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### FOREIGN INVESTMENT IN EDUCATION IN THE PRC

#### Foreign Investment Industries Guidance in Education Industry

Projects with foreign investment in the PRC are subject to the supervision and administration requirements as provided in the Foreign Investment Industries Guidance Catalogue (Amended in 2017) (《外商投資產業指導目錄》(2017年修訂)) (the “**Guidance Catalogue**”) which was amended and promulgated jointly by the National Development and Reform Commission (the “**NDRC**”) and the Ministry of Commerce (the “**MOFCOM**”) on 28 June 2017 and became effective on 28 July 2017. Under the Guidance Catalogue, foreign-invested industries are classified into two categories, namely (i) encouraged foreign-invested industries and (ii) foreign-invested industries which are subject to Special Administrative Measures for Access of Foreign Investment (Negative List for Access of Foreign Investments) (the “**Negative List**”). The Negative List is further divided into restricted foreign-invested industries and prohibited foreign-invested industries. Unless otherwise provided in the PRC laws, the industries which are not set out in the Negative List are permitted foreign-invested industries.

Pursuant to the Guidance Catalogue, higher education is a restricted industry for foreign investors, and foreigners are only allowed to invest in higher education in cooperative ways and the domestic party shall play a dominant role in the cooperation, which means the principal or chief executive officer of the schools shall be a PRC national and the representative of the domestic party shall account for no less than half of the total members of the board of directors, the executive council or the joint administration committee of the sino-foreign cooperative educational institution.

#### Regulations on Sino-Foreign Cooperation in operating schools

Sino-foreign cooperation in operating schools is specifically governed by the Regulation on Sino-Foreign Cooperation in Operating Schools of the PRC (《中華人民共和國中外合作辦學條例》) (the “**Sino-Foreign Regulation**”), which was promulgated by the State Council on 1 March 2003 and became effective on 1 September 2003 and was amended on 18 July 2013, and the Implementing Rules for the Regulations on Operating Sino-foreign Schools (《中華人民共和國中外合作辦學條例實施辦法》) (the “**Implementing Rules**”), which were issued by the Ministry of Education (the “**MOE**”) on 2 June 2004 and became effective on 1 July 2004.

The Sino-Foreign Regulation and the Implementing Rules mainly apply to the activities of education institutions established in the PRC cooperatively by foreign education institutions and Chinese education institutions, the students of which are to be recruited primarily among the PRC citizens, and encourage substantive cooperation between overseas educational organisations with relevant qualifications and experience in providing high-quality education and PRC educational organisations to jointly operate various types of schools in the PRC, with such cooperation in the areas of higher education and occupational education being encouraged. The overseas educational organisation must be a foreign educational institution with relevant qualification, experience in education, and high-quality education ability. Sino-foreign cooperative schools are not permitted, however, to engage in compulsory education and military, police, political and other kinds of education that are of a special nature in the PRC. Any Sino-foreign cooperation school and cooperation programme shall be approved by relevant education authorities and obtain the Permit of Sino-Foreign Cooperation in Operating School. A Sino-foreign cooperation school established without the above

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approval or permit may be prohibited by the relevant authorities, be ordered to refund the fees collected from its students and be subject to a fine of no more than RMB100,000, while a Sino-foreign cooperation programme established without such approval or permit may also be banned and be ordered to refund the fees collected from its students.

On 18 June 2012, the MOE issued the Implementation Opinions of the MOE on Encouraging and Guiding the Entry of Private Funds into the Field of Education to Promote Healthy Development of Private Education (Jiaofa [2012] No. 10) (《教育部關於鼓勵和引導民間資金進入教育領域促進民辦教育健康發展的實施意見》) (教發[2012] 10號) to encourage private investment and foreign investment in the field of education. According to these opinions, the proportion of foreign capital in a Sino-foreign cooperative education institution shall be less than 50%.

### REGULATIONS ON PRIVATE EDUCATION IN THE PRC

#### Education Law of the PRC

On 18 March 1995, the National People's Congress of the PRC enacted the Education Law of the PRC (《中華人民共和國教育法》) (the “**Education Law**”), which was effective from 1 September 1995, amended on 27 August 2009 and further amended on 27 December 2015. The Education Law sets forth provisions relating to the fundamental education systems of the PRC, including a school education system comprising pre-school education, primary education, secondary education and higher education, a system of nine-year compulsory education, a national education examination system, and a system of education certificates. The Education Law stipulates that the government formulates plans for the development of education, establishes and operates schools and other institutions of education. Furthermore, it provides that in principle, enterprises, social organisations and individuals are encouraged to establish and operate schools and other types of educational institution in accordance with the relevant PRC laws and regulations. Moreover, private schools may be operated for “reasonable returns” as described in more detail below. The Education Law also stipulates that some basic conditions shall be fulfilled for the establishment of a school or any other education institution, and the establishment, modification or termination of a school or any other education institution shall, in accordance with the relevant PRC laws and regulations, undergo examination, verification, approval, registration or filing procedures.

The Education Law was amended (the “**amended Education Law**”) by the Standing committee of the PRC National People's Congress (the “**SCNPC**”) on 27 December 2015, and became effective on 1 June 2016. The amended Education Law does not include the requirement that no organisation or individual may establish or operate a school or any other educational institution for profit-making purposes, but schools and other educational institutions founded with governmental funds or donated assets are forbidden to be established as for-profit organisations.

#### Regulations on Higher Education

According to the Higher Education Law of the PRC (《中華人民共和國高等教育法》), which was promulgated on 29 August 1998 and amended on 27 December 2015 and became effective on 1 June 2016, higher education includes education for academic qualifications and education for non-academic qualifications. Higher education institutions refer to universities, independent colleges, and specialised higher education schools, including higher vocational schools and higher education schools for adults. Higher education for academic qualifications include junior college education,

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undergraduate education and graduate course education. Higher education shall be conducted by higher education institutions and other higher education organisations. The establishment of higher education institutions for undergraduate education and above shall be subject to examination and approval by the administrative department for education under the State Council; and the establishment of higher education institutions for junior college education shall be subject to examination and approval by the people's governments of provinces, autonomous regions and municipalities directly under the PRC central government. The establishment of other higher education organisations shall be subject to examination and approval by the administrative department for education under the people's governments of provinces, autonomous regions and municipalities directly under the PRC central government. Higher education institutions shall be established in accordance with state plans for the development of higher education and in line with the interests of the state and the public. Universities shall mainly conduct undergraduate education and education at a higher level. Specialised higher education schools shall conduct junior college education. With the approval of the administrative department for education under the State Council, research institutes may undertake the graduate programme. Other higher education organisations shall conduct higher education for non-academic qualifications. Universities shall, in addition, have better qualified staff for teaching and research, a higher level of teaching and research, as well as a necessary size of the student body, so that they can offer undergraduate education and education at a higher level. Moreover, universities shall offer at least three branches of learning designated by the state as the main courses.

Further, the MOE issued the Several Provisions on the Administration of Non-state-operated Colleges and Universities (《民辦高等學校辦學管理若干規定》) on 3 February 2007, which were amended on 10 November 2015, pursuant to which the conditions for running private colleges and universities shall conform to the establishment standards as prescribed by the state and the basic indicators for running regular colleges and universities. The investors of a private college or university shall, under the private education promotion law and the regulation for the implementation thereof, timely and fully perform the capital contribution obligation. No private college or university may engage in educational and teaching activities in any place other than those specified in the licence for running private education, or establish any branch, rent or lend to others its licence for running private education. The principal of a private college or university shall satisfy the appointment requirements of the state and shall have ten or more years of experience of administration of higher education and shall not be over 70 years old. The term of office of a principal shall be four years in principle.

