

Legal Commentary

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漢坤律師事務所
HAN KUN LAW OFFICES

BEIJING | SHANGHAI | SHENZHEN | HONG KONG

New Filing Rules for Online Extracurricular Training Institutions

Authors: Gloria XU | Jiaxin LIU | Joseph LI | Huanhao HE | Qiongxing WANG

Since the beginning of 2018, education administrative departments, in conjunction with other government departments, have been strengthening the supervision of extracurricular training institutions by emphasizing regulatory focus on offline extracurricular training institutions. However, the compliance requirements for online extracurricular training institutions have been unclear, with respect to both legal provisions and enforcement. On July 15, 2019, the Ministry of Education issued the *Implementing Opinions of the Ministry of Education and Five Other Departments on Regulating Online Extracurricular Training Institutions* [Jiao Ji Han (2019) No. 8] (“**Circular 8**”) which, according to a person in charge of the Department of Basic Education of the Ministry of Education, is the first national-level normative document to focus on the regulation of online extracurricular training institutions. Circular 8 specifies that online extracurricular subject-based training institutions need to record-file with a provincial-level education administrative department, and stipulates the general regulatory requirements for online training institutions. This article will analyze the main contents of Circular 8.

Provincial-level Education Administrative Department Record-Filings

I. Overall requirements

1. Applicable for: **subject-based** online extracurricular training institutions¹
2. Filing departments: **provincial-level** education administrative department
3. Time requirements:
 - A. Institutions that have started online training business should submit relevant filing materials by October 31, 2019; newly established online training institutions should submit relevant materials in accordance with the filing requirements;

¹ The term “subject-based” here refers to those institutions whose courses are based on national standard curricula and are intended to supplement school coursework and enhance performance at school or on entrance examinations. Under the relevant rules, “subject-based” courses are distinguished from “quality-based” courses, which are instead designed to enhance a student’s qualitative abilities, such as foreign language fluency, team building or social awareness.

- B. Online extracurricular training institutions that are found to have problems following an investigation should make rectifications in accordance with the authorities suggestions, and should complete the rectifications and re-submit relevant filing materials by the end of June 2020.
4. Consequences: The authorities will investigate and handle those online extracurricular training institutions that fail to make rectifications or fail to do so timely, and may order such institutions to suspend or stop operating their training platforms, take down apps, shut down WeChat public accounts (mini apps), and impose economic penalties in accordance with law. During the press briefing for Circular 8, the head of the Department of Basic Education of the Ministry of Education also mentioned that the department has been developing penalty measures for non-compliant extracurricular training institutions.

II. Record-filing application documents

Circular 8 stipulates three categories of materials required to be submitted to make the record-filing, as shown in the below.

1. For training institutions, the applicant needs to provide:
 - Relevant licenses of the training institution such as an internet content provision (ICP) record-filing, telecommunications services operating license (if applicable), etc.;
 - Information on the establishment of party organizations;
 - Information on fund management, guarantee conditions and service commitments, etc.;
 - Internet platform information and data interaction and processing capabilities, personal information protection systems, network security management systems, security protection technology measures, statement regarding servers located in mainland China.
2. In respect of training content, materials that need to be submitted include course introductions, course arrangements, enrollment rules, etc. Introduction of foreign curricula requires submission of certificates in accordance with relevant regulations.
3. In respect of teachers, subject-based training personnel record-filing materials include: basic information, teacher qualification certificates (for foreign teachers, a description of study and work experience, teaching qualifications or description of teaching ability).

Circular 8 authorizes the provinces (autonomous regions and municipalities directly under the Central Government) to develop specific record-filing rules, so it is possible that the provincial-level education administrative departments may impose more detailed filing requirements.

III. Record-filing procedures

The record-filing procedures are divided into two steps:

- Step one: Obtain telecommunications operating qualifications, including ICP record-filing (and telecommunications service operating license, if applicable), cybersecurity classified

protection system record-filing certificate and evaluation report;

- Step two: Make a record-filing for the online extracurricular training institution. Submit relevant materials to the provincial-level education administrative department of the place where the institution is located. The provincial-level education administrative department will, together with other relevant departments, review and verify the materials submitted by the applicant. For online extracurricular training institutions that meet the requirements, the department will register the filing and circulate an announcement.

