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**| RESEARCH ARTICLE**

## **Financing Laws of China's Big Health Industry PPP Projects: A Discussion Paper**

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**| ABSTRACT**

At present, China's big health industry is developing rapidly, but due to its characteristics of heavy assets, slow returns and public welfare attributes, the further development of the big health industry is mostly restricted by factors such as policy supervision, capital reserves, technology and technology [iResearch, 2019]. The introduction of the PPP model into the field of general health is conducive to the formation of benefit sharing, risk sharing and long-term cooperative relations between the government and the market [Ding C et al.,2019]. This article analyzes the legal concerns of the PPP project financing process in the big health industry, discusses the design of appropriate system construction, legalizes the space for the legalization of financing rules at the legal level, and then straightens out the system and conditions for the realization of PPP project financing in the big health industry in China so that The health industry will become a new growth point for China's economic development in the future.

**| KEYWORDS**

Big health industry; PPP project financing; law

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### **1. Introduction**

The big health industry includes multiple production and service fields closely related to human health, such as medical services, medical and health care products, nutrition and health care products, medical and health care equipment, leisure and health care services, and health consultation management [Zhang 2018]. According to Frost Sullivan data, in 2019, the scale of China's big health industry exceeded 8 trillion yuan, reaching 8,131 billion yuan [Qianzhan Economist, 2021]. According to the "Healthy China 2030" Planning Outline issued by China in October 2016, it is estimated that by 2020, the output value of China's general health is expected to account for more than 10% of GDP, which should exceed 10 trillion yuan. It will reach 16 trillion yuan in 2030, and the industry has huge room for development.

Under the background of diversified and multi-level demand for medical and health services in China, the PPP model is introduced into the field of general health, forming a benefit-sharing, risk-sharing and long-term cooperative relationship between the government and the market [Ding, 2019]. The PPP model not only solves financing problems but also brings three major advantages: management improvement, technology improvement, and performance upgrade. More importantly, the PPP model strengthens the tripartite cooperation between government medical institutions, medical resource markets, and social capital, promotes the downward shift of the focus of general health work and the sinking of resources, and improves grassroots service capabilities.

## **2. Policy background**

As the focus of infrastructure construction and people's livelihood, medical institutions have issued documents supporting the introduction of social capital through the PPP model to participate in the construction and operation of public medical institutions. For example, the "Guiding Opinions of the China Development and Reform Commission on the Development of Public-Private Cooperation" (Fagai Investment [2014] No. 2724) clearly states that the PPP model is mainly applicable to public services and infrastructure that the government is responsible for providing and suitable for market-oriented operations. Facilities projects and medical public service projects can implement the PPP model; "Opinions of the General Office of the State Council on Further Stimulating Investment Vitality in the Social Field" (Guobanfa [2017] No. 21) requires further expansion of investment and financing channels and guides the participation of the PPP model Construction and operation of medical institutions. In addition, the PPP model is also encouraged to be applied to the construction and operation of the elderly care industry.

Introducing the PPP model into the field of construction and operation of medical institutions can improve the efficiency of construction and operation of public medical institutions and make up for the lack of public financial resources by combining public finance and social capital to give full play to their advantages. So far, according to our search on the official website of the Ministry of Finance's Public-Private Cooperation Center, many medical institutions have adopted the PPP model to introduce social capital for construction and operation, but there is no medical institution's PPP project asset securitization financing in the market case. Asset securitization of PPP projects can help social capital parties expand financing channels, reduce capital costs, and encourage more qualified social capital parties to participate in medical institution PPP projects.

## **3. Focus points**

Although China's big health industry started relatively late, it is developing rapidly. According to statistics, in 2019, the market size of China's big health industry reached 8.131 trillion yuan, and five basic industry groups, including the pharmaceutical industry, medical industry, health care, health management services, and health care products industry, have been formed. Among them, the pharmaceutical industry and the health care industry are the main industries, and the market size of the two in 2019 accounted for 50.04% and 33.04%, respectively. Through an in-depth analysis of China's existing PPP project cases in the big health industry, it is not difficult to find that the vast majority of social capital parties that cooperate with the government are still state-owned enterprises.