### Regulations on Vocational Education

According to the Vocational Education Law of the PRC (《中華人民共和國職業教育法》) (the “**Vocational Education Law**”), which was promulgated by the SCNPC on 15 May 1996 and came into effect on 1 September 1996, the state encourages institutional organisations, social organisations and other social groups and citizens to operate vocational schools and vocational training institutions according to relevant provisions of the state.

Vocational school education includes primary, secondary and higher vocational school education. Primary and secondary vocational school education shall be conducted respectively by primary and secondary vocational schools. Higher vocational school education shall be conducted by higher vocational schools or by common institutions of higher learning in accordance with the actual needs and conditions. Other schools may implement vocational school education at corresponding levels in accordance with the overall planning by the education administrative department.

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The education administrative department, the labour administrative department and other relevant departments of the State Council shall each be responsible for the work relating to vocational education within the scope of their functions and duties as specified by the State Council.

The Administrative Measures for the Sino-foreign Cooperative Education on Vocational Skills Training (《中外合作職業技能培訓辦學管理辦法》) (the “**Sino-foreign Vocational Skills Training Measures**”) was promulgated by the Ministry of Labour and Social Security on 26 July 2006 and came into effect on 1 October 2006 and then was amended on 30 April 2015 by the MOHRSS. The Sino-foreign Vocational Skills Training Measures shall apply to the establishment, activities and management of vocational skills training institutions and educational projects initiated by Chinese educational institutions and foreign educational institutions (including vocational skills training institutions) by cooperation. Parties to Sino-foreign cooperation shall conclude a cooperation agreement upon completion of arms’ length negotiation for initiating a vocational skills training project of Sino-foreign cooperative education, and the application for the said project shall be subject to the examination and approval by the administrative department of labour and social security of the people’s government of the province, autonomous region or municipality directly under the Central Government where the said project is located, and shall be reported to the administrative department of labour and social security under the State Council for filing.

### **The Law for Promoting Private Education and the Implementation Rules for the Law for Promoting Private Education**

The Law for Promoting Private Education of the PRC (《中華人民共和國民辦教育促進法》) became effective on 1 September 2003 and was amended on 29 June 2013 and on 7 November 2016, and the Implementation Rules for the Law for Promoting Private Education of the PRC (《中華人民共和國民辦教育促進法實施條例》) became effective on 1 April 2004. Under these regulations, “private schools” are defined as schools established by social organisations or individuals using non-government funds. The establishment of a private school shall meet the needs of the development of the local education, and shall satisfy the requirements in accordance with the Education Law and relevant laws and regulations. The standards for the establishment of private schools shall be executed by reference to those for the establishment of public schools of the same level and category.

Private schools providing academic qualifications education and other education shall be subject to approval by the education authorities at or above the county level, while private schools engaging in occupational qualification training and occupational skill training shall be subject to approvals from the authorities in charge of labour and social welfare at or above the county level. A duly approved private school will be granted a Licence of Operating a Private School (《民辦學校辦學許可證》), and shall be registered with the Ministry of Civil Affairs of the PRC (the “**MCA**”) (中華人民共和國民政部) or its local counterparts as a privately run non-enterprise institution (民辦非企業單位). As of the Latest Practicable Date, each of our schools had obtained the Licence of Operating a Private School and has been registered with the relevant local counterpart of the MCA.

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Under the regulations hereinabove, private schools have the same status as public schools, though private schools are prohibited from providing military, police, political and other kinds of education, which are of a special nature. Public schools that provide compulsory education are not permitted to be converted into private schools. The operations of a private school are highly regulated. For example, a private school shall establish its executive council, board of directors or any other form of the decision-making body and such decision-making body shall meet at least once a year.

Teachers employed by a private school shall have the qualifications specified for teachers and meet the conditions for the position as provided for in the Teachers Law of the PRC (《中華人民共和國教師法》) and other relevant laws and regulations. There shall be a definite number of full-time teachers in a private school, and for private schools offering academic qualifications education full-time teachers shall account for not less than one-third of the total number of the teachers. Each of our schools provides a diploma or certificate to students. In line with the relevant regulations, all of our courses required for PRC diplomas or certificate are taught by teachers that are certified by the relevant city education bureaus after undergoing systematic training and passing standardised tests in the subject they teach.

According to the relevant PRC laws and regulations, entities and individuals who establish private schools are commonly referred to as “sponsors” instead of “owners” or “shareholders.” The economic substance of “sponsorship” in respect of private schools is similar to that of ownership with regard to legal, regulatory and tax matters. The main differences between sponsorship and equity ownership can be found in the specific provisions of the laws and regulations applicable to sponsors and owners, as follows:

- Right to receive a return on investment. See the paragraph headed “Sponsor’s Reasonable Returns” below, and
- Right to distribution of residual properties upon termination and liquidation. Under the PRC Company Law (《中華人民共和國公司法》), properties that remain upon termination and liquidation of a company after payment of relevant fees and compensation are to be distributed to its owners. With respect to a school, the Law for Promoting Private Education provides that such distribution be made in accordance with other relevant laws and regulations. However, there have been no other relevant laws and regulations addressing the distribution of residual properties upon termination and liquidation of a private school.

### **Sponsor’s Reasonable Returns**

Private education is treated as a public welfare undertaking under the relevant PRC laws and regulations. Nonetheless, sponsors of a private school may choose to require “reasonable returns” from the annual net balance of the school after deduction of costs for school operations, donations received, government subsidies (if any), the reserved development fund and other expenses as required by the regulations. Private schools are divided into three categories, namely: (i) private schools established with donated funds, (ii) private schools with the sponsors of which require reasonable returns, and (iii) private schools with the sponsors of which do not require reasonable returns.

The election to establish a private school the sponsors of which require reasonable returns must be set out in the articles of association of the school. The percentage of the school’s annual net balance that can be distributed as reasonable returns shall be determined by the school’s executive council, board of directors or other form of the

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decision-making body, taking into consideration the following factors: (i) items and criteria for the school's fees; (ii) the ratio of the school's expenses used for educational activities and improving the educational conditions to the total fees collected; and (iii) the school operation level and educational quality. The relevant information relating to the school's operation level and the quality of education shall be publicly disclosed before the determination of the percentage of the school's annual net balance that can be distributed as reasonable returns. Such information and the decision to distribute reasonable returns shall be filed with the approval authorities within 15 days from the date on which the decision is made. However, none of the current PRC laws and regulations provides any formula or guidelines for determining what constitutes "reasonable returns." In addition, no current PRC laws or regulations set forth any requirements or restrictions on a private school's ability to operate its education business that are differentiated based on such school's status (i.e., whether as a school the sponsor of which requires reasonable returns or a school the sponsor of which does not require reasonable returns). None of our schools have elected to be a school whose sponsor requires reasonable returns.

At the end of each fiscal year, every private school is required to allocate a certain amount to its development fund for the construction or maintenance of the school or procurement or upgrade of educational equipment. In the case of a private school where the sponsor requires reasonable returns, this amount shall be no less than 25% of the annual net income of the school, while in the case of a private school the sponsor of which does not require reasonable returns, this amount shall be equal to no less than 25% of the annual increase in the net assets of the school, if any.