As mentioned above, record-filing submissions are to include a “cybersecurity classified protection record-filing classification certificate and evaluation report.” According to the *Measures for Administration of Classified Protection of Information Security*, an information system may be classified into one of five classes, Class I to V. Entities that operate information systems of Class II or above are required to undertake record-filing procedures with the local public security bureau of municipalities divided into districts and above. The public security bureau will issue a protection system classification record-filing certificate for information systems that conform to the classified protection requirements after making the record-filing. In addition, the operator, user or the competent department in charge of information systems will select a qualified evaluation agency to conduct regular evaluations of the security classification status of information systems Class III and above.

IV. Amendment filings

Online training institutions are required to promptly submit the descriptions of changed items and relevant materials if any change occurs to information of the online training institutions, content of training courses, or teachers. The provincial-level education administrative department will review the submitted amendment filing materials according to the filing requirements.

General Regulatory Requirements

Based upon regulatory ideas of *Opinions of the General Office of the State Council on Regulating the Development of Extracurricular Training Institutions* (Guo Ban Fa [2018] No. 80) (“**Circular 80**”), Circular 8 places requirements on online extracurricular training institutions from five aspects, including the course content, duration of classes, faculty, tuition and information security.

1. Course content: The content of subject-based courses may not exceed the corresponding national curricular standards, and must be matched with the grades of the students and adapted to their abilities. Course content, data and information must be retained for one year or more, and live video lectures must be retained for at least six months.

The competent education administrative departments have issued several notices to repeatedly emphasize the requirements that extracurricular training institutions cannot “teach beyond curricular standards” or “teach ahead of curricular standards,” but they have not specified how to determine “beyond” or “ahead of.” In respect of this issue, officials of the Ministry of Education mentioned at the Circular 8 press briefing that the education department will formulate specific evaluation rules for courses “beyond” or “ahead of” curricular standards.

2. Duration of class: The duration of each class must not exceed 40 minutes, and the interval between two classes is to be no less than ten minutes. The schedule of live courses must not conflict with the class arrangements of primary and middle schools. No after-school assignments are allowed for primary school students of grades 1 and 2. The livestreaming of classes for students in compulsory education must conclude before 21:00. Online teaching platforms shall have eye protection and parental supervision functions.

Compared with Circular 80, Circular 8 adds requirements for the duration of each class and the interval between two classes, and delays the conclusion of classes to 21:00, which is later than 20:30 as specified in Circular 80.

3. Faculty: Online training institutions may not employ teachers serving in primary and middle schools. Teachers engaged by institutions to teach subject knowledge must have the relevant teacher qualifications prescribed by law, including for Chinese, mathematics, English, ideology and politics, history, geography, physics, chemistry, biology, etc. The employment of foreign teachers must comply with relevant national provisions. Teachers' names, photos and teaching qualifications must be displayed at a prominent position on the training platform and course pages. In the case of foreign teachers, a description of work and teaching experience must be displayed.
4. Tuition: For courses charged on a per-class basis, one-time fees cannot exceed 60 classes; for courses charged on a training period basis, one-time fees cannot exceed three months.

Compared with Circular 80, Circular 8 adds the requirement that "one-time fees per subject shall not exceed 60 classes," which aims to exercise more comprehensive supervision on the pre-payment activities of training institutions.

5. Information security: Training institutions are to adopt the principle of "compulsory real-name registration, voluntary real-name logins," and verify student identities upon approval of students and their guardians. Training institutions must take effective measures to protect student information and data and prevent privacy disclosures, and must not illegally sell or provide data of students to others. User activity logs must be retained for one year or more.