### **3.1 Whether there are flaws in the legal framework**

Since 2014, the PPP model has been widely used in various fields of government investment and financing, especially in the fields of infrastructure construction and public services. Various ministries and commissions have successively issued a number of departmental regulations and normative documents in the form of notices, opinions, guidelines, and decisions in order to control the chaos of the PPP field. However, the relevant legislation presents a disorderly and embarrassing situation in which the Reform Commission and the Ministry of Finance are jointly formulated, the legislative model is chaotic, and the legislative direction is unclear [Zhang, 2015]. In order to solve the problem of conflicts and contradictions in the documents of various ministries and commissions, in July 2016, the State Council transferred the PPP legislative power to the Legislative Affairs Office of the State Council. In July 2017, the Legislative Affairs Office of the State Council issued the "Regulations on Public-Private Partnerships in Infrastructure and Public Services (Draft for Comment)" (hereinafter referred to as the "PPP Regulations") [China PPP Industry Development Forum, 2018], but no formal regulations have been issued so far. The General Office of the State Council has issued a document to formulate and issue PPP regulations by the end of 2018, and the Ministry of Justice, the Development and Reform Commission and the Ministry of Finance will be responsible. However, PPP regulations have not yet been issued. The Ministry of Finance also stated that due to the low legal level and effectiveness of the current PPP management system, there is a lack of unified regulation at the legal level on the connotation and extension of PPP and the division of responsibilities. The current promotion of PPP work still faces unstable policy expectations, unclear management responsibilities, and Problems such as poor program connection. On May 5, 2019, the State Council promulgated the "Government Investment Regulations" (Decree No. 712 of the State Council) (hereinafter referred to as the "Regulations"). Therefore, the "Regulations" are currently the most effective administrative regulations in China and are closely related to PPP. The government investment projects and PPP projects constrained by it are "crossover" and "intersection" relationships. One situation is that PPP projects that involve the injection of government capital are government investment projects, and the relevant provisions of the "Regulations" apply. Another situation is that the PPP project does not have government capital injection but uses government subsidies or loan discounts, which are also within the scope of the relevant provisions of the "Regulations".

However, as far as PPP financing of major health industry projects is concerned, China has not yet formulated an independent upper-level law for top-level design and institutional regulation of PPP financing at this stage, and it cannot cover a comprehensive financing process. At the same time, government departments such as the Ministry of Finance, the People's Bank of China, the China Securities Regulatory Commission, and the China Banking Regulatory Commission have different understandings of project

financing, or too frequent changes in financing policies based on economic development, making social capital undertake uncertain project risks in investment and financing [Sweeping the Net n.d].

### **3.2 Whether it involves implicit government liabilities**

In project practice, the exchange is particularly concerned about whether the asset securitization of PPP projects involves implicit government liabilities. According to the requirements of the "Implementation Opinions of the Ministry of Finance on Promoting the Standardized Development of Public-Private Partnerships" (Caijin [2019] No. 10), PPP projects need to establish a payment mechanism that is completely linked to project output performance and must not pass the lower assessment standards and other methods to lock and solidify government expenditure responsibilities in advance. In specific project practice, it should be judged according to the specific agreement of the PPP project contract whether there is a risk of violating the above provisions.

During the establishment and operation of the entire PPP project, the source of funds for the project company mainly includes two parts: one is its own funds, that is, the registered capital of the project company; the other is the external financing of the project company, including debt financing and equity financing wait. The success or failure of external financing will determine the success or failure of project operation to a large extent. At present, the mainstream of local infrastructure projects is to issue local government bonds to raise funds, and other financing models coexist. The models adopted are "authorization-build-operate" (ABO) and "financing + general contracting" (F+EPC). Mainly, there are certain hidden debt risks for local governments.

### **3.3 Supervision and management of the whole process of PPP projects**

According to the "Guidelines for PPP Project Listing", in response to the requirements of "PPP project implementation plan review and necessary approval, approval or filing and other related procedures, the private capital party (project company) and the government party have signed a valid PPP project contract", in actual operation, attention should be paid to reviewing the completeness of relevant approval documents, warehousing certification materials, publicity materials, project company establishment and operation certificates, etc. in the whole process of PPP project identification, project preparation, project procurement, and project implementation, as well as the PPP project contract, business operation certificate, etc. Whether the rights delivery agreement is legally and effectively signed, and whether the validity period can cover the period of the special plan, etc. [Tan, 2015].

