Analysis on the Restriction Factors of the Classification of Non-profitable Privately-run High-education Schools—Based on the Deep Interview of a Privately-run Higher School in Shanghai

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Abstract. The Decision to Amend Law of the People’s Republic of China on the Promotion of Privately-run Schools by the People’s Congress stipulate that privately-run schools should be classified as non-profit entities and those seeking profit and each will have different policies. The application dilemma resulting from the law institutional change when they are making a choice, Chinese endowment culture not formed, imperfect property system, lack of control power guarantee, all these appeals should be considered by the legislature and law enforcement agency.

Introduction

In 1972 UNESCO published Learning to be: the world of education today and tomorrow (also called Faure Report), and it led to a great development in world education in 70th 21st century. In the report Studying Society and Life-time education were advocated. As we all know, Studying Society and Life-time education cannot be realized without the national education system. Privately-run education makes full use of social capital and educational resources, and is one of the important part in national educational system. In Dec. 28, the People’s Congress issued Law of the People’s Republic of China on the Promotion of Privately-run Schools (hereinafter called as Promotion Law). It stipulates, privately-run schools and government-run schools share equal legal status. However, in fact, they are not equal. Compared with privately-run schools, government-run schools obviously have advantages in its system as well as the social recognition.

In Nov. 7, 2016, the People’s Congress issued the Decisions on the Amendments on Law of the People's Republic of China on the Promotion of Privately-run Schools (hereinafter called as Amendments), which stipulated that privately-run schools will be classified as non-profit entities and those seeking profit. Newly-established higher schools should decide its status as non-profit entities and those seeking profit, thus they will enjoy different fiscal, tariff and land policies, while non-profitable higher schools will not earn revenue from running schools.

Amendment did not stipulate the deadline of when to execute the classified management, and it authorized local government to make it. In Dec. 27, 2017, Shanghai Municipal Government unveiled Classification License Registration Management Regulations on Shanghai Privately Run Schools (hereinafter called as Classified Regulations). It is regarded as the first local proposals after the Amendments was executed. ² As the registration date to choose its future identity–non-profit or otherwise, different provinces made different regulations, while Shanghai required the existing schools should make a choice and submit related paperwork to authorities for registration before Dec.31 2018. This project will analyze the dilemmas and system appeals the privately run higher schools will face when choosing to be non-profit entities or those seeking profit based on the deep investigations to a large-scale and influential privately run higher schools in Shanghai.

Application Dilemma Resulting from the Law Institutional Change

Promotion Law stipulates with regard to privately-run schools, the State applies the principles of enthusiastic encouragement, vigorous support, correct guidance, and administration according to
law, also People’s governments at all levels shall incorporate the undertakings of the privately-run schools into their plans of national economic and social development, and regulates a series of support and reward terms in taxation, credit, financial support, educational assets and so on.

In Promotion Law Article 51 it stipulates after the cost of a privately-run school is deducted, the funds for its development are withheld and the sum of money for other necessary expenses is drawn in accordance with the relevant regulations of the State, the fund providers may obtain a reasonable amount of requital from the cash surplus of the school. This greatly attracts social capital to privately run schools (also arose huge debate on it) and privately run schools has grown explosively.

Promotion Law also stipulates specific measures for obtaining reasonable amounts of requital shall be formulated by the State Council. But the State Council and local governments did not formulate detailed regulations on reasonable amounts of requital. Chongqing and Wenzhou used to issue proposals on it, while other areas has not issued the detail regulations on it until now. In running schools, some fund providers has obtained some requital, but no one can be sure whether it is legal or not. Promotion Law ( Article 6 Term 2 in Amendments 2015) stipulates legal norms should be specific, detail, targeted and can be executed. Amendments in 2016 stipulate non-profitable higher schools will not earn revenue from running schools. In these 10 years, no one can give a definite answer to “how much reasonable requital is”.