Private schools the sponsors of which do not require reasonable returns shall be entitled to the same preferential tax treatment as public schools, while the preferential tax treatment policies applicable to private schools the sponsor of which require reasonable returns shall be formulated by the finance authority, taxation authority and other authorities under the State Council. As of the Latest Practicable Date, however, no regulations had been promulgated by such authorities in this regard.

A sponsor of a private school has the obligation to make capital contributions to the school in a timely manner. The contributed capital can be in the form of tangible or non-tangible assets such as materials in kind, land use rights or intellectual property rights. The capital contributed by the sponsor becomes assets of the school and the school has independent legal person status. In addition, the sponsor of a private school has the right to exercise ultimate control over the school by becoming the member of and controlling the composition of the school's decision making body. Specifically, the sponsor has control over the private school's constitutional documents and has the right to elect and replace the members of the private school's decision making bodies and therefore controls the private school's business and affairs.

### **The Revisions of the Law for Promoting Private Education of the PRC**

On 7 November 2016, the Decision on Amending the Law for Promoting Private Education of the PRC (Order of the President of the PRC No. 55) was reviewed and passed by the SCNPC and came into effect on 1 September 2017.

In accordance with this decision, as long as the school does not provide compulsory education, school sponsors of the private schools are allowed to register and operate the schools as for-profit private schools or non-profit private schools. School sponsors of for-profit private schools are allowed to derive income from the operation of the school and the balance of running such schools is permitted to be handled in accordance with

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the PRC Company Law and other relevant laws and administrative regulations. While school sponsors of non-profit private schools are prohibited from deriving income from the operation of the schools, the balance of running such schools shall be only used for the operation of the other non-profit schools. Furthermore, the remaining assets upon liquidation of for-profit private schools are permitted to be handled in accordance with the relevant provisions of the PRC Company Law and that of non-profit private schools shall only be used for the operation of other non-profit schools.

Also pursuant to the Decision on Amending the Law for Promoting Private Education, for-profit private schools are entitled to make their own decisions about the fees collection in accordance with the market condition while the fees collection of non-profit private schools shall be subject to concrete measures to be promulgated by the provincial, autonomous regional or municipal government. In addition, private schools are entitled to preferential tax policies and land policies in accordance with the PRC laws, with the emphasis that non-profit private schools shall enjoy the preferential tax policies and land policies equivalent to those applicable to public schools.

If the school sponsors of private schools established prior to the promulgation date of the Decision on Amending the Law for Promoting Private Education choose to register and operate their schools as non-profit private schools, they shall procure the school to amend its articles of association in accordance with the Decision on Amending the Law for Promoting Private Education and continue the school operation pursuant to such revised articles of association. Furthermore, upon the termination of such non-profit private schools, the government authority may provide compensation or reward to the school sponsors who have made capital contribution to such school from the remaining assets of such schools upon their liquidation and then apply the rest of the assets to the operation of other non-profit private schools. If the school sponsors of private schools established prior to the promulgation date of the Decision on Amending the Law for Promoting Private Education choose to register and operate their schools as for-profit private schools, the schools shall go through some procedures including but without limitation to conducting financial settlement, defining the property right, paying relevant taxes and expenses and making renewed registration, the details of which shall be subject to concrete measures to be promulgated by the provincial, autonomous regional or municipal government.

### **Several Opinions on Encouraging Individual Persons or Entities to Conduct Education and Promote the Healthy Development of Private Education**

According to Several Opinions on Encouraging Individual Persons or Entities to Conduct Education and Promote the Healthy Development of Private Education (Guofa [2016] No. 81) (《關於鼓勵社會力量興辦教育促進民辦教育健康發展的若干意見》) (國發[2016] 81號), which was issued by the State Council of PRC on 29 December 2016, innovative institutional mechanisms shall be implemented in the field of private education, including but without limitation to: (i) classification registration and management, which shall be applicable to private schools and the school sponsors of private schools shall, at their own discretion, choose to operate their schools as non-profit private schools or for-profit private schools; (ii) different government support policies, which shall be applicable to private schools.

The people's governments at relevant levels are responsible for formulating and perfecting the support policies for non-profit private schools, including but without limitation to: government subsidies, government procurement services, fund incentives, donation incentives and land allocation. At the same time, the people's governments at relevant levels may support the development of for-profit private schools by way of

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government procurement services and preferential tax treatments in accordance with the economic and social development needs and the request for public services, and expand financing channels for private schools and encourage and attract private funds to enter into the field of private education. Financial institutions are encouraged to provide loans to private schools with the pledge of the schools' operating profits in the future or intellectual property rights, while individual persons or entities are encouraged to make donations to non-profit private schools.

The people's governments at various levels shall perfect the government support policies for private schools, which include, but are not limited to: (i) implementing the same subsidy policies for private schools so that the students at both private schools and public school shall equally enjoy student loans, scholarships and other state funding benefits; and (ii) implementing incentive policies regarding taxes and fees for private schools. For-profit private schools shall enjoy preferential tax treatments in accordance with the PRC national regulations while non-profit private schools shall enjoy the same preferential tax treatments as public schools. For-profit private schools shall also be entitled to the same price policies for utilities, such as electricity, water, gas and heat, as those of public schools; and (iii) implementing different land supply policies. Non-profit private schools shall enjoy the same land policy as public schools and obtain parcels of land by way of land allocation while for-profit private schools shall obtain parcels of land in accordance with PRC national regulations and policies.

### **Implementation Regulations on Classification Registration of Private Schools**

According to the Implementation Regulations on Classification Registration of Private Schools (《民辦學校分類登記實施細則》) (the “**Classification Registration Rules**”), which was issued jointly by the MOE, the MOHRSS, the MCA, the State Commission Office of Public Sectors Reform and the State Administration for Industry and Commerce and became effective on 30 December 2016, the establishment of private schools is subject to government approval. Private schools approved to be established shall apply for the registration certificate or licence in accordance with the Classification Registration Rules after they are granted with the licence for the school operation by the competent government authorities.

The Classification Registration Rules shall be applicable to private schools. Non-profit private schools that meet the requirements under the Interim Administrative Regulations on the Registration of Private Non-enterprise Entities (《民辦非企業單位登記管理暫行條例》) and other relevant regulations shall apply to the civil affairs department for registration as private non-enterprise entities. Non-profit private schools that meet the requirements under the Interim Regulations on the Administration of the Registration of Public Institutions (《事業單位登記管理暫行條例》) and other relevant regulations shall apply to the administrative authority for registration of public institutions for registration as public institutions. For-profit private schools, on the other hand, shall apply to the industry and commerce department for registration in accordance with the jurisdiction provisions set out by relevant laws and regulations.

The Classification Registration Rules are also applicable to private schools which were established before the promulgation of the Revisions of the Law For Promoting Private Education of the PRC on 7 November 2016 (“**Existing Private Schools**”). If an Existing Private School chooses to register as a non-profit private school, it shall amend its articles of association in accordance with laws, continue its school operation, and complete the new registration formalities. If an Existing Private School chooses to register as a for-profit private school, it shall make financial settlement, clarify the ownership of the schools' lands, buildings and accumulations with the consent of the



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relevant departments of the people's governments at or below the provincial level, pay relevant taxes and fees, obtain new school permits, carry out their re-registration and continue their school operation. The provincial people's government is responsible for formulating the detailed measures on the alteration registration of the private schools in accordance with national laws and the local situation.