As far as PPP projects are concerned, in addition to relevant government functional departments, social capital parties and project companies, there are many stakeholders, such as final consumers, construction units, operators, banking institutions, insurance institutions, etc. In a sense, whether the PPP project can achieve the expected results is closely related to whether the conflict of interests among stakeholders can be effectively coordinated. Each stage ensures the smooth completion of the project. At the same time, there are obvious externalities in the construction and operation of infrastructure and public utilities in the general health industry. In the process of public-private cooperation, information asymmetry often occurs. For example, in the stage of bidding and project approval, the government has more information about the project than social capital. Advantage. Therefore, the provision of public goods and public services through the PPP model requires government supervision to prevent the private sector from obtaining excess profits through monopoly pricing, solve the problem of information asymmetry, and protect public interests [Yu 2016].

## **4. Results and Discussion**

As mentioned above, the regulation of PPP should comprehensively use various tools such as laws, policies, guidelines, and contracts. If the regulatory tool of law is used, framework legislation should be carried out. It is clearly stipulated in [Harisankar 2013]. In the same way, the construction of a legal environment for PPP financing in China's big health industry projects is an important prerequisite and basis for promoting and promoting the practice of PPP financing. The improvement of relevant legal systems can be carried out from the following aspects.:

### **4.1 Carry out general bill legislation**

General legislation on PPPs. For example, Germany enacted the famous "German Public-Private Partnership Promotion Law" in 2005 and the "Promotion of Private Participation in Public Construction Law" promulgated in Taiwan in 2000. It is worth mentioning that, in order to pursue legislative economy and legislative efficiency, the Taiwan region abandoned "individual case legislation" and adopted "general case legislation" six years after the implementation of the "Regulations on Encouraging Private Participation in Transportation Construction" as individual case legislation. The PPP Basic Law promulgated, by the way. In particular, the "German Public-Private Partnership Promotion Act", not only established the basic framework of German PPP financing but also passed the original "Anti-Restriction of Competition Law", "Public Procurement Regulations", "Long-distance Road Private Financing Act", "Laws such as the Federal Budget Regulations, the Land Acquisition Tax Law, the Land Tax Law, and the Investment Law have been comprehensively revised to promote the promotion and application of PPP financing. From the perspective of China's national conditions, the establishment of such a basic law on PPP financing can fundamentally change the technical problems such as conflicts, dislocations, and absences caused by China's current PPP financing overall legislation, which is low in

level, low in authority, and multi-legislative. Therefore, it is recommended to formulate China's "Public-Private Cooperation Law" on the basis of summarizing the previous legislative experience, and at the same time, do a good job with the "Tendering and Bidding Law", "Government Procurement Law", "Infrastructure and Public Utilities Franchise Management Measures" and other PPP core rules and regulations to achieve docking in principle or effectiveness.

The introduction of PPP regulations is a key measure to remove the institutional barriers that restrict the reform and development of PPP. At present, there is an urgent need to introduce PPP regulations, unify the design of the top-level system, solve the problem of decentralization left over from history, systematically optimize the business environment, strengthen the protection of the rights and interests of all parties involved in cooperation, and stabilize development expectations.

#### **4.2 Combining the characteristics of the big health industry**

Behind the drastic medical reform and industrial model transformation, the problem of tight cash flow of medical institutions at all levels and pharmaceutical distribution companies has become increasingly prominent. Public hospitals that have long relied on supplementing medicine with medicines are facing financial constraints under the implementation of the zero markup policy on medicines, and pharmaceutical distribution companies are also facing the "pains" of business model transformation under the "two-invoice system" policy. In addition, industries such as genetic testing, medical care, and innovative drug research and development in the field of medical and general health also require a large amount of capital investment in the early stage of research and development, construction and promotion. In addition to traditional financing methods, the pharmaceutical and health industry urgently needs to develop more financing channels to cope with industrial changes.

