

China Clarifies its Private Education Rules

On 21 July 2020, the National People's Congress of the People's Republic of China ("PRC") promulgated Replies Regarding Law Application for Profit Making Private School Corporate Governance (对营利性民办学校决策机构法律适用问题的答复意见) ("**Replies**"). The Replies clarified the following points regarding the operation of profit making private schools.

Change of Sponsors

The PRC Private Education Promotion Law divides private schools into two types: profit making private schools and non-profit making private schools.

The profit making private schools are governed by the PRC Company Law and are registered as limited liability companies. Before the Replies were promulgated, it was widely accepted that any of the following three scenarios would give rise to a change of sponsors (i.e., shareholders) of such companies:

- Introduction of new shareholder(s)
- Exit of existing shareholder(s)
- Transfer of shares between existing shareholders without change of shareholders

The Replies have made it clear that the third scenario does not give rise to a "change of sponsors" and is not subject to approval by the relevant education authority, while the first two scenarios do give rise to a "change of sponsors" and are therefore subject to approvals by the relevant education authority before any such change of sponsors can be effected.

Distribution of Balance Assets

The PRC Private Education Promotion Law provides that, for non-profit making private schools:

- The balance assets upon termination will be used by other non-profit making private schools for education purposes; and
- Any surplus accumulated from daily operations will be used for education purposes.

In contrast, for profit making private schools, any surplus accumulated during daily operations and any balance assets upon termination will be distributed/used in accordance with PRC Company Law.

The Replies further clarified that, for profit making private schools, the proposed distribution and use of any surplus and/or balance assets will be decided by the board of directors before submission to the general meeting of shareholder(s) for approval.

For most limited liability companies, directors are appointed by the shareholder(s) and there is generally no conflict between the board and shareholder(s). However, for profit making private schools, not all directors are appointed by the shareholder(s). This creates a potential conflict between board and the shareholder(s) and there is a possibility that the shareholder(s) cannot distribute the surplus and balance assets as they wish.

It is therefore advisable for shareholder(s) to build in proper safeguards in the articles of association of profit making private schools to minimise any potential conflicts between the board and shareholder(s).

It still remains to be seen how the Replies will be applied in practice as it is a fresh new interpretation from the National People's Congress.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:

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