### **Implementation Regulations for the Supervision and Administration of For-Profit Private Schools**

According to the Implementation Regulations for the Supervision and Administration of For-Profit Private Schools (《營利性民辦學校監督管理實施細則》), which was issued jointly by the MOE, the MOHRSS and the State Administration for Industry and Commerce on 30 December 2016, social organisations or individuals are permitted to operate for-profit private universities and private junior colleges and other higher education institutions, but are prohibited from operating for-profit private schools providing compulsory education.

According to the implementation regulations, the social organisations or individual operating a for-profit private school shall have financial strength appropriate to the level, type and scale of the school, and their net assets or monetary funds shall be able to satisfy the needs of school construction and development. Furthermore, the social organisation operating for-profit private schools shall be a legal person that is in good credit standing, and shall not be listed as an enterprise operating abnormally or be listed as an enterprise that is in material non-compliance with the laws or be dishonest. Individuals operating for-profit private schools shall be a PRC citizen who resides in China, be in good credit standing without any criminal record and enjoys political rights and complete civil capacity.

For-profit private schools shall establish boards of directors, boards of supervisors (or supervisors), administrative organs, organisations of the Communist Party of China, the employee representatives' assembly as well as labour unions. Secretary of the Communist Party of China shall be a member of the board of directors and a member of the administrative organs of the school, and not less than one-third of the members of the board of supervisors of the school shall be employee representatives.

In addition, for-profit private schools shall implement the financial and accounting policies required by the PRC Company Law and other relevant regulations and include all of their income in their financial accounts and issue legal invoices and other documents as required by the PRC tax authorities for such income. For-profit private schools enjoy legal person property rights and shall be entitled to manage and use all of their assets in accordance with applicable regulations. The school sponsors of for-profit private schools shall neither withdraw their shares of registered capital nor mortgage the teaching facilities for loans or guarantee. The balance of the school operating profits could only be distributed upon the annual financial settlement.

For-profit private schools shall, in accordance with the Provisional Regulations on Enterprise Information Publicity, publicise their credit information such as annual report information, administrative licence information and administrative penalty information through the national enterprise credit information publicity system. In addition to the information that has been made public by the schools, the social organisations or individuals can make written application to the schools for additional information.

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The division, merger, termination and other major changes involving for-profit private schools shall be subject to the approval of the boards of directors of the schools, the approval by the relevant government authorities as well as the registration requirements by the industry and commerce departments. The division, merger and termination, as well as the change of name involving for-profit private universities and private junior colleges shall be subject to the approval of the MOE while other alteration matters shall be approved by the relevant provincial governments.

According to the Notice of the State Administration for Industry and Commerce and the Ministry of Education on the Registration and Administration of the Name of For-Profit Private Schools (《工商總局、教育部關於營利性民辦學校名稱登記管理有關工作的通知》), which was issued jointly by the MOE and the State Administration for Industry and Commerce on 31 August 2017 and became effective on 1 September 2017, the private school shall be registered as a limited liability company or a joint stock limited company according to the Company Law of the PRC (《中華人民共和國公司法》) and the Law for Promoting Private Education (《中華人民共和國民辦教育促進法》) and its name shall comply with the relevant laws and regulations on company registration and education.

### **Interim Measures for the Management of the Collection of Private Education Fees**

The Interim Measures for the Management of the Collection of Private Education Fees (《民辦教育收費管理暫行辦法》) (the “**Private Education Fees Collection Measures**”) was promulgated by the NDRC, the MOE and the MOHRSS on 2 March 2005. According to the Private Education Fees Collection Measures and the Implementation Rules for the Law for Promoting Private Education, the types and amounts of fees charged by a private school providing academic qualifications education shall be examined by education authorities or the labour and social welfare authorities and approved by the governmental pricing authority, and the school shall obtain the fee charge permit. A private school that provides non-academic qualifications education shall file its pricing information with the governmental pricing authority and publicly disclose such information. If a school raises its tuition fee levels without obtaining the proper approval or making the requisite filing with the relevant government pricing authorities, the school would be required to return the additional tuition fees obtained through such raise and become liable for compensation of any losses caused to the students in accordance with relevant PRC laws. All of our schools’ Fee Charge Permits were updated for each tuition fee increment and renewed upon their expiry prior to 1 January 2016. From 1 January 2016, pursuant to the Notice on the Cancellation of the Fee Charge Permit System and Strengthening the Supervision in process and afterwards (《國家發展改革委、財政部關於取消收費許可證制度加強事中事後監管的通知》) which was jointly issued by the NDRC and the Ministry of Finance on 9 January 2015, our schools are no longer required to apply for or to renew any Fee Charge Permit.

On 12 October 2015, the State Council and the Central Committee of CPC jointly issued the Several Opinions of the Central Committee of the Communist Party of China and the State Council on Promoting the Price Mechanism Reform (《中共中央、國務院關於推進價格機制改革的若干意見》), which allows for-profit private schools to determine their prices on their own, while the tuition-collecting policies of non-profit private schools shall be determined by the provincial governments in a market-oriented manner and based on the local conditions.

On 16 March 2015, the Jiangxi Provincial Development and Reform Commission, Jiangxi Provincial Education Department and Jiangxi Provincial Department of Human Resources and Social Security jointly issued the Circular on Issues Concerning the

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Liberalisation of Pricing of Private Schools (Gan Fagai Shoufei [2015] No.221) (《江西省發展和改革委員會、江西省教育廳、江西省人力資源和社會保障廳關於放開民辦教育收費有關事項的通知》) (贛發改收費[2015] 221號), which provides that the private schools in the self price-setting list in Jiangxi are entitled to determine their own price of the academic education tuition and accommodation fee standard. Private schools in the self price-setting list shall register in the pricing department, make undertakings with regard to education tuition and accommodation fees, and declare the pricing charge publicly.

On 26 October 2015, the Jiangxi Provincial Development and Reform Commission issued the Circular on Issues Concerning the Further Improvement of Liberalisation of Pricing of Private Schools (Gan Fagai Shoufei [2015] No. 1212) (《江西省發展和改革委員會關於進一步完善放開民辦教育收費有關事項的通知》) (贛發改收費[2015] 1212號) (the “Circular 1212”), which provides that the self-price-setting school list and register in the pricing department were abolished from the issued date of the Circular 1212.

On 11 October 2016, the Guangdong Provincial Development and Reform Commission, Guangdong Provincial Education Department and Guangdong Provincial Department of Human Resources and Social Security jointly issued the Circular on Issues Concerning the Cancellation of Record-filing of Academic Education Tuition Fees and Approval of Boarding Fees on Private Schools and Private Secondary Vocational Schools (Yue Fagai Jiage [2016] No. 657) (《關於取消我省民辦高校和民辦中職學校學費備案以及住宿費核准有關問題的通知》) (粵發改價格[2016] 657號), according to which, the record-filing of tuition fees and the approval of boarding fees on private schools and private secondary vocational schools are cancelled. Private schools in Guangdong are entitled to determine their tuition fees and boarding fees on their own after taking into account the market factors, the costs of the school, the conditions of running schools, the social tolerance and school development needs and other factors, and shall declare the fee charge publicly before execution.

