 44.3 thousand stands at the end of 2012.
- China has also improved its medical services (which is under the supervision of the National Health Commission) in senior care institutions after years of efforts, with 78.6% of all senior care institutions nationwide being able to provide medical services by the end of July 2017, fulfilling 50% of the target ahead of the MCA's agenda. Skilled nursing care beds in senior care institutions comprise 46.4% of the total bed number, increased from the same less than 30% in 2015.
- Some more liberation and incentives are recently seen in the integration of medical care into the community and home-based services by means of allowing certain care and medical services being extended to communities and families by various types of medical institutions which is referred to by the legislator as Continuing Medical Services Institutions. In this regard, a measure to incorporate the Establishment approval procedure with the Practicing procedure of medical institution is implemented to lessen the licensing burden for most of the medical institutions under 2-tier level.
- Now, legislation puts more focus on the improvement of the service quality of senior care institution. Six Ministries including MCA have jointed force to launch specific movement of quality construction of senior care institutions nationwide since March 2017 where nine major tasks are set to be accomplished step-by-step by the end of 2020.
- With respect to the construction and service standard of senior care institutions, the MCA has promulgated regulations such as Establishment Measures of Senior Care Institution, Administrative Measures for Senior Care Institution, and a series of national standards, such as Basic Specification of Senior Care Institution, Security Management of Senior Care Institution, Basic Specification of Service Quality for Senior Care Institution, among the 12 implemented standards in the regime, whilst another 19 releases are on schedule.



# Areas to Cover in a Legal Feasibility Report

To begin with, a legal feasibility report must narrow down the specific areas to cover and questions to address. There are industrial norms to follow but every project could be unique in its location, size, financial targets, competitive market, among other aspects.

Many legal aspects of a senior living project may worth the effort to study to ensure management decisions are made to the right direction in the first place. Typical ones are:

- Whether and how the land use right may impact the development of a project. There is a regulation guiding the land use right grant of senior care service facilities; however, many of the projects we've seen in the marketplace will not fall into such regime—they are either repurposing of manufactory facilities or commercial buildings or development of residential or tourism properties. A comprehensive legal study on the land use right is very essential—we've seen several projects failing due to the non-compliance of land use or planning approval. What's more—the land use right may determine the fee structure of your community, and, if there are medical component you want to place, the master planning of the location shall call your attention as well.
- Then it comes to the fee model. Common practice could be membership fee, rental and deposit and fee for services. However, it does not necessarily mean they fit to every project. The management may have their consideration as to the cash flow, profitability or customer acceptance, etc., but what really matters to legal is whether the model is sustainable and without challenge from local authorities. Looking into local regulations is very essential as it may help to prepare the right legal documentations needed for the operation of a project.
- It is understood that the Chinese government advocates the integration of elderly care and medical service to be provided not only in the facility but also to the community and families. Therefore, to plan for a senior living community is to envision the way residents live in many years to come, and to explore the clients' need within and out of the community. The legal analysis in this respect will help client to understand the top-to-bottom policy implementation in the senior living space, while details however can only be unfolded once the investor and/or operator is able to explain what the project is really targeted to achieve.
- Sometimes, if the assignment is from an operator, many issues regarding operation may be analyzed as well. Incorporation of for-profit or not-for-profit entity (joint venture or wholly-owned), government subsidies and taxes and service charge compliance are listed as three of the most frequent asked questions.

# How to Structure Different Service Components

Undoubtedly, services are always the theme of a senior living community and clients want to have a good plan on this at the very early stage. In one of our feasibility studies for a potential CCRC project, possible routes to address service components are summarized as below:

	Independent living	Nursing care and medical service component			Home care
		Senior Care Institution (with internal clinic)	Nursing-type medical institution	Community day care center	
Supervisory body	Administrative Department of Real Estate or MCA, depending on whether a senior care institution license is applied	Local counterpart of MCA	Local counterpart of National Health Commission	Local counterpart of MCA	Local counterpart of MCA
Target customers	Independent living residents	Assisted-living, dependent and memory care residents	Mostly dependent and memory care residents	Independent and assisted-living residents in the community	Nearby families, usually without restriction on service radius
Service location		Facility bed	Facility bed	In the center, usually without nursing bed	At home
Service contents	No services included in the units except for some amenities; usually care services are provided via on-call visit	Mainly accommodation and care service, coupled with basic medical services	Nursing care and associated medical services	Day care, possibly with some medical care services	Housekeeping and long-term care, possibly with limited medical services
Fees	Membership fee/rental and deposit; Fee for services	Accommodation fee; Care service fee; Medical Fee (for internal clinic)	Accommodation fee; Care service fee; Medical Fee	Fee for services	Fee for services
Staff qualification	N/A	Mainly qualified caregiver	Mainly practicing doctors, nurses and rehabilitation therapists	Mainly qualified caregiver	Qualified caregiver and housekeeping personnel

When a management decision is made as to which option is the most suitable for a project, more study work can be done regarding detailed requirements and documentation for the licensing procedure.



Pick Up the Right  
Examples to  
Study

As we mentioned above, every project has its unique positioning and considerations from the investor and operator's perspective, it is therefore important to choose the right case study for client to refer to. Most of the information of example projects can be found in open resources, the difficulties however are in the way to screen those useful and precise ones that can rightly address the client's concern. In a recent study, we are asked to advise viable ways to license a senior care and medical component of a medium-sized senior living community. We picked up two examples in two major cities respectively from the Eastern and Northern China and tried to illustrate something that can be learned from by our client:

- Both projects are relatively new while one is built on land use right for senior care service facility and the other on a residential plot (which is relatively bigger).
- One project chooses to obtain a nursing home (a type of medical institution) license within the community which is open to public at the same time the community opens; and the other project chooses to establish a community clinic (also a type of medical institution but smaller than the first example) next to a senior care institution which started to operate one or two years ago.
- One project adopts the membership model and the other charges only rental and service fees. Both models have witnessed the customers' acceptance and either one may be set as good example for target project.
- Operators under the approved license of both projects are seeking to extend their services to the neighborhood families. How their local practices have been benefited from the recent open-up policy may be set as models for others to follow suit.

Having all that said, preparing a legal feasibility report is no longer a pro forma procedure that decides a project "Go" or "No Go"; it requires professional knowledge and experience to ensure management decisions are made in compliance with legislation and normal practice in the local market.

Oftentimes, the biggest concern for a client to engage a consultant to conduct a feasibility study comes from the absence of its responsibility to deliver. That's why many operators in the industry are heavily involved in at the very early stage of a project planning. Engaging in a legal feasibility, if it covers the responsibility to execute the business plan as an operator does, shall worth the time and money an investor will spend.

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## About us:

**Renowned global team.** As early entrants as legal professionals in this industry, we understand the way the senior housing and healthcare industries works. We are trusted key advisors, with the experience and reach to advise at all stage of this business.

**Outstanding track record.** Having represented international companies, from developers and aged care/hospital operators to institutional investors, in their entry into the Chinese market, we benefit our clients with our deep industry knowledge and experience, and with our creative, solution-oriented and responsive approach.

**Industrial networking platform.** Our partners have participated in many senior care conferences in Asia, as chairperson, speaker and/or panelist, and have authored several articles and reports. Clients benefit from our industrial network in a wide variety of business.

**Service covering the full life cycle of senior care project.** Providing sound service on the full spectrum of issues in project development which can arising during the site selecting, acquisition, feasibility studying, construction, financing, pre-opening preparation, post-opening operation and disposal of senior care or hospital facilities.