HIGHER EDUCATION AND FOREIGN SCHOOLS IN CHINA

STEVEN N. ROBINSON, JUN WEI, YINGZI GONG, AND MICAH SCHWALB*

I. INTRODUCTION .......................................................................................363

II. BACKGROUND .......................................................................................366
   A. Education is linked to national policy. ........................................367
   B. Central government control. ..........................................................368
   C. Role of education in the Chinese family ....................................369
   D. Structural changes underway .....................................................370
   E. Balancing national priorities .......................................................370

III. THE LAW OF HIGHER EDUCATION AND FOREIGN INSTITUTIONS IN CHINA ..........................................................372
   A. Common Issues ..........................................................373
   B. Programs that do not grant degrees to Chinese citizens ..............378
   C. Education of PRC Nationals ..................................................381
      1. “Projects” .........................................................................386
      2. “Institutions” .....................................................................387
   D. Distance Education Initiatives ..................................................389

IV. RESULTS AND FUTURE REFORMS ........................................................394

V. CONCLUSION .........................................................................................397

I. INTRODUCTION

Despite sweeping reforms, higher education in China still falls short of international standards. Membership in the World Trade Organization (WTO), a vibrant economy, and an influx of foreign investors has heightened the demand for skilled professionals. Education drives

* Steven N. Robinson, a graduate of the Columbus School of Law and Brown University, is the Co-Managing Partner of the Greater China Practice, and Chief Representative of the Shanghai office of Hogan & Hartson LLP. Jun Wei, a graduate of Beijing University and Harvard University, is the Co-Managing Partner of the Greater China Practice, and the Chief Representative of the Beijing Office of Hogan & Hartson LLP. Yingzi “Sherry” Gong, an associate in the Beijing Office of Hogan & Hartson LLP, holds an LLB from the China University of Political Science and Law, an LLM from Peking University, and an LLM from Southern Methodist University. Micah Schwalb is Corporate Counsel at Viaero Wireless, and graduated from Peking University Law School (LLM) and the University of Colorado School of Law (JD).
government policies and Chinese society, but the People’s Republic of China (PRC) work force still has a relatively low average education level, and higher education does not provide students with the skills necessary to compete in the global economy.\textsuperscript{1} China’s colleges and universities award four million degrees each year and the PRC has 700 million workers, but China still has only forty percent of the skilled laborers found in Organization for Economic Cooperation and Development (OECD) countries, and less than half of China’s graduates can find jobs within months of leaving school.\textsuperscript{2} In 2009, the Chinese labor force has been faced with absorbing more than six million new graduates, of whom less than half held concrete job offers as of June, while Chinese colleges and universities simultaneously increased enrollment of graduate students by five percent. In the wake of the financial crisis, average monthly salaries for recent graduates have fallen by more than twenty percent.\textsuperscript{3} Foreign-educated PRC nationals, on the other hand, command a premium in the marketplace due to their valuable skills and experiences abroad.\textsuperscript{4} The problem has become so pronounced that U.S. companies rate the lack of qualified Chinese employees as the top challenge of their PRC operations.\textsuperscript{5}

China promised to allow parties from WTO member nations to provide “educational services” in China, subject to certain restrictions, when it joined the WTO in 2001.\textsuperscript{6} This promise meant that foreign schools could open high schools, colleges, and universities on the mainland, though primary and middle school education would remain the province of

\begin{itemize}
\item \textsuperscript{1} See CARL DAHLMAN ET. AL., ENHANCING CHINA’S COMPETITIVENESS THROUGH LIFELONG LEARNING 3 (World Bank Institute 2007).
\item \textsuperscript{3} Cong Cao, China’s College Graduate Statistics, UPI ASIA, NOTES ON CHINA BLOG (July 14, 2009), http://bit.ly/AsAJu. As the article notes, two different methodologies are offered for calculating the number of recent graduates considered to be “employed.” The Chinese Ministry of Education method is to “count those entering domestic and foreign graduate schools as employed, as well as those who enlist in the military, both areas that have witnessed increases in recent years,” while the alternative method used by MyCos, a Chinese human resources company, counts only those with “concrete job offers,” as referenced above. Id. Therefore, according to the Ministry of Education, the figure of employment would be 68%, as opposed to MyCos’ less sanguine 40% for bachelor’s degrees and 30% for community college degrees. Id.
\item \textsuperscript{4} DAHLMAN ET. AL., supra note 1, at 142.
\end{itemize}
domestic providers. Since China’s accession to the WTO, a growing number of institutions of higher education (“IHEs”) from western countries have relied on this promise and subsequent enabling laws to enter China’s education market through partnerships and contracts with Chinese colleges and universities. In addition, a bilateral agreement between the United States and China has encouraged exchange programs, the organization of delegations and visiting groups, as well as data exchanges, subject to the laws and regulations of both countries. However, despite China’s having somewhat opened the educational services sector to foreign participation, the degree of success among foreign schools in their China strategy varies broadly.

On one end of the spectrum lie institutions that follow an oft-repeated pattern and encounter difficulties in achieving their objectives. After months of negotiation and trans-Pacific travel, a U.S. college or university signs a letter of intent with a peer Chinese school or, in some instances, a private PRC company. The parties publish a joint press release announcing the relationship, which typically involves a foreign exchange program, a research and development project, a joint degree program, a distance learning initiative, a Sino-foreign cooperative educational institution, or some combination thereof. Sometime later, however, as the foreign party begins to implement its plans, it discovers that it must secure more or different approvals from ministries and bureaus within the Chinese government than it had originally anticipated, or that its own government lacks the capacity to process the volume of visa applications required to facilitate the travel of Chinese citizens to the foreign party’s U.S. campus. If the initiative involves educating Chinese citizens in China, the foreign party also learns that the PRC government maintains the authority to approve personnel, curriculum, tuition and fees. At this juncture, for reasons that vary depending upon the goals and the details of the proposed program, some projects languish, some fall apart and others

11. See id.
12. Id.
require further negotiation.14

A few foreign institutions lie at the other end of the spectrum, having successfully navigated the path through thorny regulatory issues. The Hopkins Nanjing Center, a collaboration between Johns Hopkins University and Nanjing University that began in 1986, was the first joint academic program offering a full master’s degree approved in both China and the United States.15 The University of Nottingham-Ningbo, thanks to strong financial support from the Ningbo local government, became the first partnership between a British institution and a Chinese university.16 A growing number of joint degree programs (1,300 as of 2006) include partnerships between Chinese IHEs and a diverse group of U.S. institutions. As of 2007, twenty-four percent of American graduate schools indicated in a survey that they had established one or more degree programs with Chinese institutions.17 An Australian company even bought a Chinese university outright, acquiring its entire physical plant and operations as a going concern.18 The successful Sino-foreign cooperative educational efforts, though differing in scale, complexity and structure, share two common attributes: extensive prior planning and successful navigation of the Chinese legal system.

To help institutions avoid the pitfalls of failed entry into China’s education market, we have prepared the following article. We begin in Part II by identifying the unique characteristics of the Chinese education system and how it differs from education in the United States and other western countries. Part III explores the regulations governing foreign education providers in China by way of examples, where available. Finally, in Part IV, we discuss the results of China’s educational reform efforts and opportunities for future change.

II. BACKGROUND

At first glance, education in China resembles education in western countries. Local governments fund the first nine years of schooling in part through funding from the central government.19 Children not only have the

16. See Gow, supra note 13, at 78.
19. See ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, OECD
right, they “have the obligation to receive [such] compulsory education, regardless of gender, nationality, race, status of family property, religion, belief, etc.”

Government funding for education continues through middle school, which consists of two stages roughly analogous to junior high and high school, but high school and college are funded primarily by local governments and parents. After entering higher education, students can earn the equivalent of an associate’s, bachelor’s, master’s, or doctorate degree. Vocational training parallels high school and tertiary education, and provides post-baccalaureate training as well. Despite some similarities in structure, education in China differs from that in western countries in several significant ways.

