

## New Mainland China Official Government Opinion on the Off-campus Tutoring Education Sector—Implications for VIE Structures in This Space?

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Last month we alerted our clients to the expected impact of the [Implementation Rules for the Law for Promoting Private Education](#) (“Education Sector Implementation Rules”), which signaled a continued focus by the authorities in Mainland China on further regulating and streamlining the provision of private sector education in the compulsory education stage and also focused on the use of “variable interest entity” (VIE) structures (“VIE Structures”) in that business context.

While those rules relate to the pre-school and compulsory school aspects of the education sector, the latest official government opinion published on July 24, 2021, on the after-school tutoring sector in Mainland China (the “Tutoring Education Sector Opinion”) has thrown the continued viability of those profit-making tutoring businesses for compulsory education into serious doubt—whether they are owned by People’s Republic of China (PRC) domestic shareholders or operated as a foreign-invested business via a VIE Structure.

With these measures, the Mainland China government appears to be bolstering its policy efforts to focus educational activity on its mainstream public education system and reduce the financial pressures and other burdens on parents that can be associated with the widespread use of fee-paying private educational businesses.

### What is the Tutoring Education Sector Opinion?

The official title of the Tutoring Education Sector Opinion, which was issued on July 24, 2021, by the General Office of the Central Communist Party (CCP) and the General Office of the State Council is “The Opinion on Further Reducing the Homework Burden and Off-campus Tutoring Burden for Students in Compulsory Education”.

The opinion focuses on the regulation of after-school tutoring operations and, while the Tutoring Education Sector Opinion is not itself an enforcement measure, it was promulgated by the CCP General Office and the State Council. This means that even though no specific measures or timings for enforcement were set out in the opinion—it simply provided that any non-compliance should be “rectified”—the prohibitions it

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contains are likely to be enforced. Further guidance is awaited from the relevant authorities on what steps will be required to “rectify” non-compliance and by when.

## Foreign-owned After-school Tutoring Businesses

Importantly, the Tutoring Education Sector Opinion, as part of its focus on the non-profit model for the education sector, expressly prohibits after-school tutoring platforms from raising equity finance by way of a public offering, and disallows the control or holding of equity in these platforms by foreign capital, whether by way of mergers and acquisitions, entrusted operations, franchising or VIE Structures.

Foreign ownership of education businesses on the Mainland has been and remains—along with other sectors such as internet, media and telecommunications—restricted under China’s foreign ownership and investment rules—the so called “Negative List<sup>1</sup>”. Until recently, many foreign-invested education businesses on the Mainland had raised offshore capital by using VIE Structures in light of the foreign ownership rules. Now, the Education Sector Implementation Rules and the Tutoring Education Sector Opinion make it clear that the prohibition of foreign investment in education includes the use of VIE Structures. This appears to bring an end to the viability of profit-making after-school tutoring businesses and confirms that foreign ownership of tutoring businesses, even through the use of VIE Structures, has been banned.

## What’s Next for VIE Structures on the Mainland?

The Tutoring Education Sector Opinion relates only to after-school tutoring in the compulsory education sector, but some investors fear that the specific ban on the use of VIE Structures with respect to after-school tutoring businesses in compulsory education may signal a broader move by the Mainland China authorities to crack down on the use of VIE Structures in other sectors of the economy where foreign ownership is limited or prohibited.

Although these education sector measures were likely to have been part of policy efforts to focus educational activity on China’s mainstream non-profit public education system and reduce the financial pressures and other burdens on parents associated with private tutoring businesses, it does appear that the use of VIE Structures, as required to be “rectified” under the Tutoring Education Sector Opinions, may need to be phased out in China’s compulsory education sector. The approach of the government on this issue in the compulsory education sector may also shed light on how the Chinese government will deal with VIE Structures in other sectors in the future.

<sup>1</sup> The various sectors and industries where foreign investment is prohibited or restricted (i.e., the Negative List) are set out in the Special Administrative Measures (Negative List Edition 2020) on Access to Foreign Investment and Free Trade Zone Special Administrative Measures (Negative List Edition 2020) on Access to Foreign Investment.