



## Fresh developments in regulations on private schools

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## Background

Following the release of the amendment to *the Law of Promoting Privately Run Schools* (the "**Amendment**") by the Standing Committee of National People's Congress on 7 November 2016, the Ministry of Education ("**MOE**"), jointly with other departments, issued *the Implementing Rules for the Registration of the Classified Private Schools* ("**Registration Rules**"), and the *Implementing Rules on the Supervision and Administration of For-profit Private Schools* ("**Supervision Rules**") on 18 January 2017. On the same day, the State Council released the *Opinions on Encouraging Private Investment in the Education Areas to Promote Sound Development of Privately Run Schools* ("**Opinions**").

As a breakthrough in the education area, the Amendment has categorized private schools into for-profit ones and non-for-profit ones. Private schools for compulsory education (G1-G9) can only be not-for profit. These three new regulations set forth the procedures, requirements and different treatments for two types of schools, but some questions arising from the Amendment remain unresolved. As a side note, these regulations are also applicable to for-profit private training institutions.

## Where to register the private schools?

The Registration Rules address the registration issues regarding the two types of schools, including the departments in charge of registration, the registration requirements for establishment, changes and de-registration. These Rules mainly reiterate the newly-revised provisions in the Amendment and they do not add much substantial development.

The Registration Rules stipulate that a private school should first obtain the school license from the education department, and then go through the applicable registration process.

Non-for-profit schools should register either as (i) a private non-enterprise unity ("**PNEU**") with the local civil affairs department, or (ii) a

public institution with the registration administration for public institutions. A public institution is usually set up by the government agency or organization or it obtains the funding from state-owned assets. Meanwhile, for-profit schools should register with China's company registrar, namely, the local Administration for Industry and Commerce ("**AIC**").

The registration authorities are consistent with our previous understandings and now the funders have the apparent clue for registration authorities.

## How to establish a for-profit school?

The Supervision Rules outline the details for the establishment and operation of for-profit schools, covering the application requirements, internal governance structure, financial assets, changes and termination, supervision and penalties.

### **Establishment procedure**

The procedure for setting up a for-profit school is usually divided into two phases, i.e., preliminary establishment and formal establishment. The application for formal establishment must be submitted within 3 years after the receipt of preliminary approval. The schools cannot enroll students during the preliminary establishment period. We understand that the funders may skip the preliminary application phase and go directly to the formal application if certain requirements are met<sup>1</sup>, but it is not clear what those conditions are. Based on our experience, the conditions may include that the campus construction should have already been completed and the faculty team is in place.

Meanwhile, the Supervision Rules also list detailed documents to be prepared for each phase of application<sup>2</sup>. For instance, the certificates of the funder, the supporting documents for the sources of funds, the ownership of funds, the documents in relation

<sup>1</sup> Article 13 has listed the documents to be submitted for direct application of formal establishment..

<sup>2</sup> Articles 14 and 15,

to the existing private schools established by the funder, and the name list of Communist Party members.

It seems that the process of application is already in shape, and this is apparently worth watching how it is eventually carried out in September.

### ***Internal governance structure***

The Supervision Rules regulate the governance structure of a for-profit school, which should include a board of directors, supervisor (or a board of supervisors), administration office (such as President and Vice-Presidents), Communist Party's organization, faculty and staff congress and labor union. The structure is quite similar to a company under the PRC company law but varies in some aspects.

Aligned with what we have seen in the higher education area lately, the role of the Communist Party has been expanded and is further addressed in both the Supervision Rules and the Opinions. Moreover, the *Opinions to Enhance the Communist Party's Construction Work of Private Schools (Trial)* is also anticipated to be released soon.

In particular,

- **Board of directors:** For-profit schools are not able to appoint just one executive director as a company; instead, they must have a board of directors. The Supervision Rules do not specify if there are any restrictions on the nationalities of the directors. We are inclined to believe that foreign directors are allowed, but subject to the local MOE's further confirmation. It would not be surprising to see some concepts like in the Sino-foreign universities in which the Board must be at least half Chinese.



- **Supervisors:** If a board of supervisors is set up, the representative of faculty and staff should not be less than 1/3 and the board should include members from the Communist Party's leadership. However, if the school only has one supervisor, whether the supervisor has to be a faculty and staff representative or a Communist Party member is unclear. As with our types of organizations, no individual can assume the role of both a director and a supervisor in a same school.
- **Communist Party members:** The Party's Secretary (highest authority within the Party) should take a position in both the board of directors and school's administration office.

For the foreign entities engaging in private schools using VIE structure, this may result in more cautious and complicated arrangement in the school's leadership, especially considering the requirements regarding the Communist Party members.