### **Regulations on Safety and Health Protection of Schools**

Pursuant to the Food Safety Law of the PRC (《中華人民共和國食品安全法》), which was amended on 24 April 2015 and became effective on 1 October 2015, collective canteens of schools shall obtain the licence in accordance with the laws and strictly abide by the laws, regulations and food safety standards. With regard to order of meals from meal suppliers, orders shall be placed with suppliers which have obtained the food production and trading licences and inspection shall be conducted on the food ordered as required.

According to Administrative Measures on Licence of Catering Industry (《餐飲服務許可管理辦法》), which was promulgated on 4 March 2010 and became effective on 1 May 2010, a licencing system for catering industry is implemented. A catering service provider shall obtain food service licence, and assume the food safety liability in accordance with the law. Pursuant to Administrative Measures for Food Operation Licencing (《食品經營許可管理辦法》) promulgated on 31 August 2015 and became effective on 1 October 2015 and amended on 17 November 2017 with effect from the same day, a food operation licence shall be obtained in accordance with the law so as to engage in food selling and catering services within the territory of the PRC. The principle of one licence for one site shall apply to the licencing for food operation, classified licencing for food operation according to food operators’ types of operation and the degree of risk of their operation projects is also implemented.

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Pursuant to Administrative Measures for the Supervision of Food Safety in Catering Service (《餐飲服務食品安全監督管理辦法》), which was promulgated on 4 March 2010 and became effective on 1 May 2010, catering service providers shall carry out catering service activities in accordance with laws, regulations, food safety standards and relevant requirements, hold themselves accountable for society and the general public, ensure food safety, accept social supervision, and assume responsibilities for food safety in catering service.

According to the Circular on Strengthening Hygiene and Epidemic Prevention and Food Hygiene and Safety of Private Schools (《關於加強民辦學校衛生防疫與食品衛生安全工作的通知》), which was promulgated on 29 April 2006, private schools should pay high attention to and strengthen the school hygiene and epidemic prevention and the food hygiene and safety.

According to the Regulation on Sanitary Work of Schools (《學校衛生工作條例》), which was promulgated on 4 June 1990 and became effective on 4 June 1990, schools shall carry out sanitary work. The main tasks of sanitary work include monitoring health conditions of students, getting students to receive health education, helping students develop good health habits, improving health environment and health conditions for teachers, strengthening prevention and treatment of infectious disease and common diseases among students.

According to the Administrative Regulations on Medical Institutions (《醫療機構管理條例》), which were promulgated on 1 September 1994 and were amended on 6 February 2016, and the Implementing Rules for the Administrative Regulations on Medical Institutions (《醫療機構管理條例實施細則》), which became effective on 1 September 1994 and was amended on 1 November 2006, 24 June 2008 and 1 April 2017, where an entity or individual sets up a medical institution, the entity or individual shall go through the examination and approval procedures with the local health administrative department at the county level or above, and may handle other formalities with such relevant departments only after obtaining the approval on the setup of a medical institution. Furthermore, medical institutions shall be registered for practice, and obtain the License for Practising of Medical Institutions. Medical institutions under such regulations include campus hospitals, and thus, the establishment and operation of a campus hospital shall be subject to the regulatory requirements under the Administrative Regulations on Medical Institutions and Implementing Rules for the Administrative Regulations on Medical Institutions.

### REGULATIONS ON PROPERTY IN THE PRC

Pursuant to the Property Law of the PRC (《中華人民共和國物權法》) (the “**Property Law**”) which was promulgated on 16 March 2007 and came into effect from 1 October 2007, educational, medical and health and other public welfare facilities of institutions and social groups with the aim of benefiting the public such as schools, kindergartens, hospitals as prescribed by laws or administrative regulations are not allowed to be mortgaged.

According to the Property Law, transferable fund units and equity, property rights to intellectual properties of transferable exclusive trademark rights, patent rights, copyrights, accounts receivable and other property rights that can be pledged as stipulated by any law or administrative regulations may be pledged.

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### REGULATIONS ON LABOUR PROTECTION IN THE PRC

#### Labours

According to the Labour Law of the PRC (《中華人民共和國勞動法》) (the “**Labour Law**”), which was promulgated by the SCNPC on 5 July 1994, came into effect on 1 January 1995 and was amended on 27 August 2009, an employer shall develop and improve its rules and regulations to safeguard the rights of its workers. An employer shall establish and develop labour safety and health systems, stringently implement national protocols and standards on labour safety and health, get workers to receive labour safety and health education, guard against labour accidents and reduce occupational hazards. Labour safety and health facilities must comply with the relevant national standards. An employer must provide workers with the necessary labour protection gear that complies with labour safety and health conditions stipulated under national regulations, as well as provide regular health examination for workers that are engaged in work with occupational hazards. Labourers engaged in special operations must receive specialised training and obtain the pertinent qualifications. An employer shall develop a vocational training system. Vocational training funds shall be set aside and used in accordance with national regulations and vocational training for workers shall be carried out systematically based on the actual conditions of the company.

The Labour Contract Law of the PRC (《中華人民共和國勞動合同法》), which was promulgated by the SCNPC on 29 June 2007, amended on 28 December 2012 and came effect on 1 July 2013, coupled with the Implementation Regulations on Labour Contract Law (《勞動合同法實施條例》), which was promulgated and became effective on 18 September 2008, regulate the parties to labour contracts, namely employers and employees, and contain specific provisions relating to terms of labour contracts. Under the Labour Contract Law and the Implementation Regulations on Labour Contract Law, a labour contract must be made in writing. An employer and an employee may enter into a fixed-term labour contract, an un-fixed term labour contract, or a labour contract that concludes upon the completion of certain work assignments, after reaching agreement upon due negotiations. An employer may legally terminate a labour contract and dismiss its employees after reaching agreement upon due negotiations with its employees or by fulfilling the statutory conditions. Where a labour relationship has already been established without a written labour contract, the written labour contracts shall be entered into within one month from the date on which the employee commences to work.

#### Social Insurance

The Law on Social Insurance of the PRC (《中華人民共和國社會保險法》), which was promulgated on 28 October 2010 and became effective on 1 July 2011, has established social insurance systems of basic pension insurance, unemployment insurance, maternity insurance, work injury insurance and basic medical insurance, and has elaborated in detail the legal obligations and liabilities of employers who do not comply with relevant laws and regulations on social insurance.

According to the Interim Regulations on the Collection and Payment of Social Insurance Premiums (《社會保險費徵繳暫行條例》), the Regulations on Work Injury Insurance (《工傷保險條例》), the Regulations on Unemployment Insurance (《失業保險條例》) and the Trial Measures on Employee Maternity Insurance of Enterprises (《企業職工生育保險試行辦法》), enterprises in the PRC shall provide benefit plans for their employees, which include basic pension insurance, unemployment insurance, maternity

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insurance, work injury insurance and basic medical insurance. An enterprise must provide social insurance by processing social insurance registration with local social insurance authorities or agencies, and shall pay or withhold relevant social insurance premiums for or on behalf of employees.

According to the Interim Measures for Participation in the Social Insurance System by Foreigners Working within the Territory of China (《在中國境內就業的外國人參加社會保險暫行辦法》) (the “**Interim Measures**”), which was promulgated by the MOHRSS on 6 September 2011 and became effective on 15 October 2011, employers who recruit foreigners shall participate in the basic pension insurance, unemployment insurance, basic medical insurance, occupational injury insurance, and maternity leave insurance in accordance with the relevant laws, with the social insurance premiums to be contributed respectively by the employers and foreigner employees as required. In accordance with such Interim Measures, the social insurance administrative authorities and agencies shall have the right to oversee and inspect the legal compliance of foreign employees and employers. Employers who do not pay social insurance premium in conformity with the laws shall be subject to the administrative provisions provided in the Social Insurance Law and the relevant regulations and rules mentioned above.