Circular 8 requires the establishment of routine and random inspection systems, the construction of a national online extracurricular training institution management and service platform, and the provision of technical support for local governments' filing and management work for online extracurricular training institutions. Under the leadership of the education departments, the cyberspace, public security, telecommunications, radio and television administration, and "anti-pornography and illegal publications" departments will jointly supervise the activities of online extracurricular training institutions within scope of their respective authorities. In addition, Circular 8 retains the requirement of Circular 80 that requires the establishment of "black and white lists." The online extracurricular training institutions that comply with the relevant regulations will be whitelisted; institutions that violate relevant regulations will be graylisted and ordered to rectify within a time limit; non-compliant institutions that refuse to rectify or fail to complete rectification timely will be blacklisted. Blacklisted online extracurricular training institutions will be strictly dealt with in accordance with law. The "black and white lists" will be announced by the provincial-level education administrative departments on the national online extracurricular training institutions

management and service platform, and will be updated in a timely manner.

Our Observations

I. Are online language training institutions subject to the record-filing and review system?

Merely looking at its provisions, Circular 8 applies to “subject-based” online extracurricular training courses, but does not currently apply to “quality-based” training courses. However, the standards for distinguishing “subject-based” and “quality-based” courses have so far been unclear.

Taking English training as an example, both Circular 8 and Circular 80 clearly use the expression “subject-based courses including Chinese, mathematics, English, etc.”, which indicates that online English training constitute subject-based training. However, some online “one-on-one student-teacher” youth English training courses are not directly related to entrance examinations, but rather focus more on oral communication skill improvement and introducing the cultural environment. The *Regulations for the Implementation of the Law on the Promotion of Privately-run Schools (Draft for Review)* (“**Draft Regulations**”) attempts to distinguish between the two different kinds of English trainings and categorizes private training and education institutions whose courses contribute to quality and personal development as quality-based training institutions, such as courses on language skills, arts, sports, science and technology, research, etc. In other words, the Draft Regulations classify English training as either quality-based English training or subject-based English training, depending on the specific content of the training. However, the Draft Regulations have not been formally promulgated, and Circular 8 and Circular 80 do not specify rules to distinguish between the two different kinds of English training. In practice, some quality-based English training courses also include subject-based content. Therefore, it remains to be observed as to whether some business types that are ambiguous in nature will be included in the applicable scope of Circular 8 and the results may vary across jurisdictions.

II. Do online extracurricular training institutions need to obtain a school running license?

Circular 8 is not the first to propose a record-filing and review system. The *Circular on Improving Several Working Mechanisms for the Special Management and Reform of Extracurricular Training Institutions* (Jiao Ji Ting [2018] No. 10) (“**Circular 10**”) promulgated by the General Office of the Ministry of Education and other departments on November 20, 2018, stipulates that online subject-based training institutions are required to file the name of the courses, the course content, enrollment targets, course schedule, and class duration with the provincial education administrative department of the place where the institution is located. However, as far as we know, most provinces and cities have not officially opened the relevant record-filing channels after the release of Circular 10. Circular 8 clearly provides for the establishment of a national online extracurricular training institutions management and service platform to provide technical support for the building of local filing and management channels.

However, neither Circular 10 nor Circular 8 explicitly require a school running license. According to the previous Circular 80, extracurricular training institutions need to obtain a school running license and a business license (or a corporate legal person certificate or a private non-enterprise unit

registration certificate) to engage in business, regardless of whether the institution is online or offline. Therefore, a question that still remains is whether online extracurricular training institutions need to obtain a school running license to start business.

In response to this matter, the person in charge of the Department of Basic Education of the Ministry of Education mentioned at the Circular 8 press briefing that online training institutions and offline training institutions will be managed separately based upon their respective characteristics. Specifically, offline training institutions will be subject to county-level examination and approval and “permit-before-business-license” management, while online training institutions will be subject to a record-filing and review system. “Considering online training institutions are flattening, are of wide coverage and large scale, and changing rapidly, we have changed the management mode of online training institutions from county-level approval to provincial-level filing, with the aim to reduce intermediate links and improve the regulatory level. On the one hand, upgrading regulatory level will guarantee the authority, reasonableness and normality of supervision. On the other hand, it will also help reduce enterprises’ burden and improve the transparency of information.” The Ministry of Education also made a similar reply at a special press briefing on July 15, 2019. We understand that the school running license requirement is temporarily not applicable to online extracurricular training institutions. However, Circular 8 authorizes the provinces to formulate specific record-filing rules, so we cannot rule out that the provincial-level education departments may hold different attitude toward this issue. We expect the ambiguity can be clarified in the finalized *Regulations for the Implementation of the Law on the Promotion of Privately-run Schools*.