In Education Law, Higher Education Law, and Promotion Law, they all clearly definite the legal statue of those seeking profits privately- run higher schools. In the system of privately-run higher schools, although there is no definite legal definition between non-profit entities and those seeking profit, their legal entity is definite. However, as it is said above, because Promotion Law does not have detail regulations, and the Execution Proposals for Promotion Law in 2004 still stipulates “reasonable requital”, the amend draft of Execution Proposals is still in review, when the existing higher schools choose their statue, there arose a question “Can we, if so, how can we withdraw the reasonable requital in those ten years from the execution of Promotion Law to the execution of Amendments?” Because of the undefined, undetailed, unenforceability of the related education regulations, there exists a law application dilemma of institutional change.

Chinese Endowment Culture not Formed.

According to Amendments, the existing privately-run schools have rights to choose non-profit entities and those seeking profit. Non-profit entities belong to public welfare undertakings and government has rights to enforce its investment. Article 30 term 2 in Classification License Registration Management Regulations on Shanghai Privately Run Schools stipulates that when choosing to be non-profit entities, they should amend the school regulations, perfect legal person management system and inner management to continue running schools according to related law regulations. It is easy to operation if you abandon property income right and become non-profit entities; meanwhile, it means property endowment.

It is clear to note that in these forty years, the sponsors has made a miracle in the development of the Chinese privately-run higher schools because of their great efforts and contributions, their marketing conscientious and their enterprise managements. However, up till now, endowment culture has not formed in China, public welfare undertakings are still under development.

Citizen’s social responsibilities and public spirits are related to the social economic development as well as traditional opinions and public welfare culture. In USA the earlier established higher schools are most privately-run, in 1860 USA had 264 higher schools, in which privately-run schools was 247, mainly by private donation. Now endowment culture (or philanthropy culture) in USA is very complete. USA funding mainly pay close attention on education and healthy, as they believe if everyone has received equal education and is in good healthy, then he or she would have equal opportunity to work and live, thus, the society can develop continuously. In this culture, every enterprise and every citizen all have strong responsibility sense. Public donation becomes everyone’s duty, right and social value.

China is still in the primary stage of socialism, and the average of individual welfare is not high,
therefore, they lack the ability to make donations to higher schools. On the other hand, only 4% of
the present GDP can be put into education, which obviously is far too enough. Higher schools still
urgently need social capital to be invested in their running schools. One of the interviewees thought
the Amendments and the execution plans made by different areas did not attract social capitals to
non-profit privately-run schools, because our economy was still in low stage.

Imperfect Property System

Article 36 in Amendments stipulates *Privately-run schools shall enjoy property rights of the legal
persons in respect of the assets provided by sponsors to privately-run schools.* Privately-run higher
schools enjoy independent legal property right, but there is no legal stipulation as to the original
property rights of the sponsors and the right to inherit, transfer, donate or something else.

Article 59 *Promotion Law* stipulates the remaining property of a privately-run school after the
debts mentioned above are cleared off shall be disposed of in accordance with the provisions of
relevant laws and administrative regulation. Article 59 Amendments stipulates when the
privately-run school is terminated, non-profit privately-run schools can still use the remaining
assets to other non-profit schools after clear off all the above debts; those making profit
privately-run schools should dispose the remaining assets in accordance with the provisions in
Company Law after they clear off the above debts. Thus, it is clearly stipulated in Amendments that
the sponsor of the non-profit privately-run schools will not enjoy the remaining property right. So,
if choosing non-profit, it might make the sponsor lose their rights, which cause great concerns to the
sponsors when choosing their classifications.

Lack of Control Power Guarantee

Most of the existing privately-run higher schools now practice the system of president
responsibility under the leadership of board. Article 21 Amendments stipulates sponsors can be
directors of the Board. In fact all sponsors will elect Director of the Board. Article 22 Amendments
follows the stipulations in Promotion Law that sponsors enjoy the rights to select the manager and
make important decisions.

When choosing to classify, the sponsors are likely to concern about their management rights.
With more and more fiscal investment by the government to the privately-run school and the
government will step in the management of the schools, the sponsors might lose their control power
and management rights, therefore, the flexibility of privately-run school system might lose.

Conclusions

Law is the outcome of the benefit game, and the making process is the process of compromise
and interests balance. It remains to be seen the influence of the classification management to China
privately-run higher school. Shanghai is pioneer in privately-run education classification
management. The dilemma in choosing the classification for the privately-run schools and its
system appeal may be a guide to other areas and list as the factors to be considered when making
and enforcing laws.

Reference

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