### **Housing Provident Fund**

According to the Administrative Regulations on the Administration of Housing Provident Fund (《住房公積金管理條例》), which was promulgated and became effective on 3 April 1999, and was amended on 24 March 2002, housing provident fund paid and deposited both by employee themselves and their unit employer shall be owned by the employees.

A unit employer shall undertake registration of payment and deposit of the housing provident fund in the housing provident fund management centre and, upon verification by the housing provident fund management centre, open a housing provident fund account on behalf of its employees in a commissioned bank. Employers shall timely pay and deposit housing provident fund contributions in full amount and late or insufficient payments shall be prohibited. With respect to unit employers who violate the regulations hereinabove and fail to complete housing provident fund payment and deposit registrations or open housing provident fund accounts for their employees, such unit employers shall be ordered by the housing provident fund administration centre to complete such procedures within a designated period. Those who fail to complete their registrations within the designated period shall be subject to a fine from RMB10,000 to RMB50,000. When unit employers are in breach of these regulations and fail to pay deposit housing provident fund contributions in full amount as they fall due, the housing provident fund administration centre shall order such unit employers to pay within a prescribed time limit period, failing which an application may be made to a people’s court for compulsory enforcement.

## **REGULATIONS ON TAXATION IN THE PRC**

### **Enterprise Income Tax (“EIT”)**

In accordance with the PRC Enterprise Income Tax Law (《中華人民共和國企業所得稅法》) (the “**EIT Law**”), which was promulgated on 16 March 2007 and became effective from 1 January 2008 and amended on 24 February 2017, and the Regulation on the Implementation of Enterprise Income Tax Law of the PRC (《中華人民共和國企業所得稅法實施條例》), which was promulgated on 6 December 2007 and became effective from 1 January 2008, enterprises are classified as either “resident enterprises” or “non-resident enterprises”. Enterprises that are set up in the PRC under the PRC laws, or that

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are set up in accordance with the law of the foreign country (region) whose actual administration institution is in PRC, shall be considered as “resident enterprises”. Enterprises established under the law of the foreign country (region) with “de facto management bodies” outside the PRC, but have set up institutions or establishments in PRC or, without institutions or establishments set up in the PRC, have income originating from PRC, shall be considered as “non-resident enterprises”.

A resident enterprise shall pay EIT on its income originating from both inside and outside PRC at an EIT rate of 25%. A non-resident enterprise that has establishments or places of business in the PRC shall pay EIT on its income originating from PRC obtained by such establishments or places of business, and on its income which deriving outside PRC but has actual connection with such establishments or places of business, at the EIT rate of 25%. A non-resident enterprise that does not have an establishment or place of business in the PRC, or it has an establishment or place of business in the PRC but the income has no actual connection with such establishment or place of business, shall pay EIT on its passive income derived from the PRC at a reduced rate EIT of 10%.

According to Notice of the Ministry of Finance and the State Administration of Taxation on Tax Policies Relating to Education (Caishui [2004] No. 39) (《財政部、國家稅務總局關於教育稅收政策的通知》) (財稅[2004] 39號) (“三十九號文”) (the “**Circular 39**”) and Notice of the Ministry of Finance and the State Administration of Taxation on Issues Concerning Strengthening the Administration over the Collection of Business Tax on Educational Services (Caishui [2006] No. 3) (《財政部、國家稅務總局關於加強教育勞務營業稅徵收管理有關問題的通知》) (財稅[2006] 3號) (“三號文”) (the “**Circular 3**”), public schools are not required to pay EIT on fees they have collected upon approval and have incorporated under the fiscal budget management or the special account management of the funds outside the fiscal budget, and are not required to pay EIT on the financial allocations they have received and special subsidies they have obtained from their administrative departments or institutions at higher levels.

According to the Law of PRC for Promoting Private Education and its implementing rules, a private school that does not require reasonable returns enjoys the same preferential tax treatment as public schools, whereas the preferential tax treatment policies applicable to private schools that require reasonable returns are separately formulated by the relevant authorities under the State Council.

### Income Tax in Relation to Dividend Distribution

The PRC and the government of Hong Kong entered into the Arrangement between the Mainland of the PRC and Hong Kong for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (《內地和香港特別行政區關於對所得稅避免雙重徵稅和防止偷漏稅的安排》) (the “**Arrangement**”) on 21 August 2006 and implemented the Arrangement from 1 January 2007. According to the Arrangement, the 5% withholding tax rate applies to dividends paid by a PRC company to a Hong Kong tax resident, provided that such Hong Kong tax resident directly holds at least 25% of the equity interests in the PRC company. The 10% withholding tax rate applies to dividends paid by a PRC company to a Hong Kong tax resident if such Hong Kong tax resident holds less than 25% of the equity interests in the PRC company.

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Pursuant to the Circular of the State Administration of Taxation on Relevant Issues relating to the Implementation of Dividend Clauses in Tax Agreements (Guoshui Han [2009] No. 81) (《國家稅務總局關於執行稅收協定股息條款有關問題的通知》) (國稅函[2009] 81號), which was promulgated by the State Administration of Taxation of the PRC (the “SAT”) and became effective on 20 February 2009, all of the following requirements shall be satisfied before a fiscal resident of the other party to a tax agreement can be entitled to such tax agreement treatment as being taxed at a tax rate specified in the tax agreement for the dividends paid to it by a Chinese resident company: (i) such a fiscal resident who obtains dividends should be a company as provided in the tax agreement; (ii) the equity interests and voting shares of the Chinese resident company directly owned by such a fiscal resident reaches a specified percentage; and (iii) the equity interests of the Chinese resident company directly owned by such a fiscal resident, at any time during the twelve months prior to receipt of the dividends, reach a percentage specified in the tax agreement.

### **Value-added Tax (“VAT”)**

According to the Temporary Regulations on Value-added Tax (《中華人民共和國增值稅暫行條例》), which was amended on 10 November 2008 and 6 February 2016 and came into effect on 6 February 2016, and the Detailed Implementing Rules of the Temporary Regulations on Value-added Tax (《中華人民共和國增值稅暫行條例實施細則》), which was amended on 28 October 2011 and became effective on 1 November 2011, all taxpayers selling goods, providing processing, repairing or replacement services or importing goods within the PRC shall pay value-added tax. The tax rate of 17% shall be levied on general taxpayers selling or importing various goods; the tax rate of 17% shall be levied on the taxpayers providing processing, repairing or replacement service; the applicable rate for the export of goods by taxpayers shall be nil, unless otherwise stipulated.

Furthermore, according to the Trial Scheme for the Conversion of Business Tax to Value-added Tax (Caishui [2011] No. 110) (《關於印發<營業稅改徵增值稅試點方案>的通知》) (財稅[2011] 110號), which was promulgated by the MOF and the SAT, the State began to launch taxation reforms in a gradual manner with effect from 1 January 2012, whereby the collection of VAT in lieu of business tax items was implemented on a trial basis in regions showing significant radiating effects in economic development and providing outstanding reform examples, beginning with production service industries such as transportation and certain modern service industries.