Through the certainty and authority of the law, we can enhance the trust and sense of security of social capital in PPP projects, promote social capital to better participate in the investment and construction of PPP projects, and protect the rights and interests of social capital. It is suggested to learn from the model of the "German Public-Private Partnership Promotion Law" and to revise the applicable conditions of government procurement in the "Government Procurement Law" through China's "Public-Private Partnership Law", and to "use financial funds" in the case of PPP financing. The exemption is required to protect the application of relevant procurement procedures to PPP financing projects in the health industry that do not "use financial funds" such as pure consumer payments; "strengthening the protection of the rights of social capital" can be clearly defined as one of its legislative purposes. One should be clarified, so as to promote the enthusiasm of social capital to participate in the PPP financing of big health industry projects. All PPP projects and franchising projects should follow various methods such as public bidding, invited bidding, competitive negotiation, competitive negotiation, and single-source procurement, and must closely combine the procurement characteristics of various projects themselves and choose the corresponding form and method in accordance with the law. Procedure [Yang, 2018].

Article 41 of the "Basic Medical and Health Promotion Law of the People's Republic of China" (hereinafter referred to as the "Health Law"), which came into force on June 1, 2020, clarifies the equal status of social hospitals and public hospitals in the form of the Basic Law, and in equal terms. In terms of treatment, the scope has been expanded, from the original government subsidies and taxation to the basic medical insurance designation, key specialty construction, scientific research and teaching policies, and social, medical institutions enjoy equal treatment. At the same time, the "Health and Health Law" clearly puts forward the principle of "public welfare" and requires that "all revenue and expenditure should be included in the budget management, and the scale should be reasonably set and controlled according to the planning of the medical and health service system". And this principle and possible future practices may also directly affect all partners with public hospitals and their related investments. According to the provisions of Section 3, Chapter 3, "General Provisions", Part 1 of China's "Civil Code", a legal person established for public welfare purposes or other non-profit purposes, and does not distribute the profits obtained to the investor founder or member, is a non-profit legal person. Therefore, public hospitals are usually considered as non-profit legal persons, and this kind of "non-profit" and "public welfare" is not limited to the internal construction problems of public hospitals (such as the rationality and legality of the hospital's development of the tertiary industry and the establishment of VIP services for special outpatient clinics). In addition to sexual explanations, etc.), the first thing to bear the brunt is to curb the business model of public hospitals and partners seeking reasonable consideration through contracts, and from the purpose, it also denies the possibility of public hospitals diverting to partners. After the two-invoice system and many medical reforms separated "medicine" and "medicine", the provisions of the "Health and Health Law" may accelerate the separation of "medicine" and "medical services" to a certain extent. This has increased the difficulty of matching the laws and regulations of the big health industry and PPP projects to a certain extent.

#### **4.3 Establish a comprehensive coordination framework**

Throughout the life cycle of PPP projects, there are many and diverse regulatory entities. Project review requires the coordination and cooperation of financial departments, auditing departments, housing and construction departments, land and resources departments, and environmental protection departments [Li 2015] [Zhang 2014] how to properly handle the role positioning of the government and social capital and build a long-term cooperative partnership between the two parties, and ensure the high-

quality completion of PPP. It is an independent regulatory agency, independent of government administrative departments and government representatives[IrisH-YChiu 2010]. Division of labor and responsibilities. In the legal framework of comprehensive governance of PPP financing for major health projects, industry self-regulatory organizations represented by health associations will play an irreplaceable and important role. In addition to the "Public-Private Cooperation Law", the health administrative department, the Ministry of Finance, the National Development and Reform Commission and other departments can jointly issue a document to clarify the power of industry self-regulatory organizations to evaluate and inspect the PPP financing construction and operation of major health projects, and specially endowed it with the right to advise on the formulation of post-operation standards of the big health project and the right to supervise the actual operation, so as to ensure the maximization of public health benefits brought by the project.

Taking medical quality supervision and management as an example, it is possible to introduce third-party supervision and management, establish a medical quality supervision and evaluation system, promote the separation of administrative management from medical business operations, improve the efficiency of administrative departments and the autonomy of medical institutions, and strengthen the supervision and management of the medical industry. , to ensure the healthy and orderly development of medical and health services.

## 5. Conclusion

As China's future strategic pillar industry, the big health industry has a very bright future development prospect under the background of population aging, popularization of health concepts and policy dividends. Due to the obvious public attributes of PPP projects, this is highly similar to the characteristics of the big health industry. The legal research on the financing of PPP projects in the big health industry aims to legally supervise the investment and financing of the project's entire life cycle and provide information on the financing issues of China's big health industry PPP projects. The path of legalization has made the big health industry a new bright spot in the continued growth of China's economy in the future.

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