A. Education is Linked to National Policy

After Mao Zedong died, China’s leadership explicitly linked education with national development and reform policies. Deng Xiaoping, Mao’s successor, instituted a plan to modernize China by improving agriculture, industry, science and technology, and national defense. The Four Modernizations, as they were called, prioritized education as a means of restoring national stability and unity after the ravages of the Cultural Revolution. Over thirty years later, Deng’s plan continues to drive domestic policy-making, in that education remains the backbone of China’s five-year planning process. In 2003, for instance, the Central Committee of the Communist Party of China declared that:


capabilities in seeking employment, innovation, and entrepreneurship; and strive to turn the country’s huge population into an advantageous ample supply of human capital.26

In its 2003–2007 Action Plan for Revitalizing Education, the Ministry of Education simply stated that “[e]ducation represents the basis of fundamental long-term development.”27 More recently, the Eleventh Five-Year Plan included specific measures for education under the banner of “Implementing the Strategy of Developing China Through Science and Education and the Strategy of Strengthening China Through Tapping Human Resources.”28 In this way, education has become inextricably linked with national policy.

B. Central Government Control

Unlike the federal government in the United States, the central government in China acts as the direct supervisor and administrator of higher education. Despite market reforms, the PRC remains a unitary, non-federated state in which state power emanates from the central organs of the national government.29 Laws enacted by the National People’s Congress, China’s top legislature,30 determine the composition and management of colleges and universities.31 The State Council, China’s highest executive body, oversees and manages education on an ongoing basis in consultation with several entities under its direct authority,

30. As defined by China’s 1982 Constitution, the National People’s Congress is the “highest organ of State power.” China Business Law Guide, Kluwer Law International, ¶1-230 (2005). As such, it has final authority over the judiciary and executive branches of government, in addition to legislative power. Id. Its main functions and powers include: to amend the Constitution and oversee its enforcement; to enact and amend basic statutes on criminal and civil law, the organization of the State and other matters; to elect and appoint members to central State organs; and to approve the national economic plan and hear reports on its implementation. Id. Readers curious about the government and political system of China are encouraged to consult other sources. See, e.g., China Business Law Guide, Kluwer Law International, ¶1-200–¶1-550 (2005).
including the Ministry of Education (MOE). The MOE in turn decides how many students will be admitted to colleges and universities each year, how much institutions can charge for tuition, what subjects will be taught, and which foreign institutions will receive licenses to operate in the PRC, among other matters. Where independent non-profit institutions maintain quality standards through accreditation and testing in the United States, in China the MOE and local governments regulate education through a licensing system. The MOE also administers nationwide standardized testing.

C. Role of Education in the Chinese Family

Education is the central focus of Chinese family life. Every June, graduating high school seniors take the national college entrance examination, a three-day event that captures national attention. The entrance exam traces its roots to the seventh century, when the 科举 (keju, or imperial examination) was first used to examine officials selected to serve the Emperor. The 高考 (gaokao, or high exam), the modern equivalent of the keju, sorts students into four hierarchical levels of tertiary schools based on their examination scores, a rite of passage associated with the growing opportunity for economic advancement through schooling. Reflecting the importance of the exam and subsequent education in Chinese society, as well as the fact that China does not yet have a system for financing education similar to student loans in the United States, educational expenses for children represent the top consumption category for Chinese households, exceeding outlays for housing and pensions. Notably, public opinion polls list higher education as one of the top three causes of discontent with China’s central government.

36. Yu & Swen, supra note 34, at 19.
38. CHINESE ACADEMY OF SOCIAL SCIENCES (2005).
39. Hartmann, supra note 33.
D. Structural Changes Underway

Higher education in China is undergoing significant structural change. Between 2000 and 2005, for example, the number of short-term colleges grew by almost four hundred percent and the number of vocational-technical schools grew by more than five hundred percent. In the past decade, the number of graduates from tertiary education grew four-fold, the number of IHEs reached 1,792, the number of enrolled undergraduates hit 16 million, and the number of enrolled postgraduates reached almost one million. While the United States had 16 million students enrolled in 4,000 colleges and universities in 2004, comprising fifty to sixty percent of the school-age population, China had almost the same number of people enrolled in just under 1,800 IHEs, comprising just fifteen percent of its school-age population. However, by 2008, more than four million Chinese students were enrolled in either short or long-term courses in private colleges and universities, a significant increase. Such increases in both the number of institutions and the number of enrollees seem likely to continue, especially given estimates that predict the number of college and university students worldwide will nearly double by 2020.

However, some have questioned whether China has been able to achieve improvements in quality as well as quantity. To be sure, because of improvements in education, “the average quality of the labour force has also been improving significantly, with new entrants to the labour force having almost three times as many years of schooling as those who are retiring.” But today, “[p]erhaps no tension in China is greater than that between the desire to provide increased access to education at all levels and the equally strong desire to maintain and increase educational quality to ‘world-class’ standards.”

E. Balancing National Priorities

Despite far-reaching reforms in commerce and industry, education in

---

40. Li et al., supra note 2; see also 国务院关于大力发展职业教育的决定 [Decision of the State Council on Vigorously Developing Vocational Education] (promulgated Oct. 28, 2005, effective Oct. 28, 2005).
41. Lixu, supra note 21.
44. See Dahlman et al., supra note 1, at 32.
45. OECD 2005 SURVEY, supra note 19, at 17.
46. ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, Governance in China: China in the Global Economy 540 (2005) [hereinafter OECD CHINA GOVERNANCE REPORT].
China remains subject to strong political forces. As a result, educational institutions must balance the changing demands of the professional marketplace with academic rigor, scientific development, and overarching political considerations.

In China:

Education must serve the socialist modernization drive and must be combined with production and physical labour in order to train for the socialist cause builders and successors who are developed in an all-round way—morally, intellectually and physically.

Not unlike governments in the United States, China’s central government prioritizes other concerns when faced with footing the bill for its own policy mandates. Granted, the PRC recently spent $3.6 billion upgrading and consolidating the top 100 domestic IHEs, using a portion of that sum to position China’s top nine universities as world-class competitors. But, while enrollments quadrupled, government tuition subsidies for students dropped to less than fifty percent of the cost of attendance, and expenditures per student fell by more than five percent.

Today, learning facilities and teaching methods in many areas remain out of date, and modern information and communications technologies are not harnessed to the same degree as in comparable western institutions. Compounding the issues posed by the generally low quality of many domestic IHEs is their wide dispersal across China, one of the world’s largest and most populous countries. Despite the presence of a number of excellent universities in cities like Beijing, Shanghai, and Wuhan, the vast majority of college students in China do not attend universities in these ‘first tier’ or ‘second tier’ cities, further limiting their options upon graduation, especially for those students unwilling to relocate for work.

In addition, according to statistics from China’s Ministry of Commerce (MOFCOM), virtually all (ninety-seven percent) foreign direct investment in the education sector through 2007 remains relegated to the ‘Eastern’ region of China, leaving only small-scale projects for the central and western provinces of China.

47. Hughes, supra note 25, at 26.
48. OECD CHINA GOVERNANCE REPORT, supra note 46, at 547.
49. Education Law of the People’s Republic of China, supra note 31, at art. 5.
50. See Li et al., supra note 2.
51. Id. at 17; see Pallavi Aiyar, China Hunts Abroad for Academic Talent, ASIA TIMES, Feb. 18, 2006, http://atimes.com/atimes/china_business/hb18cb05.html.
53. Dahlman et al., supra note 1.
55. The Survey of Foreign Investment in China’s Education Industry of 2007,
Educational institutions at all levels charge service fees in addition to tuition, and these expenses can prevent students in less-developed areas from progressing beyond junior high, let alone high school.\footnote{OECD 2005 SURVEY, supra note 19, at 53; see also Xinhua News Agency, Chinese Urban Students Will be Free from Tuition and other Fees, CHINA VIEW, July 30, 2008, available at http://news.xinhuanet.com/english/2008-07/30/content_8862983.htm.} Faced with rising costs, growing enrollments, and limited capacity, MOFCOM has advocated increased foreign involvement in domestic education.\footnote{See The Survey of Foreign Investment in China’s Education Industry of 2005, FOREIGN INVESTMENT ADMINISTRATION OF THE MINISTRY OF COMMERCE, Mar. 22, 2006, http://www.fdi.gov.cn/pub/FDI_EN/Economy/Sectors/Service/Education/t20060422_25535.htm.} As one observer noted, “[i]f China is to catch up, and catch up fast, it needs to profit from the existing strengths of other nations.”\footnote{Anna Fazackerley, To Know the Road Ahead, Ask Those Coming Back, in BRITISH UNIVERSITIES IN CHINA: THE REALITY BEYOND THE RHETORIC 1 (Anna Fazackerley ed., 2007).}