III. What are the qualification requirements for teachers (including foreign teachers)?

Circular 8 reiterates the requirement of Circular 80, which stipulates that teachers engaged by online subject-based training institution shall have the relevant teaching qualifications prescribed by law. It is worth noting that, according to the *Education Law* and the *Regulations on Teacher Qualifications*, persons who are not graduates of normal colleges or schools may need to attend interviews and study courses in education, psychology, etc. in order to apply for teacher qualifications. And teachers need go through a probationary period to start their teaching careers. As far as we know, a large proportion of teachers in online academic-based training institutions are not graduates of normal colleges or schools. And it is also unclear whether teachers at online extracurricular training institutions targeted at primary and middle school students need to pass the “Primary and Middle Schoolteachers Qualification Examination.” Therefore, in practice, it is possible there will also be an accommodation process for teachers at online extracurricular training institutions to apply for teacher qualifications.

One concern in the industry has consistently been whether foreign teachers employed by training institutions need to obtain teacher qualifications. According to the *Teachers Law* and the *Regulations on Teacher Qualifications*, only Chinese citizens can obtain a Chinese teaching qualification certificate, while foreign citizens cannot obtain a Chinese teacher qualification certificate. Circular 8 puts forwards different requirements for foreign teachers and stipulates that a foreign teacher must provide a “description of study and work experience, teaching qualifications or description of teaching abilities,” but does not require a foreign teacher to provide a teacher qualification certificate. In addition, the employment of foreign teachers must also “comply with relevant state provisions.” We understand

that the online training institutions must apply for and obtain a foreigner's work permit in China for foreigner teachers, in order to satisfy relevant requirements under foreigner worker-related regulations in China.

IV. Do online extracurricular training institutions need to obtain a telecommunications services operating license?

The Draft Regulations for the first time categorize privately-run education and training institutions as offline training institutions and online training institutions, based upon the use of internet technology. Online training institutions are required to obtain corresponding internet business licenses, but the Draft Regulations do not specify what types of Internet business licenses are required to be obtained. Circular 8 clearly requires online extracurricular training institutions to obtain telecommunications business operating qualifications before record-filing, including an ICP filing, cybersecurity classified protection system record-filing certificate and evaluation report, as well as a telecommunications business operating license if telecommunications services are involved.

According to the *Regulations on Telecommunications, Classification Catalog of Telecommunications Services*, and *Measures for Administration of Internet Content Provision Services*, operators of commercial internet content provision services are required to obtain a telecommunications services operating license (“**ICP license**”) whose business scope includes “internet content provision services.” Online courses provided by online extracurricular training institutions constitute commercial internet content provision services and therefore require an ICP license, considering that online courses generally involve charging of additional fees, such as fees for instructional videos, fees for downloading courseware, and fees for online teaching. In practice, it is also very common for online extracurricular training institutions to obtain an ICP license.

Telecommunications services operating licenses are granted and regulated by the telecommunications departments, while the registration of extracurricular training institutions is made with the provincial-level education administrative departments. Although both the Ministry of Education and the Ministry of Industry and Information Technology are issuers of Circular 8, Circular 8 does not clearly specify the manner for review of the qualifications for operating telecommunications services. After the commencement of the record-filing work, it still remains to be seen whether the provincial-level education administrative departments will cooperate with other departments to consider the necessity of the telecommunications services operating license requirement, or whether they will require the institutions that apply for filing to obtain an ICP license by considering the fact that most online extracurricular training institutions have already obtained an ICP license in practice.