### **Qualifications of the funders**

The Supervision Rules introduce a new concept of a blacklist regarding the funders of for-profit schools. Persons on this list are disqualified from setting up for-profit schools. For example, if it or its exiting school is on the abnormal business operation list because of a failure to file its annual report or a failure to disclose relevant enterprise information by the deadline required by the relevant authorities, it can be placed on this blacklist. As such, when considering a potential Chinese partner, the foreign party should check the qualifications of such Chinese partner and keep in mind that their activities with other schools could adversely impact their role in the future cooperation.

### **Policies highlight and different treatments**

The Opinions have laid out the general principles related to private schools, among

others, the different policies for two types of schools, the supporting and beneficial measures, the governance structure and some other general rules. As the Opinions have covered a wide range of aspects, we have underlined some key points as below.

### **Preferential policies**

The State will encourage and provide strong support for not-for-profit schools, by means of government subsidies, government procurement services, awards of fund, donation incentives, land allocation, tax reduction and exemption. Not-for-profit schools will enjoy the equal treatment as public schools and will be exempted from enterprise income tax for their revenues. In contrast, for-profit schools will unlikely receive the same treatment.

Nevertheless, as applicable to all private schools, the property and the land used by kindergartens and schools will be exempted from property tax and the urban land use tax, if their funders are companies.

Regarding the government procurement services, it may involve the procurement of education services by the government from private schools (no matter for-profit or not-for-profit), including degrees, courses and materials, scientific and research achievements, professional training and policy consulting services. In addition, the State encourages the procurement of management services, teaching resources, scientific results between the public schools and private schools.

Though the Opinions do not mention services fees/license fees, it appears that the funders of not-for-profit schools may be able get reimbursed through contractual agreements since the procurement of services are permitted both between the two types of schools and between the government and schools. The question left is whether such reimbursement will be attractive and sufficient for the foreign investors given the restriction of the tuition standards for non-for-profit private schools.



### ***Tuition standards***

The rules concerning the tuition of private schools generally are the same as the Amendment.

After launching a pilot project of market reform, the government will gradually let the market adjust the tuition standards of not-for-profit school. Local rules should be developed by the People's government at the provincial level based on the costs of running schools and to the extent to ensure the viable operation of private schools.

To the contrary, for-profit schools can determine the tuition standards in their sole discretion, but the government will have oversight on the amounts charged.

The government, likely the local pricing bureau, will supervise the fees charged by private schools. We believe the local rules will be developed and set forth standards, after which the funders can evaluate whether they wish to proceed with a for-profit or not-for-profit model.



### ***Curriculum and admission***

The Opinions emphasize again that private schools for G1-G12 should follow the national curriculum arrangements and standards, particularly for G1-G9. Private schools will have some flexibility in carrying out education and teaching activities, after completing the national curriculum. In short, it appears that there is no explicit prohibition for introducing certain international courses. But we understand the mandatory courses will occupy the majority of the student's time in school, so this must be taken into account in the design of a foreign-invested school's curriculum.

The Opinions specify that the local government cannot set barriers to restrict private schools from enrolling students across the regions, which may be a change from the policies followed in the past by some private schools. We note that some local MOEs only allow the enrollment within its own district. Therefore, ideally, we hope this new policy may help to remove such restrictions and the schools will have more freedom in enrollment.

### ***Land use policies***

In relation to the land use rights of private schools, the two types of schools again are treated in different ways (the policy obviously is more in favor of not-for-profit schools). A not-for-profit school can enjoy the same policies as public schools, which means it can use the land through allocation, i.e., using the land without any payment. A for-profit school should follow the relevant national rules to use the land with a fee.

### ***Conclusion***

The series of rules have clarified some issues regarding the two types of schools, for example, the departments to register with, establishment process and the requirements related to for-profit schools. Some issues, such as the tuition range for not-for-profit schools, and whether the contractual arrangements will be subject to a stricter review, are still outstanding.

In general, we believe the rules are positive news for the kindergartens, the high schools and higher education institutions, which can choose to be for-profit schools. The existing rules for setting up kindergartens are not clear and quite confusing due to the lack of governing regulations. The new rules provide more consistent guidance and are easier to follow in practice. Similarly, the funder can also better understand the preferential policies for not-for-profit schools.

As officially announced by the MOE's official in the press conference, the next step is revising the *Implementing Rules of Promoting Privately-run School* and the issuance of other corresponding measures by both State and local governments. The Amendment will not come into effect until September this year. Hopefully, the time period will be used to clarify the pending issues and give a more clear guidance for funders.

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