In accordance with Circular on Comprehensively Promoting the Pilot Programme of the Collection of Value-added Tax in Lieu of Business Tax (Caishui [2016] No. 36) (《關於全面推開營業稅改徵增值稅試點的通知》) (財稅[2016] 36號), which was promulgated on 23 March 2016 and came into effect on 1 May 2016, upon approval of the State Council, the pilot programme of the collection of VAT in lieu of business tax shall be promoted nationwide in a comprehensive manner starting from 1 May 2016, and all business tax payers engaged in the building industry, the real estate industry, the financial industry and the life service industry shall be included in the scope of the pilot programme with regard to payment of value-added tax instead of business tax. For general service income, the applicable VAT rate is 6%.



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### Other Tax Exemptions

In accordance with the Circular 39 and Circular 3, the real properties and land used by schools established by enterprises shall be exempt from house property tax and urban land use tax. Schools expropriating arable land upon approval shall be exempt from arable land use tax. Schools and education institutions established by any enterprises, government affiliated institutions, social groups or other social organisations or individuals and citizens with non-state fiscal funds for education and open to the public shall upon the approval by the administrative department for education or for labour of the relevant government at the county level or above which has also issued the relevant school running license, be exempt from deed tax on their ownership of land and houses used for teaching activities.

### REGULATIONS ON COMPANIES IN PRC

The establishment, operation and management of corporate entities in the PRC are governed by the Company Law of the PRC (《中華人民共和國公司法》, the “**PRC Company Law**”), which was promulgated on 29 December 1993 and amended on 25 December 1999, 28 August 2004, 27 October 2005 and 28 December 2013. Under the PRC Company Law, companies are generally classified into two categories: limited liability companies and limited companies by shares. The PRC Company Law also applies to foreign-invested limited liability companies but where other relevant laws regarding foreign investment have provided otherwise, such other laws shall prevail.

The latest amendment to the PRC Company Law took effect from 1 March 2014, pursuant to which there is no longer a prescribed timeframe for the shareholders to make full capital contribution to a company, except otherwise required in other relevant laws, administrative regulations and State Council decisions. Instead, shareholders are only required to state the capital amount that they commit to subscribe in the articles of association of the company. Further, the initial payment of a company’s registered capital is no longer subject to a minimum amount requirement and the business licence of a company will not show its paid-up capital. In addition, shareholders’ contribution of the registered capital is no longer required to be verified by capital verification agencies.

### REGULATIONS ON FOREIGN EXCHANGE IN THE PRC

The principal regulation governing foreign currency exchange in China is the Administrative Regulations of the PRC on Foreign Exchange (《中華人民共和國外匯管理條例》) (the “**Foreign Exchange Administrative Regulations**”), which was promulgated by the State Council on 29 January 1996, amended on 14 January 1997 and 5 August 2008, and became effective on 5 August 2008. Under Foreign Exchange Administrative Regulations, Renminbi is generally freely convertible for payments of current account items, such as trade and service-related foreign exchange transactions and dividend payments, but is not freely convertible for capital account items, such as direct investment or engaging in the issuance or trading of negotiable securities or derivatives unless the prior approval by the competent authorities for the administration of foreign exchange is obtained.

In accordance with the Foreign Exchange Administrative Regulations, foreign-invested enterprises in the PRC may purchase foreign exchange without the approval of the SAFE for paying dividends by providing certain evidencing documents (board resolutions, tax certificates, etc.), or for trade and services-related foreign exchange transactions by providing commercial documents evidencing such transactions. They are also allowed to retain foreign currency (subject to a cap approval by the SAFE) to

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satisfy foreign exchange liabilities. In addition, foreign exchange transactions involving overseas direct investment or investment and trading in securities, derivative products abroad are subject to registration with the competent authorities for the administration of foreign exchange and approval or filings with the relevant government authorities (if necessary).

According to the Circular on the Management of Offshore Investment and Financing and Round Trip Investment By Domestic Residents through Special Purpose Vehicles (Huifa [2014] No. 37) (《關於境內居民通過特殊目的公司境外投融資及返程投資外匯管理有關問題的通知》) (匯發[2014] 37號) (the “**Circular 37**”), which is promulgated and came into effect on 4 July 2014, the SAFE carry out registration management for domestic resident’s establishment of special purpose vehicles (each a “**SPV**”). A SPV is defined as “offshore enterprise directly established or indirectly controlled by the domestic resident (including domestic institution and individual resident) with their legally owned assets and equity of the domestic enterprise, or legally owned offshore assets or equity, for the purposes of investment and financing.” “Round Trip Investments” refer to “the direct investment activities carried out by a domestic resident directly or indirectly via a SPV, such as establishing a foreign-invested enterprise or project within the PRC through a new entity, merger or acquisition and other ways, while obtaining ownership, control, operation and management and other rights and interests.” Before a domestic resident contributes its legally owned onshore or offshore assets and equity to a SPV, the domestic resident shall conduct foreign exchange registration for offshore investment with the local branch of the SAFE, and in the event of any change of basic information such as the individual shareholder, name, operation term, or if there is a capital increase, decrease, equity transfer or swap, merge, spin-off or other amendment of the material items, the domestic resident shall complete foreign exchange alteration of the registration formality for offshore investment. In addition, according to the procedural guidelines as attached to the Circular 37, the principle of review has been changed to “the domestic individual resident is only required to register the SPV directly established or controlled by him (first level)”.

Pursuant to Circular of the State Administration of Foreign Exchange on Further Simplifying and Improving the Direct Investment-related Foreign Exchange Administration Policies (《關於進一步簡化和改進直接投資外匯管理政策的通知》) (匯發[2015] 13號) (Huifa [2015] No. 13), which was promulgated on 13 February 2015, implemented and became effective on 1 June 2015, the initial foreign exchange registration for establishing or taking control of a SPV by domestic residents can be conducted with a qualified bank, instead of the local foreign exchange bureau.

On 30 March 2015, the SAFE promulgated the Circular on Reforming the Management Approach regarding the Settlement of Foreign Exchange Capital of Foreign-invested Enterprises (《關於改革外商投資企業外匯資本金結匯管理方式的通知》) (the “**Circular 19**”), which came into effect from 1 June 2015. According to the Circular 19, the foreign exchange capital of foreign-invested enterprises shall be subject to the Discretionary Foreign Exchange Settlement (“**Discretionary Foreign Exchange Settlement**”). The Discretionary Foreign Exchange Settlement refers to the foreign exchange capital in the capital account of an foreign-invested enterprise for which the rights and interests of monetary contribution has been confirmed by the local foreign exchange bureau (or the book-entry registration of monetary contribution by the banks) can be settled at the banks based on the actual operational needs of the foreign-invested enterprise. The proportion of Discretionary Foreign Exchange Settlement of the foreign exchange capital of a foreign-invested enterprise is temporarily determined as 100%. The Renminbi converted from the foreign exchange capital will be kept in a designated account and if a foreign-invested enterprise needs to make further payment from such account, it still needs to provide supporting documents and go through the review process with the banks.