III. THE LAW OF HIGHER EDUCATION AND FOREIGN INSTITUTIONS IN CHINA

To the benefit of China, U.S. colleges and universities feel “intense pressure” to deepen exchanges with Chinese schools, to tap into the growing market of Chinese consumers who can now, or in the future, afford U.S. tuition rates, and to provide overseas programs for American students seeking experience in China.\footnote{Morning Edition: US Schools Tap Growing Ranks of Chinese Students (National Public Radio broadcast May 29, 2008), transcript available at http://www.npr.org/templates/story/story.php?storyId=90931460.} And after years of successful student and faculty exchanges, “universities in China with strong international ties have begun to move towards more complex forms of international academic collaboration.”\footnote{Madelyn C. Ross, China’s Universities Look Outward, IIE NETWORKER MAG., Fall 2004, available at http://www.iienetwork.org/?p=Ross.} As indicated above, such partnerships typically involve foreign exchange programs, distance education initiatives, joint research and development laboratories, joint degree programs, Sino-foreign cooperative educational institutions, or some combination thereof. In the section that follows, we first discuss issues that are common to most programs, and then we tackle issues that affect various types of programs, dividing them into programs that (1) grant a degree or certificate to Chinese nationals, (2) establish an institution, or (3) educate students in person or via the Internet.\footnote{This section emphasizes the effect of Chinese law on foreign parties seeking to provide educational services in the PRC. Readers curious about US federal or state law}
A. Common Issues

Before detailing the ways in which China regulates foreign providers of higher education, we note here that certain challenges confront all visitors in China. These issues span immigration, employment, taxation, dispute resolution, property and land use, as well as negotiations for government approval. To the extent that prior scholarship on foreign investment in China considers these topics, however, we review them here only briefly in the context of higher education.

Foreign citizens and entities must of course comply with China’s immigration regulations. Students must apply to the Chinese embassy or consulate in their home country for a visa that will allow for study, but not employment, in the PRC. Foreigners and their immediate family members may similarly apply for F Visas to “visit, investigate, lecture, do business, conduct scientific, technological and cultural exchanges, and take short-term refreshment courses and do practical training,” but not to secure employment in the PRC. Entities established in China, however, can hire foreigners by helping them secure a work visa, an Alien Employment Permit, and a Residence Permit.


62. See Ferreira, supra note 61, at 446.


64. Id.

The relevant procedures for obtaining a visa or permit are simplified in some instances if a foreign party forms a subsidiary in China, typically known as a wholly foreign-owned entity (WFOE). For this reason, however, current regulatory policy in China limits the scope of educational activity in which a WFOE can engage, so parties to Sino-foreign cooperative educational institutions typically agree that the Chinese party will assist the cooperative institution in applying for visas and hiring Chinese personnel. In a few limited instances, however, foreign schools will form a WFOE, a type of limited liability company that reduces obstacles to employing both foreign citizens and Chinese nationals. However, foreign schools may not form a WFOE to award degrees to Chinese citizens, and professors and other faculty must be hired as “education consultants” to work for a WFOE. Thus, foreign schools typically only form a WFOE to hire persons responsible for logistics and administration, not instruction.

Labor laws likewise impact foreign schools. First and foremost, foreign employers cannot directly hire any Chinese nationals, and so must rely on an appropriate hiring relationship with a domestic entity or a contractual arrangement. The Labor Contract Law requires executed contracts for all “labor relationships,” regardless of whether the employee is a PRC national, and limits the employer’s ability to fire employees before the expiration of their contract term. Schools employing Chinese nationals must contribute to social insurance accounts in amounts that vary depending upon the location of the employing entity and the form of insurance. Regulations also prohibit workplace discrimination based

---


upon nationality, race, sex, and religious belief, and include specific measures designed to protect female employees, but such regulations typically have limited significance in a Chinese context.71

Local tax laws also impact both employees and their employers. Entities in China must withhold individual income tax payments for employees, though some U.S. citizens serving on the faculty of Sino-foreign cooperative educational institutions are exempt from withholding if they stay in China for less than three years. Other U.S. citizens are likewise exempt under a detailed set of rules agreed upon by the PRC and U.S. governments.72 Foreign entities must also pay taxes, but such entities are not double-taxed under the same agreement between the PRC and the US.73 (As non-profit Chinese entities are extremely difficult for even domestic parties to register, foreign institutions typically do not enjoy tax-free status.)74 China’s enterprise income tax, business tax, value-added tax, and various consumption taxes typically apply to entity income, though the value-added tax and consumption taxes rarely apply in an educational context.75 While in the past, foreign investors benefited from preferential tax treatment, such preference was largely repealed by the new enterprise income tax law that came into effect as of January 1, 2008.76 Foreign parties that are not engaged in a cooperative institution (but that provide


75. See James M. Zimmerman, CHINA LAW DESKBOOK: A LEGAL GUIDE FOR FOREIGN-INVESTED ENTERPRISES 336 (2d ed. 2005).

educational services to Chinese parties) typically enjoy a five percent business tax rate, while parties operating a cooperative institution pay twenty-five percent on “reasonable returns,” once the MOE approves their disbursement.77

To earn taxable income, however, a foreign entity and a Chinese party must execute a contract. In such a cross-border contract, foreign schools should be mindful of provisions regarding forum selection, indemnification, arbitration, intellectual property, and governing law.78 Public institutions should also pay attention to language that operates to waive sovereign immunity or immunity from execution. Parties should note that, if a dispute arises, Chinese courts will only enforce a foreign judgment if China and the awarding jurisdiction have signed a treaty that allows for reciprocal recognition and enforcement of judgments.79 As of 2007, China had thirty such treaties in force, but none with its largest trading partners, including the United States, the United Kingdom, and Japan.80 As of August 1, 2008, however, parties may apply to PRC courts to enforce certain final judgments awarded in Hong Kong pursuant to an arrangement between the PRC Supreme People’s Court and the Hong Kong

77. When providing services in China, non-resident enterprises are subject to a 5% business tax, and may also be subject to a 25% enterprise income tax, with “income” calculated according to the following formula: total service fees × the profit margin (usually 10-40%), determined by the competent taxation authority. When a non-resident enterprise has a permanent establishment (e.g., a representative office; a plant; a place where services are provided; a place where projects involving construction, installation, assembly, repair or exploration are carried out; or a place where production and business operations are carried out) in China, such enterprise must pay the 25% enterprise income tax on incomes derived from China and on incomes it earns outside China that have real connection with said establishment. However, under the PRC Enterprise Income Tax Law, when a non-resident enterprise does not have any permanent establishment in China, or when the incomes earned by a non-resident enterprise with a permanent establishment in China have no real connection to said establishment, such enterprise only has to pay the 10% withholding tax on incomes derived from China. Despite the letter of the Law, tax experts maintain that in practice the 10% withholding tax is only applicable to passive incomes (e.g., interests, rental fees, royalties and dividends). When services are involved, a non-resident enterprise without any permanent establishment in China may still have to pay the 25% enterprise income tax (rather than the 10% withholding tax) on service incomes derived from China according to the abovementioned formula. However, it is also possible that such enterprise would not have to pay any enterprise income tax or withholding tax since the competent taxation authority has significant discretion on whether or not a foreign service provider without a permanent establishment in China should pay the 25% enterprise income tax (and what the deemed profit margin should be, if the taxation authority determines that the 25% enterprise income tax is applicable) on service incomes derived from China.

