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Shanghai FTZ's New Rules on Establishing Sino-Foreign Cooperative For-Profit Training Institutions

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As authorized by the State Council, one of the 18 opening up measures to be taken in the China (Shanghai) Pilot Free Trade Zone (“**Shanghai FTZ**”) is to allow the establishment of Sino-foreign cooperative joint venture education and training institutions and Sino-foreign cooperative joint venture vocational skills training institutions. On November 13, 2013, the General Office of Shanghai People's Government issued *the Interim Measures of the Shanghai FTZ for Administration of Establishment of Sino-Foreign Cooperative Joint Venture For-Profit Training Institutions* (“Interim Measures”), which represents the newest reformation for the administration of foreign investment in non-governmental training institutions.

No Laws or Regulations outside the Shanghai FTZ Governing the Same

For a long time, the law on domestic-funded and Sino-foreign cooperative joint venture for-profit training institutions (“**FPTI(s)**”) remains unclear. *The Education Law of the PRC* (effective as of September 1, 1995, revised in 2009) expressly prohibits any institution or person from establishing a school or other education institution for profit. *The Non-State Education Promotion Law of the PRC* (effective as of September 1, 2003; revised in 2013) (“**NSEPL**”) provides that non-state education is a public undertaking, so does *the Regulations of the PRC on Sino-Foreign Cooperative Education* (effective as of September 1, 2003) (“**SFCER**”) as to Sino-foreign cooperative education. Moreover, *the Implementing Measures for the SFCER* (effective as of July 1, 2004) and *the Administrative Measures for Sino-Foreign Cooperative Professional Skills Training Education* (effective as of October 1, 2006) expressly provides that no Sino-foreign cooperative educational or professional skills training institution may engage in for-profit activities. Although the law permits the contributors to obtain “reasonable gains” from the balance of the school, such reasonable gains do not equal to distributable profits, and such training institutions remain non-for-profit and cannot operate for profit as enterprises. Indeed, both the NESPL and SFCER authorize the State Council to

formulate administrative measures concerning the for-profit non-state training institutions separately. However, no nationwide rule has been enacted by the State Council so far.

In general, the existing local rules or regulations formulated by various provinces or municipalities concerning non-state non-diploma education or professional skills training institutions focus on non-for-profit training institutions.

The current laws outside Shanghai FTZ concerning the FPTIs include *the Interim Administrative Measures of Shanghai Municipality for For-Profit Non-State Training Institution* (effective as of July 20, 2013), *the Interim Registration Measures of Shanghai Municipality for For-Profit Non-State Training Institution* (effective as of July 19, 2013) and *the Administrative Measures of Shenzhen Municipality for For-Profit Professional Skills Training Institutions* (effective as of February 1, 2006). However, the foregoing local rules have not stipulated any provision for Sino-foreign cooperative for-profit training institutions. Therefore, there is no law or regulation outside the Shanghai FTZ governing the same.

New Rules in the Shanghai FTZ

According to the Interim Measures, a Sino-foreign cooperative for-profit training institution is a corporate entity established by qualified foreign enterprises or other economic institutions and Chinese enterprises or other economic institutions, which provides the public with for-profit educational or professional skill training services. The respective competent authorities shall be the educational administrative department and the administrative department for labor and social security.

The breakthrough made by the Interim Measures is to permit the establishment of Sino-foreign cooperative “for-profit” training institutions, which remains short of legal basis outside the Shanghai FTZ.

The following chart compares the establishment of a Sino-foreign cooperative training institution (“**SFCTI**”) in the Shanghai FTZ with that outside the Shanghai FTZ from material aspects:

	In the Shanghai FTZ	Outside the Shanghai FTZ
For-profit or not	for-profit ¹	public taking, including “request a reasonable return” and “do not request a reasonable return”
Organizational form	corporate entity	generally, private non-enterprise entities
Competent authority	Education: the educational administrative department; Professional Skills: the administrative department for labor and social security.	Education: the educational administrative department; Professional Skills: the administrative department for labor and social security.
Scope of operation	Permitted: non-diploma education; professional skills training; Prohibited: diploma education; pre-school education; religious, police, political and Party school education	Permitted: diploma education other than compulsory education; professional skills training; Prohibited: compulsory education; religious, police, political and Party school education
Founder	enterprises or other economic institutions	educational institution with legal person status
Basic conditions for the establishment	<ol style="list-style-type: none"> 1) meet the requirements provided for by <i>the Law of the PRC on Sino-Foreign Cooperative Joint Ventures</i> and <i>the Company Law of the PRC</i>; 2) a legal representative of the company who knows well the education affairs and management; 3) full-time and part-time teachers and administrative staffs corresponding to the class, rank and scale; 4) relevant investment no less than RMB 1 million and fund resources to ensure daily operation; 5) company address and teaching facilities corresponding to the training project; 6) management system for running the institution and teaching. 	<ol style="list-style-type: none"> 1) meet the basic conditions set forth in <i>the Education Law of the PRC</i>, <i>the Vocational Education Law of the PRC</i> and <i>the Higher Education Law of the PRC</i>, and shall have legal person status. 2) establish in accordance with state standards applicable to the establishment of other education institutions of the same level and type. 3) the cooperators shall have relevant educational qualifications and demonstrate that they can provide education of a sufficient quality. 4) the investment amounts shall correspond to the rank and scale of the prospective SFCTI, and asset verification shall be carried out by law.
Branches	may establish branch companies or subsidiary companies	shall not establish subordinate institutions or other Sino-foreign cooperative institutions
Development fund	draw profits as statutory reserve and discretionary reserve according to <i>the Company Law of the PRC</i>	draw profits as a development fund for construction and maintenance of the SFCTI and the purchasing or upgrading of teaching facilities

¹ In the Shanghai FTZ, you may also establish a Sino-foreign cooperative non-for-profit training system in accordance with the SFCER.

● **Important Announcement**

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