V. Strengthening the supervision and management of teachers serving in primary and middle schools taking part-time work at online extracurricular training institutions

Circular 8 is not the first to restrict the teachers serving in primary and middle schools from taking part-time work at online training institutions. The Ministry of Education strictly forbid teachers who work at primary and middle schools from also taking part-time work at extracurricular training institutions for compensation when it promulgated on May 29, 2015 the *Provisions on Prohibition of Teaching Supplementary Classes for Compensation by Primary and Middle Schools and Teachers Serving*

Primary and Middle Schools. Circular 80 requires extracurricular training institutions to have a relatively stable faculty and not to employ teachers who serve at primary and middle schools. Circular 8 further clarifies that online extracurricular training institutions should not hire teachers serving at primary and middle schools, and requires the submission of relevant information of teachers of online subject-based training institutions, and requires institutions to publish information of teachers in a prominent location on the training platform and course pages.

Compared with offline training institutions, there is greater difficulty in supervising online training institutions and preventing them from engaging teachers of primary and middle schools as part-time teachers. Circular 8 requires online subject-based training institutions to submit teachers' information (including basic information, teacher qualification certificates, etc.) in the record-filing, and requests to publish the teachers' information, which will help the education administrative and other departments to identify violations of extracurricular training institutions if they engage teachers serving at primary and middle schools and increases supervision of institutions both in the process of record-filing review and in routine audits.

VI. How will prepaid tuition be supervised?

To tackle the problems of excessively high prepaid tuitions, difficulty in reasonably obtaining tuition refunds, and high user consumption risk, Circular 8 stipulates that the total scale of prepaid tuition collected by online training institutions should match the institution's service ability and prepaid tuition can only be used for education and training services but should not be used for other investments, and imposes limits on the amount of one-time fees that may be charged for courses both on a per-class and training cycle basis, but does not clearly stipulate how to regulate prepaid tuition. It is worth noting that Ni Minjing, deputy director of the Shanghai Municipal Education Commission, stated at a special press briefing of the Ministry of Education on July 15, 2019, that Shanghai will promote the implementation of the "single-purpose commercial prepaid card" system and strengthen the safeguarding of prepaid tuition funds at training institutions.

At present, the *Measures for Administration of Single-purpose Commercial Prepaid Cards (for Trial Implementation)*, as revised and effective on August 18, 2016, requires enterprises engaged in retail, accommodation and catering, and residential services in China to make a record-filing to carry out single-purpose commercial prepaid card services (i.e. issue prepaid cards to redeem for goods or services). However, the single-purpose commercial prepaid card record-filing requirement does not currently apply to online or offline education and training institutions. If the tuition collected by online education and training institutions is classified as single-purpose commercial prepaid card services, the tuition collected by online education and training institutions may be subject to the following requirements stipulated in the *Measures for Administration of Single-purpose Commercial Prepaid Cards (for Trial Implementation)*:

1. A single real-name single-purpose prepaid card is limited to a maximum of RMB 5,000, and a non-real-name single-purpose prepaid card is limited to a maximum of RMB 1,000;
2. Prepaid funds can only be used for the enterprise's principal business, and cannot be used for real estate, equity and securities, etc. investment and lending;

3. The balance of prepaid funds must not exceed a certain percentage (for example, the balance cannot exceed a certain percentage of the income of the principal business, registered capital, etc.);
4. Large scale card-issuing enterprises, card-issuing enterprise groups or franchised card-issuing enterprises are also subject to the fund deposit requirements, and are required to sign a fund deposit agreement with a depository bank;
5. Prepaid card business information is required to be regularly submitted to the Ministry of Commerce.

If the single-purpose commercial prepaid card requirements are also applicable to extracurricular training institutions, the amount and use of prepaid tuition will be subject to additional restrictions in addition to the restrictions on the limits as stipulated in Circular 8. Although the current single-purpose commercial prepaid card rules do not target the education and training industry, it still remains to be observed whether these regulations will be extended to extracurricular training institutions or whether new rules will be promulgated for single-purpose prepaid cards in the education and training industry.

Important Announcement

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If you have any questions regarding this publication, please contact:

Ying (Gloria) XU

TEL: +86-10-8525 5508
Email: gloria.xu@hankunlaw.com

Jiixin LIU

TEL: +86-10-8525 4639
Email: jiixin.liu@hankunlaw.com