78. See Zimmerman, supra note 75, at 102.


80. Id.
Special Administrative Region. Because the Arrangement is still relatively new, cross-border contracts typically include mandatory arbitration provisions, as PRC courts will enforce foreign arbitral awards under the New York Convention and a similar agreement with Hong Kong.

To the extent that a college or university intends to remit funds outside of China, such transfers are subject to the strict control measures governing all types of foreign exchange transactions that cross China’s borders, as China’s official currency, the Renminbi (RMB), is not freely convertible in the international foreign exchange market. The State Administration of Foreign Exchange (SAFE), a bureau of China’s central bank, regulates the movement and/or conversion of foreign exchange, both inward and outward. Detailed rules specify the precise extent of approval authority that local banks and local branches of SAFE wield over each type of transaction. Such rules are changed periodically, but the general trend appears to be that SAFE is gradually delegating more authority to approve foreign exchange transactions to local banks. Thus, any IHE with a project in China that involves the inflow or outflow of currency should consider maintaining a good working relationship with a bank in China that is qualified to perform such foreign exchange related services.

With respect to government approvals, the many steps required to secure licenses and permits in China “make . . . the process lengthy and sometimes frustrating.” Like most nations, China has “its own laws, paperwork, and various approvals to obtain before it will allow program activities to begin.” While IHEs with experience in other countries may be accustomed to the need for translated documents and the administrative processes for obtaining properly authenticated documents, such requirements may sometimes seem daunting to IHEs embarking on their

85. Ferreira, supra note 61, at 442.
86. Id. at 444.
first international program in China. Overall, a foreign party seeking to provide educational services may need approvals from one or more of the following: the MOE, the Ministry of Human Resources and Social Security (formerly known as the Ministry of Labor and Social Security), or, MHRSS, the General Administration of Press and Publication (GAPP), the Ministry of Industry and Information Technology (MIIT), and the State Administration for Industry and Commerce (SAIC), as well as the local offices of those entities.87 As this tangled web of jurisdiction indicates, “there is no single Chinese legal ‘system’, . . .[but] instead many Chinese legal systems, each with its own jurisdiction, hierarchy of [legal] authority, and way of operating.”88 Indeed, though China is a unitary government, significant authority nonetheless resides in administrative bodies and local governments.89 Successful entrants therefore engage with the relevant agencies early and often.

B. Programs that do not grant degrees to Chinese citizens.

Educational programs that do not confer degrees or certificates on Chinese citizens fall beyond the scope of regulations governing cooperative education in China. The regulations specifically distinguish between programs that educate Chinese citizens and those that do not.90 Exchanges that simply acknowledge credits from both institutions without aiming to enroll Chinese citizens or bringing in “substantial foreign educational resources” or research and development initiatives are explicitly excluded from mandatory approval processes.91

Foreign exchange programs in the United States typically function in one of four different ways.92 With respect to programs owned or operated by IHEs, the IHEs operate their facilities and programs abroad “as if they were extensions of the home campus.”93 In contractual programs, one foreign institution will partner with one or more colleges or universities,


89. Corne, supra note 29, at 369-70.

90. See 中华人民共和国中外合作办学条例实施办法 (教育部令 (第20号)) [Implementation Measures for the Cooperative Education Regulations of the People’s Republic of China] (promulgated June 2, 2004, effective July 1, 2004), art. 2.

91. Id. at arts. 2, 60.

92. Hoye & Rhodes, supra note 61, at 155.

93. Id.
typically under a contractual arrangement designed to allocate liabilities and revenue between the parties. Under a “permissive” program, a college or university will allow a student or faculty member to study abroad on their own recognizance, essentially placing them on a leave of absence and not forming any relationship with the recipient institution. Schools may also operate some combination of the options described above, such as a program that hires only a few employees in the foreign country, but also contracts with another foreign college or university for the purposes of revenue-sharing and risk allocation.

In programs like the Hopkins-Nanjing Center, foreign parties lease property from a Chinese partner, contract for revenue-sharing, allocate responsibility for securing government approvals, and may even require the Chinese party to pay PRC taxes. Contractual programs that involve foreign faculty teaching Chinese citizens require compliance with the appropriate immigration procedures, as well as approvals from the MOE and, in some circumstances, the partner university. Simple student exchanges typically require compliance with immigration procedures and the negotiation of a contract. Again, for exchanges that do not involve teaching Chinese students, a foreign party need not partner with a Chinese IHE. It is worth noting, however, that for a variety of reasons, partnering with a Chinese IHE provides significant practical advantages.

Perhaps for this reason, exchanges between western countries and China have grown significantly in the past ten years. Educators in the United Kingdom recognize their financial dependence on “a tide of Chinese students flooding into [Great Britain] that could very easily be diverted elsewhere . . . .” With respect to China and the United States, however, the statistics are astounding: the number of U.S. citizens studying in China grew by 543% in the last ten years. In the same period, the number of Chinese citizens studying in the United States expanded by 159%, with Chinese nationals comprising 11.6% of all foreign students in the United

94. Id. at 155-56.
95. Id. at 156.
96. Id.
97. Implementation Measures for the Cooperative Education Regulations of the People’s Republic of China, supra note 90, at arts. 2, 60. To qualify as a visiting scholar, faculty members must: (1) hold a masters degree or above; (2) have at least 5 years’ relevant working experience; (3) agree to comply with PRC laws and regulations during their stay in the PRC; (4) be in good physical condition; and (5) lack a criminal record.
98. Id. at art. 60.
99. Dahlman et al., supra note 1, at 5.
100. Fazackerley, supra note 58, at 1.
States as of 2007, second only to India. Fueled by an increase in income among Chinese families and the growth of a booming industry devoted to placing Chinese students in tuition-hungry American schools, many American institutions are experiencing exponential growth in the number of Chinese undergraduates. A few years ago, Carleton College in Minnesota enrolled only three or four Chinese students, none with the wealth to pay their own tuition. In 2009, Carleton enrolled eighteen, many of whom needed no financial aid at all. Ohio University enrolled four times as many undergraduates from China in 2008 as it did in 2007, many paying full tuition in addition to fees paid to agents who help the students find a school. With respect to faculty exchanges, China sends more scholars to the United States than any other nation, increasing exports between 2005–2006 and 2006–2007 by 20.5%. Observers expect such exchanges to grow even further, both in terms of headcount and the overall number of programs.

Similarly, research and development initiatives are accorded considerable flexibility under China’s Higher Education Law, which “encourages cooperation in diverse forms between institutions of higher learning and enterprises, institutions, societies and other social organizations in scientific research, technological development and extension.” To that end, the MOE and the Ministry of Science and Technology jointly formulated the “Outline for the Development Program of National University Science and Technology Parks” to promote the development and growth of technologically-advanced inventions and enterprises. Chinese and foreign IHEs have formed so many different kinds of joint research and development programs that it would be impossible to catalogue them all in one place. Yale University has multiple cooperative programs in China, including one with Peking University

102. Id.
106. Johnson, supra note 61, at 309.
2010] FOREIGN SCHOOLS IN CHINA 381

founded in 2001, while more recent examples include a relationship between the University of Massachusetts and Tsinghua University that began in 2006, as well as the preliminary 2009 extension of a corporate-sponsored research partnership between an American company and University of California, Los Angeles to include Peking University. Tsinghua and the Brookings Institution also formed the Brookings-Tsinghua Center for Public Policy in Beijing. The history department at Fudan University established the Center for Asian Studies with the Korean Higher Education Consortium, as well as several technology development projects with non-educational partners, including Lucent Technologies, Cisco, and Toshiba. Intel sponsors courses at several Chinese universities, as well as several research and development laboratories, under the aptly-named “multi-core” program. As these programs typically do not involve a foreign institution granting degrees or certificates to Chinese students, they are not required to partner with a Chinese IHE.

As with exchange programs, the same issues concerning contractual provisions apply to research and development initiatives. Where research and development initiatives differ, however, is with respect to the joint ownership of intellectual property (IP), in that parties must negotiate the use of existing IP, as well as the ownership and use of any IP created by the partnership. In our practice, we have seen a spectrum of different arrangements, ranging from partnerships in which the foreign party owns all of the resulting IP and grants the Chinese party a license, to initiatives in which both parties decide to jointly own any IP produced by the initiative.