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Furthermore, the Circular 19 stipulates that the use of capital by foreign-invested enterprises shall follow the principles of authenticity and self-use within the business scope of enterprises. The capital of a foreign-invested enterprise and capital in Renminbi obtained by the foreign-invested enterprise from foreign exchange settlement shall not be used for the following purposes:

1. directly or indirectly used for payment beyond the business scope of the enterprises or payment prohibited by relevant laws and regulations;
2. directly or indirectly used for investment in securities unless otherwise provided by relevant laws and regulations;
3. directly or indirectly used for granting entrusted loans in Renminbi (unless permitted by the scope of business), repaying the inter-enterprise borrowings (including advances by third parties) or repaying bank loans in Renminbi that have been sub-lent to a third party; and
4. paying the expenses related to the purchase of real estate that is not for self-use (except for the foreign-invested real estate enterprises).

SAFE issued the Circular on Reforming and Regulating Policies on the Control over Foreign Exchange Settlement of Capital Accounts (《關於改革和規範資本項目結匯管理政策的通知》, or the “**Circular 16**”) on 9 June 2016, which became effective simultaneously. Pursuant to the Circular 16, enterprises registered in the PRC may also convert their foreign debts from foreign currency to Renminbi on self-discretionary basis. The Circular 16 provides an integrated standard for conversion of foreign exchange under capital account items (including but not limited to foreign currency capital and foreign debts) on a discretionary basis which applies to all enterprises registered in the PRC. The Circular 16 reiterates the principle that Renminbi converted from foreign currency-denominated capital of a company may not be directly or indirectly used for purposes beyond its business scope or prohibited by PRC laws or regulations, while such converted Renminbi shall not be provided as loans to its non-affiliated entities.

As the Circular 16 is newly issued and SAFE has not provided detailed guidelines with respect to its interpretation or implementations, it is uncertain how these rules will be interpreted and implemented.

### **Provisions on the Merger and Acquisition of Domestic Enterprises by Foreign Investors**

Under the Provisions on the Merger and Acquisition of Domestic Enterprises by Foreign Investors in the PRC (《關於外國投資者併購境內企業的規定》) (the “**M&A Rules**”) which was promulgated on 8 September 2006 and was amended and came into effect on 22 June 2009, a foreign investor is required to obtain necessary approvals when (i) a foreign investor acquires equity interests in a domestic non-foreign invested enterprise thereby converting it into a foreign-invested enterprise, or subscribes for new equity interests in a domestic enterprise via an increase of registered capital thereby converting it into a foreign-invested enterprise; or (ii) a foreign investor establishes a foreign-invested enterprise which purchases and operates the assets of a domestic enterprise, or which purchases the assets of a domestic enterprise by agreement and injects those assets to establish a foreign-invested enterprise. In the case where a domestic company or enterprise, or a domestic natural person, through an overseas company established or controlled by it/him, acquires a domestic company that is related to or connected with it/him, approval from MOFCOM is required.

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On 8 October 2016, MOFCOM promulgated Provisional Measures on Administration of Filing for Establishment and Change of Foreign Investment Enterprises (《外商投資企業設立及變更備案管理暫行辦法》) (the “**Measures**”) which came into effect on the same date, and was further amended on 30 July 2017. According to the Measures, the merger and acquisition of domestic non-foreign-invested enterprises by foreign investors shall, if not involving special access administrative measures and affiliated mergers and acquisitions, be subject to the record filing measures.

### STATUTES AND REGULATIONS ON PRIVATE POSTSECONDARY EDUCATION IN THE STATE OF CALIFORNIA

#### California Private Postsecondary Education Act

The California Education Code establishes the structure of the school systems in the State of California and governs the operations of both public and private educational institutions. As part of the California Education Code, on 11 October 2009, Assembly Bill 48, also known as the California Private Postsecondary Education Act of 2009 (“**California Private Postsecondary Education Act**”), was enacted to regulate private postsecondary educational institutions in the State of California, United States (“**California**”).

The Bureau for Private Postsecondary Education (“**BPPE**”) came into existence on 1 January 2010 following the passage of the California Private Postsecondary Education Act. The BPPE was created primarily to regulate private postsecondary educational institutions operating in California.

Pursuant to the California Private Postsecondary Education Act, a private postsecondary educational institution in California must seek approval to operate from the BPPE by demonstrating that the educational institution satisfies the minimum operating standards prescribed by the BPPE under the applicable provisions of the California Private Postsecondary Education Act and regulations promulgated thereunder.

Under California law, an institution must fulfil the minimum operating standards to reasonably ensure that: (i) the content of each educational programme can achieve its stated objective; (ii) the institution maintains specific written standards for student admissions for each educational programme and those standards are related to the particular educational programme; (iii) the facilities, instructional equipment, and materials are sufficient to enable students to achieve the educational programme’s goals; (iv) the institution maintains a withdrawal policy and provides refunds; (v) the directors, administrators, and faculty are properly qualified; (vi) the institution is financially sound and capable of fulfilling its commitments to students; (vii) that, upon satisfactory completion of an educational programme, the institution gives students a document signifying the degree or diploma awarded; (viii) adequate records and standard transcripts are maintained and are available to students; and (ix) the institution is maintained and operated in compliance with the California Private Postsecondary Education Act and all other applicable regulations and laws.

Formal application is made to the BPPE for approval to operate a private postsecondary educational institution. After submission of the Application for Approval to Operate (“**Application**”) to the BPPE by an educational institution together with the required documentation and fees, the BPPE first reviews the completeness of the Application. After the BPPE is satisfied with the completeness of the Application, the

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## REGULATIONS

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Application then is put before a BPPE analyst for compliance review. Once the BPPE has completed its review and has determined that the educational institution is in compliance with all of the applicable requirements, the BPPE issues the approval to operate.

In order to be approved by the BPPE, pursuant to the California Private Postsecondary Education Act and applicable regulations, an educational institution offering one or more degrees, if it is not already accredited by an agency recognised by the U.S. Department of Education, must submit an Accreditation Plan for the institution to become fully accredited. Upon its review of the Application and its approval of the Accreditation Plan, the BPPE will issue to the educational institution a Provisional Approval to operate until full accreditation is achieved. During the period of Provisional Approval, the educational institution may not offer more than two degree programmes, and there are other legal requirements and restrictions during this period. Within the first two years of issuance of Provisional Approval, the BPPE will empanel a visiting committee who will make a recommendation regarding the educational institution's progress towards achieving full accreditation, and the institution must provide evidence of accreditation candidacy or pre-accreditation status within two years of the issuance of the Provisional Approval.

The Western Association of Schools and Colleges, Senior Colleges and University Commission ("**WSCUC**") is one of the regional accrediting agencies recognised by the U.S. Department of Education for accreditation and pre-accreditation of senior colleges and universities in (among other regions) California. The accreditation process for the WSCUC typically involves three progressive stages: (i) Eligibility, (ii) Pre-Accreditation or Candidacy, and (iii) Initial Accreditation. An educational institution will be granted a maximum of five years of Eligibility after review by the WSCUC that the educational institution meets the Eligibility Requirements set by the WSCUC. Pre-accreditation or Candidacy is a preliminary affiliation with the WSCUC awarded to an education institution that establishes minimum compliance with the WSCUC Standards of Accreditation and the related Criteria for Review. Full Initial Accreditation is awarded to an educational institution that establishes substantial compliance with the WSCUC's Standards of Accreditation and the related Criteria for Review for a maximum of six years before the next comprehensive accreditation review. The Accreditation Plan submitted to the BPPE is to provide for obtaining full accreditation within five years, but upon timely submission of sufficient evidence that the educational institution is making strong progress towards obtaining full Initial Accreditation, the BPPE will grant a request for an extension for up to an additional two years.