C. Education of PRC Nationals.

China encourages foreign education for Chinese nationals.


110. University of Massachusetts the First Foreign College to Offer (Online) Classes in China, STRAITS TIMES, Apr. 1, 2008 [hereinafter UMass].


115. Implementation Measures for the Cooperative Education Regulations of the People’s Republic of China, supra note 90, art. 2.

116. Catalogue of Industries for Guiding Foreign Investment (Revised 2007),
Regulations and guidance from both the State Council and the MOE establish the framework for entry, allowing foreign schools to educate students on the mainland in partnership with peer Chinese IHEs so long as the foreign school is not religiously affiliated and restricts its activities to upper middle and higher education. The Cooperative Education Regulations “encourage leading western institutions to come to China, bringing teaching and research systems and staff to carry out research-led teaching, in English, on undergraduate and postgraduate degrees which are internationally excellent.” The MOE’s Implementation Measures for the Cooperative Education Regulations, which clarify the Regulations, likewise promote “cooperative education between Chinese education institutions and foreign education institutions whose academic level and educational and teaching quality are universally acknowledged.” China specifically hopes to draw “cooperative education activities relating to the subjects, specialties and fields that are new and badly demanded in China[,]” as well as “Chinese-foreign cooperative education in China’s [western], remote and poverty-stricken regions.” To date, however, much of the activity has taken place in the coastal cities, although programs such as the University of Montana’s association with Xinjiang Normal University seek to extend the cooperation to inland cities.

“Chinese-foreign cooperative education must . . . implement Chinese education policies . . . .” Foreign schools should, therefore, recognize that in 2006, in addition to the priorities identified above, the MOE emphasized public interest principles when it declared that education is not a “trade in goods,” and that it would “strictly put an end to the acts of...
arbitrary charges and high charges in the name of Sino-foreign cooperative education, and prevent the trend of educational industrialization." The MOE also highlighted the need to strengthen “political sensitivity . . . so as to maintain national security, social stability, and normal educational order[,]” as well as the “leading position of Chinese institutions . . . .” Finally, the Implementation Measures specified that cooperative education must remain a non-profit activity, though cooperative educational initiatives are allowed to remit “reasonable returns” to the parties involved. This concept of “reasonable returns” leaves open to interpretation the issue of whether any surplus generated from fees and tuition can be returned to the respective parties, and there is little regulatory guidance on this issue.

Through the approval system, the MOE and the governments of provinces, autonomous regions and municipalities directly under the central government wield significant authority over both higher education and vocational training in China. Labor bureaus of provincial-level governments, for instance, approve vocational training programs. The MOE approves diploma-granting higher education initiatives based upon the parties’ application materials, as well as an opinion from the provincial-level government responsible for the area in which the parties want to conduct the program. The governments of provinces, autonomous regions and municipalities directly under the central government approve higher education initiatives that do not grant diplomas. Programs or institutions involving a “double campus” approach must obtain a special license from the MOE, must include a course of study in which more than one third of the classes and teaching hours are provided by the foreign partner, and must be taught primarily at the campus of the Chinese partner. Regardless of the proposed program, however, both the applications and their review must comply with detailed rules and regulations published by the MOE in accordance with China’s law on administrative licensing.

123. Id. at art. 2.
124. Implementation Measures for the Cooperative Education Regulations of the People’s Republic of China, supra note 90, at arts. 28, 43.
126. Regulations of the People’s Republic of China on Sino-Foreign Cooperative Education, supra note 7, at art. 12.
127. See id. at art. 12; Implementation Measures for the Cooperative Education Regulations of the People’s Republic of China, supra note 90, at arts. 5, 35, 36.
128. Implementation Measures for the Cooperative Education Regulations of the People’s Republic of China, supra note 90, at arts. 5, 35, 36.
129. 2006 MOE Opinion on Cooperative Education, supra note 117, at art. 5.
130. 实施教育行政许可若干规定[Several Provisions on the Implementation of Educational Administrative Licensing] (promulgated Apr. 21, 2005; effective June 1,
Parties must submit applications for higher education initiatives in March or September, and experts from the approval authority must examine the application. Approvals typically take at least a month, though it is not unheard of for approvals to take considerably longer. The MOE looks at whether an application involves a famous foreign school, a foreign school with famous programs or professors, or a foreign provider that already operates a similar initiative, as well as considering school rankings and whether the initiative will serve central or western China. The MOE wants to attract foreign partners who can help build vocational institutions that increase the quality of labor in “the advanced manufacturing industry, modern agriculture and modern service industry, especially, in the fields of energy, minerals, environmental protection and banking,” and not “low-level educational programs of business, management, computer, IT and other subjects (specialties) whose cost is relatively cheap.”

Once parties secure the necessary approvals, certain rules govern the ongoing management of both projects and institutions. Textbooks must come through “lawful” channels. Cooperative initiatives must have an appropriate ratio of Chinese and foreign instructors. The relevant approval authority must receive book lists and course lists, and the parties must comply with the rules and bylaws that govern the management of student records and teaching, not to mention advertisements and enrollment brochures. Institutions must publicize the items and standards for all charges, but only after receiving approvals from the relevant pricing, financial, and educational authorities. School financial departments must collect tuition in RMB pursuant to permits issued by designated pricing authorities. Tuition rates must conform to standards set by the

---


133. 2007 MOE Cooperative Education Notice, supra note 132, at art. 4.

134. 2007 MOE Cooperative Education Notice, supra note 132, pmbl.

135. Implementation Measures for the Cooperative Education Regulations of the People’s Republic of China, supra note 90, at art. 44.

136. 2007 MOE Cooperative Education Notice, supra note 132, pmbl.

137. Implementation Measures for the Cooperative Education Regulations of the People’s Republic of China, supra note 90, at arts. 44-47.

138. 2007 MOE Cooperative Education Notice, supra note 132, at art. 2.

139. Regulations of the People’s Republic of China on Sino-Foreign Cooperative Education, supra note 7, at art. 38; see, e.g., Provisional Measures for the
provincial-level government, which also sets a maximum ratio between tuition and other costs, and may not be increased without prior approval.\textsuperscript{140} With respect to tuition charged by the Chinese party, PRC nationals and ethnically Chinese foreign citizens pay lower tuition than non-Chinese foreign citizens,\textsuperscript{141} so IHEs need to consider whether this is a potential cause of concern under the relevant anti-discrimination laws which they are subject to in the United States. Diplomas issued by a foreign institution to graduates of a project or initiative must match those issued to graduates of the foreign institution not enrolled in the project or initiative.\textsuperscript{142} Relevant regulations provide that in granting diplomas, parties may not recognize credits for preparatory foreign-language training.\textsuperscript{143} This may impact students’ choice with regard to such preparatory training. Finally, parties may only use tuition to establish and repair schools, to pay salaries for teaching and administrative personnel, and to cover other select operating expenses; they may not use it for “profit-making purposes.”\textsuperscript{144}

Programs that confer degrees from a Chinese IHE must comply with two recent notices promulgated by the MOE concerning electronic registration.\textsuperscript{145} The regulations require that both foreign students beginning a formal course of study at a four-year college level or above,
and Chinese students entering an institution at a two-year college level or above, register electronically.  

If the IHE fails to electronically register the enrollment of a student, the MOE will not recognize any coursework that the student completes, and will not allow the IHE to grant the student a degree. As a result, parties should be careful to ensure the registration of all students with the MOE by the prescribed deadlines, and be sure that any related contracts include provisions to allocate related liabilities. Moreover, given the recent riots at independent colleges that failed to grant graduates diplomas from their more prestigious parent universities, parties should be careful to specify in both contracts and marketing materials which institution will ultimately confer the degree awarded, if any.

1. “Projects”

Again, as mentioned above, regulations distinguish between cooperative projects and cooperative institutions that grant diplomas or certificates. Diploma-granting projects are a popular approach for foreign IHEs in China, in part because they place fewer burdens on the foreign institution. To create a cooperative educational project, institutions of the same level and type must develop curricula and courses in subjects already offered by both institutions or, if the project will introduce a new subject to the Chinese institution, the Chinese institution must have sufficient resources and faculty to handle the new subject. The parties must also execute a cooperative agreement that describes the goals of the program and sets a project term, and they must apply to the appropriate approval authority. According to recent guidance from the MOE, project partners should ensure that “the educational and teaching plan, fostering plan, courses, and contents of teaching formulated by them jointly shall not be inferior to the standards and academic requirements of the foreign education institution in the country where it is located.” Beyond that, however, all of the same rules listed above apply.

146. Domestic Student Electronic Registration Notice, supra note 145, at art. 3; Foreign Student Electronic Registration Notice, supra note 145, at art. 4.
147. Domestic Student Electronic Registration Notice, supra note 145, at art. 14; Foreign Student Electronic Registration Notice, supra note 145, at art. 4, ¶7.
149. OBSERVATORY ON BORDERLESS HIGHER EDUCATION, SINO-FOREIGN JOINT EDUCATION VENTURES: A NATIONAL, REGIONAL AND INSTITUTIONAL ANALYSIS (2006) (noting that Chinese and foreign IHEs entered into more than 1,300 joint degree programs as of 2006 and had planned an additional 400 more).
150. Implementation Measures for the Cooperative Education Regulations of the People’s Republic of China, supra note 90, at art. 33.
151. Id. at art. 5.
152. 2006 MOE Opinion on Cooperative Education, supra note 117, at art. 4, ¶2.
2. “Institutions”

Establishing a cooperative educational institution involves more steps than a “project,” and the obstacles to a United States IHE’s involvement in such an institution are daunting. Parties first submit a preliminary application, which the approval authority must process within 45 working days, and then submit a second formal application within three years after the approval of the preliminary application. Upon accepting a formal application, authorities must decide whether or not to license a vocational institution within three months or a college or university within six months. Proposed schools (including vocational schools, colleges and universities) must have qualified teachers, facilities and equipment, as well as sufficient funds to support current and long term operations, and proposed universities must have at least three “major” departments, as designated by the State. Colleges and universities, in particular, must possess a “strong teaching and scientific research ability, have a higher level and scope of teaching and scientific research, and be in a position to impart undergraduate and post-graduate education.” All in all, 230 foreign schools met these requirements in 2006, a figure that includes not only IHEs, but also private primary and middle schools.

In terms of structure and governance, vocational institutions operate as joint ventures with legal person status and higher education institutions operate as contractual joint ventures with status analogous to a partnership. The principal or chief executive must be a PRC citizen and permanent resident in China with teaching experience who “loves the country” and “observes high moral standards.” The board of directors or

---

154. Id. at arts. 15, 18. Schools may not enroll Chinese students until approval of a final application.
155. Id. at art. 18.
160. Survey of US Posts, International Education: Obstacles and Opportunities, INTERNATIONAL EDUCATION STUDY TEAM 11 (2001); Regulations of the People’s Republic of China on Sino-Foreign Cooperative Education, supra note 7, at arts. 21,
management committee must have at least five members, at least half of whom are Chinese citizens, at least two thirds of whom have five or more years of teaching experience, and all of whom must be approved by the relevant approval authority. In addition, the institution may not establish any branches or subsidiary entities.

With respect to funding, cooperative vocational institutions must maintain a minimum amount of registered capital, since Chinese law emphasizes registered capital to protect creditors. Less clear, however, are MOE regulations which specify that “[t]he operators who run Sino-foreign cooperative schools or establish Sino-foreign cooperative educational institutions or projects shall have corresponding capital investment for the education.” In essence, this requirement means that the MOE decides when Chinese and foreign partners have invested sufficient capital in a proposed institution or project. Notably, institutions that bring in “foreign quality education resources” may partner with private organizations or individuals to secure funding, as well as funding for ongoing operations. In addition, non-cash assets like intellectual property can serve as registered capital, but such contributions are limited to one third of the foreign party’s total contribution unless the MOE or a local government authority invites the party to invest more, and the parties comply with specific procedures regarding the calculation and certification of such non-cash assets. Land use rights may be contributed as well, and last for 50 years in the event that the land is owned by a Chinese IHE, and

25.


162. Implementation Measures for the Cooperative Education Regulations of the People’s Republic of China, supra note 90, at art. 7.


165. See Implementation Measures for the Cooperative Education Regulations of the People’s Republic of China, supra note 90, at art. 8.

166. Regulations of the People’s Republic of China on Sino-Foreign Cooperative Education, supra note 7, at arts. 10, 27. According to the Implementation Measures for the Cooperative Education Regulations of the People’s Republic of China, the value of capital contributions in the form of IP may be determined in one of two ways: either the Chinese and foreign partners must agree on a value for the IP, or they must engage a qualified asset appraisal institution to determine the value for them. Id. The Ministry of Finance (MOF) and the State Intellectual Property Office (SIPO) monitor the activities of asset appraisal institutions and hold regular training and certification sessions for appraisers in order to enhance their IP appraisal capacity. See, e.g., 财政部、国家知识产权局关于加强知识产权资产评估管理工作若干问题的通知 (财企[2006]109号) [Notice of the Ministry of Finance concerning Several Issues related to Strengthening the Regulation on the Appraisal of Intellectual Property Asset] (promulgated Apr. 19, 2006, effective 19, 2006).
not a third party. Parties should be aware, however, that additional requirements apply if the Chinese party is either state-owned or intends to contribute state-owned property to a joint venture.

Finally, joint ventures in which the partners pay separate taxes must maintain joint accounting records that reflect the separate records of each joint venture partner. Cooperative educational institutions that enter into contractual relationships must therefore make special provisions to comply with Chinese accounting procedures.

CIBT, a Canadian company that has several activities in China, is one example of a foreign company operating educational services using in China, including operating a business school offering an MBA degree through the Beijing University of Technology and City University of Seattle, as well as a consulting company, a vocational college and a vocational institute teaching auto repair. The company operates a network of community colleges in Canada and is publicly listed on both American and Canadian stock exchanges. CIBT is relatively unique in that it operates a consulting company, its own independent vocational schools, and an international degree program in cooperation with a Chinese university. As a listed company, its relative success or failure may be instructive for other education management companies seeking to enter the China market.

D. Distance Education Initiatives

Distance education initiatives involve their own complexities. In the US, private and public institutions have developed their own distance learning initiatives, many forming for-profit subsidiaries that allow for the development and marketing of e-learning in China, albeit without the necessary approvals. Institutions need to appreciate the pervasive

167. See WTO Education Commitments, supra note 6, at 3.
169. Zimmerman, supra note 75, at 472.
170. 2007 MOE Cooperative Education Notice, supra note 132, pmbl.
173. See Risa L. Lieberwitz, The Corporatization of the University: Distance
regulation of content on the Internet by the Chinese government and should only consider marketing e-learning programs to students in China after gaining an understanding of the specific issues that can impact such programs. Such e-learning programs vary widely.

These programs take diverse forms, including: partnerships between public or private sector colleges and universities and for-profit corporations to market distance learning; for-profit subsidiaries, wholly-owned by a public or private nonprofit college or university; for-profit subsidiaries of a public or private nonprofit college or university, funded by venture capital; and for-profit distance learning institutions created and owned by a for-profit corporation.174

Similar models exist in China, and several have expanded considerably in recent years, as domestic authorities encourage the use of distance learning in higher education, but require that providers obtain several approvals and licenses before an entity can even establish the necessary infrastructure and websites, let alone confer a degree upon a student.175 It is important to note, however, that private entities may only provide the technical platform to provide distance education in China and must partner with an IHE in order to confer a degree.176 That is, as a legal matter, private entities themselves may not provide “educational services” as that term is thought of under Chinese law, only the websites and other means of access from which educational services are delivered.

Specifically, educational websites and online education schools may provide higher education, teacher education, vocational education, adult education and other public educational information to Chinese citizens in the form of online content or through other means not involving a classroom.177 The term “educational websites” refers to organizations

Learning at the Cost of Academic Freedom?, 12 B.U. PUB. INT. L.J. 73, 74 (2002). These programs are available in China simply via Internet access.

174. Id. at 104.

175. See Higher Education Law of the People’s Republic of China, supra note 22, at art. 16; Decision on Setting Down Administrative Licenses for the Administrative Examination and Approval Items Really Necessary to be Retained (State Council, June 29, 2004).


177. Administrative Regulations on Educational Websites and Online and Distance
providing education or education-related information services to website visitors by means of a database or online education platform connected via the Internet or an educational television station. 178 “Online education schools” refer to education websites that issue educational certificates in connection with education services or training. 179 In marketing their services, online education schools may not recruit existing full-time students, and schools offering online degrees may only recruit working adults. 180 Moreover, service providers may not set up stand-alone websites without coupling them to a physical, brick-and-mortar presence. 181

Indeed, for online degree programs, Chinese law requires the establishment of physical support centers (typically referred to as “learning centers”) to assist enrolled students. 182 The centers may not recruit students, teach students, or issue degrees in their own right; rather, these activities must be conducted in conjunction with the IHEs awarding the actual degrees. 183 In addition, learning centers may not conduct any business that is irrelevant to online education services. 184 Each learning center is required to be associated with at least one educational institution or other entity approved by the MOE to provide online education services, and can only provide logistics services to educational institutions for the recruitment of students and the administration of examinations. 185

Moreover, each learning center and the educational institution with which it is associated must jointly apply to the education authorities for approval before the learning center can provide services to any online education program. 186 Additional approvals are required for a learning

---

178. Id.
179. Id.
180. Circular on the Student Enrollment of Online Degree Education by the Pilot Universities Which Are Permitted to Operate Online Degree Education (MOE, Feb. 27, 2004).
181. Id.
182. Principles on the Establishment and Administration of Modern Distance Education Off-Campus Learning Center (Pilot) (MOE 2002); Interim Provisions on Administration of Modern Distance Education Off-Campus Learning Center (MOE 2003).
183. Principles on the Establishment and Administration of Modern Distance Education Off-Campus Learning Center (Pilot) (MOE 2002).
184. Id.
185. Id.
center if it intends to provide support services to additional educational institutions.\textsuperscript{187} The education authorities have the authority to supervise, inspect and evaluate the learning centers from time to time.\textsuperscript{188} A learning center’s approvals may be withdrawn by the education authorities if during a periodic inspection they determine that the learning center is unqualified to continue operations.\textsuperscript{189}

To date, however, there has been no reported instance of a foreign provider receiving the appropriate approvals to operate a distance learning initiative. This is not to say that foreign providers are prohibited from providing distance education in China, just that none has yet received the approval to do so.

Notably, online education requires compliance with several rules and regulations beyond those described above, including some that require schools to simply register the fact that they are offering an online degree program.\textsuperscript{190} For example, “Internet content providers,” like e-learning companies, are prohibited from producing, copying, publishing or distributing information that opposes fundamental principles outlined in the Constitution, disrupts social stability, insults or slanders a third party, infringes the lawful rights and interests of others, or otherwise violates relevant laws and administrative regulations.\textsuperscript{191} Internet content providers operating bulletin board services may not disclose personal user information to any third party without the user’s consent, absent compulsory legal processes.\textsuperscript{192} Chinese parties licensed to provide online content for profit, typically private companies, may not lease, transfer, or sell that license to a foreign provider, or provide transmission facilities.\textsuperscript{193} Under rules issued jointly by GAPP and the MIIT, distance learning providers must secure approvals if they plan to:

[S]elect, edit and process works created by themselves or others (including content from books, newspapers, periodicals, audio and video products, electronic publications, and other sources that have already been formally published or works that have been made public

\textsuperscript{187}. Opinions on the Principles Regarding the Establishment and Management of Modern Distance Education Local Learning Center, \textit{supra} note 186, at art. 4.
\textsuperscript{188}. \textit{Id}.
\textsuperscript{189}. \textit{Id}.
\textsuperscript{192}. \textit{See} Internet Electronic Bulletin Board Service Administrative Measures.
\textsuperscript{193}. Notice on Strengthening Management of Foreign Investment in Operating Value-Added Telecom Services (MII, July 2006).
in other media) and subsequently post this content on the Internet or transmit it to users over the Internet for browsing, use or downloading by the public.\footnote{194}

Distance learning providers must also secure a license from the State Administration of Radio, Film, & Television (SARFT) to transmit any audio-visual material over the Internet, a television, or a mobile phone.\footnote{195} Moreover, as in most western countries, institutions are also liable for publishing copyrighted material on the Internet without prior authorization from the copyright holder.\footnote{196}

Foreign IHEs only recently began to apply for the licenses that would allow them to award degrees in China based entirely on distance learning programs.\footnote{197} The Stevens Institute of Technology and the University of Massachusetts offer online degree programs in China, such degrees, while they may be recognized in the United States, are not officially recognized or approved by the MOE or other agencies.\footnote{198} Some foreign colleges and universities have instead opted to offer non-degree, stand-alone educational content in partnership with commercial distance education providers, as demonstrated by the Western Institute of Technology at Taranaki, New Zealand, and the British Columbia Institute of Technology, both of whom partnered with ChinaEdu to provide in-room classes under ChinaEdu’s private international curriculum program.\footnote{199} As of November 2007, however, no foreign educational provider had partnered with a Chinese IHE to offer Ministry-approved, degree-awarding higher education online.\footnote{200} Instead, as of December 2007, the MOE had licensed 68 domestic colleges and universities to offer such programs under a special pilot initiative.\footnote{201}

---


195. 互联网等信息网络传播视听节目管理办法 (国家广播电影电视总局令第39号) [Measures for the Administration of the Publication of Audio-Visual Programs through the Internet and Other Information Networks] (promulgated by State Administration of Radio, Film and Television Order No. 39, Jul. 6, 2004, effective Oct. 11, 2004), art. 6.

196. 互联网著作权行政保护办法 (国家版权局、信息产业部令2005年第5号) [Measures for the Administrative Protection of Internet Copyright] (promulgated by National Copyright Administration, Ministry of Information Industry of the People’s Republic of China, Apr. 29, 2005, effective May 30, 2005), art. 2.

197. UMass, supra note 110. While Stevens Institute of Technology and other schools have offered online degree programs in China for quite some time, such degrees are not officially recognized or approved of by the Ministry of Education.

198. Id.


200. See id. at 110.

201. ChinaCast Prospectus, supra note 176, at 28.
IV. RESULTS AND FUTURE REFORMS

The challenges China faces in developing and increasing the education of its present and future workforce are daunting, but receiving considerable attention from policy experts and Chinese officials alike. According to the Vice Minister of the Development Research Center of China’s State Council, Li Jiange, in China “[f]ormal education falls short . . . in terms of teaching methods, curriculum, and pedagogies, and needs to be adjusted to respond to the new demands of economic and social development.”202 Li believes that “[t]he role of government needs to shift from that of key decision maker and sole provider of education and training to that of system architect, rule-maker and promoter.”203 He therefore advocates lowering barriers to private capital and transforming government from a direct manager of education into a policy-making body focused on quality concerns and financing, much like the Department of Education in the United States.204 To successfully affect this transition, however, several additional changes must occur.

First, Chinese colleges and universities must institute modern, effective governance. To its credit, the central government has paved a path towards greater institutional autonomy, carrying out decentralization and market-based reforms beginning in the mid-1980s to reduce the burden of education on the central government, and letting local governments and individual institutions play a greater role in management and financing.205 As of 2001, 71 IHEs were under the direct control of the central government, while the number under the leadership of local governments had reached 896.206 Moreover, the MOE sends 100 college and university presidents and party secretaries abroad each year to learn about leadership and management from top-flight research institutions like the University of Michigan and Yale University.207 Nonetheless, in China education is still viewed as a mechanism for spreading official ideology,208 and colleges and universities still follow the Mao-era model in which Party leadership within each IHE controls policy-making, budgets, and personnel decisions, while administrators implement Party directives.209 Moreover, the consolidation of institutions mentioned above has created an often bizarre mix of

202. Dalhman et al., supra note 1, at xvi.
203. Id.
204. See id.
206. Lixu, supra note 19, at 16.
208. Lun & Keung, supra note 205, at 82.
209. Cook, supra note 207, at 33, 34.
institutions with different disciplinary focuses and cultures, as well as geographic locations, which further complicates attempts to institute effective governance.\textsuperscript{210} As one scholar pointed out, the state of governance in China’s top universities makes the goal of becoming a world leader in education particularly unrealistic: even Tsinghua University and Peking University, among the most renowned universities in China, have between twelve and sixteen people serving simultaneously as university head.\textsuperscript{211}

Second, China must establish and refine a reliable system for enhancing and measuring quality. For students, the “normative pedagogy is the lecture, and many university curricula still focus on narrow occupational preparation as opposed to a liberal arts education that teaches critical thinking and problem-solving.”\textsuperscript{212} For teachers, institutions have begun to stress publications in international journals, international citations, and involvement in international faculty exchange programs as qualitative measures.\textsuperscript{213} For the overall system, six organizations publish rankings of the top Chinese universities.\textsuperscript{214} Of the rankings, however, none provides a stable data set or a sufficiently transparent methodology that can be used to reliably measure performance.\textsuperscript{215} Meanwhile, inconsistent standards for faculty evaluations, promotions based on seniority, and problems of corruption and plagiarism undermine any quality improvements that have been made.\textsuperscript{216} Moreover, if Chinese IHEs are to maintain the 14:1 mandatory student-to-teacher ratio in higher education and the requirement that professors hold at least a master’s degree in their field, then China needs to produce an additional 220,000 qualified professors in the near term.\textsuperscript{217} The State Council has called for “[r]aising the quality of higher education” and deepening the reform of “the system for measuring educational quality[,]” but has no plans as of yet for a formal measurement mechanism.\textsuperscript{218}

Third, China needs a better system of financing for higher education. Educational expenditures are undertaken by lower levels of government that lack independent sources of revenue and must rely upon wealth

\textsuperscript{210} Id. at 34; see also Li et al., supra note 2, at 11 (discussing, for example, the incorporation of Beijing Medical University into Peking University in 2000).

\textsuperscript{211} Lixu, supra note 21, at 21.

\textsuperscript{212} Cook, supra note 207, at 34.

\textsuperscript{213} Li et al., supra note 2, at 12.

\textsuperscript{214} Nian Cai Liu & Li Liu, University Rankings in China, 30 HIGHER EDUC. IN EUROPE 217 (2005).

\textsuperscript{215} Id. at 226.

\textsuperscript{216} Cook, supra note 207, at 34.

\textsuperscript{217} Lixu, supra note 21, at 21.

transfers from the central government.\textsuperscript{219} Thus, the government needs to
design a system of fiscal transfers between the different levels of
government that ensures that the money reaches the administrative bodies
that are responsible for delivering such services.\textsuperscript{220}

For now, the latest central plan emphasizes student loans to help poorer
students gain access to higher education.\textsuperscript{221} But lenders, in particular the
four biggest commercial banks in China, are wary of providing money to
poor Chinese citizens, and often ask them to pay back the balance of loan
payments as soon as they graduate.\textsuperscript{222} Indeed, if students do not pay back
their loans before they graduate, then they may not be granted whatever
dergree or certificate for which they took out the loans, which drastically
reduces their chances of finding employment that would enable them to pay
back the loans in the first place.\textsuperscript{223} Though the government does not
currently tax the interest on savings accounts opened specifically for
education, clearly more must be done.\textsuperscript{224}

Other developing nations have shored up deficiencies in domestic
education systems by using sovereign wealth to import educational
services, a phenomenon that one observer described as an “educational
gold rush.”\textsuperscript{225} Qatar used wealth from its natural gas reserves to fund
branch campuses for five American universities in Education City, a brand-
new complex just outside Doha.\textsuperscript{226} Singapore’s sovereign wealth funded
overseas offerings for the University of Nevada, Las Vegas, New York
University, Duke, the University of Chicago and Australia’s University of
New South Wales.\textsuperscript{227} Three of the United Arab Emirates poured petro-
dollars into branch campuses for George Mason, NYU and Michigan
State.\textsuperscript{228} As host governments often pay all start-up and operational
expenses, including salaries for faculty members and administrators, the
willingness of other nations to import education has helped U.S.
institutions expand overseas without incurring heavy up-front costs.\textsuperscript{229}

\begin{itemize}
\item \textsuperscript{219} OECD 2005 SURVEY, \textit{supra} note 19, at 24.
\item \textsuperscript{220} Id. at 53.
\item \textsuperscript{221} Li et al., \textit{supra} note 2, at 27.
\item \textsuperscript{222} Id. at 27.
\item \textsuperscript{223} Id.
\item \textsuperscript{224} See OECD 2005 SURVEY, \textit{supra} note 17, at 192.
\item \textsuperscript{225} Tamar Lewin, \textit{US Universities Rush to Set Up Outposts Abroad}, N.Y. TIMES,
\item \textsuperscript{226} Lucy Hodges, \textit{Qatar: An Oasis of Education in the Desert}, INDEPENDENT
(UK), May 15, 2008, http://www.independent.co.uk/news/education/higher/qatar-an-
\item \textsuperscript{227} John Austin, \textit{New Center Helps Make A&M a Pioneer}, FORT WORTH STAR-
\item \textsuperscript{228} Lewin, \textit{supra} note 225.
\item \textsuperscript{229} See Jodi S. Cohen, \textit{NU Expands 2 Schools to Mideast: Qatar to pay start-up
\end{itemize}
Indeed, overseas education is now a billion-dollar business for U.S. colleges and universities. There are now more than one hundred and sixty branch campuses worldwide, a dramatic increase from thirty-five just a decade ago, with China playing host to fifteen such campuses.

China, on the other hand, does not yet use its budget or its sovereign wealth to fund branch campus build-outs for foreign institutions. Were China to use its sovereign wealth to attract schools from the United States and the United Kingdom, or even simply reduce restrictions on their involvement in the Chinese educational system, these institutions could provide China with instant access to quality resources and more spots for Chinese nationals to earn reputable degrees from programs conducted at home. In addition, supplementing local provision of higher education with foreign education in the PRC would not only postpone the expensive task of building local infrastructure, but also aid in the improvement of local educational providers. Like it or not, the United States and the United Kingdom dominate education, and the Chinese government stands to benefit from their expertise. But as it stands, Chinese law often inhibits IHEs from entering China by placing too much power in the hands of Chinese partners and the Chinese government and by focusing too much attention on brand names.

V. CONCLUSION

We hope that in writing this Article we have helped to smooth the road for future partnerships between PRC and foreign IHEs by (1) providing a background on the Chinese educational system, (2) reviewing the laws and regulations governing foreign involvement in higher education in the PRC, and (3) highlighting areas for future reform and change. We note that the ground covered in this Article is neither exhaustive nor static. As in the United States, Chinese laws are frequently updated and amended, and those laws involving foreign parties are prone to even more change than bodies of law focused solely on Chinese companies and citizens.

We also hope that this Article provides strategic insight into those areas in which foreign IHEs can lend assistance. To reiterate, there are three

234. Id. at 20.
235. Id. at 25.
236. See Gow, supra note 13, at 7–8.
main areas in higher education that the Chinese government hopes to improve: the quality of education provided by Chinese schools, the research and innovation conducted in Chinese universities, and the ranking of China’s leading universities as world-class institutions. Foreign college and universities that can find synergies between their own goals and the Chinese government’s policies, as well as the needs of the Chinese people, will be better served in the long run than those that look toward China solely as a potential revenue source, given its huge population. China hopes to match international standards rather quickly, but some college and university leaders think it could take as long as fifty years before reforms in education help China reach its goals. Any party that can help China achieve this goal in a shorter time frame would, we think, find both substantial success and strong support in the PRC.

Finally, we should note that it is not uncommon to see Chinese and foreign parties have disputes after years of successful collaboration. In 2001, for example, the University of Colorado at Denver attempted to unilaterally raise tuition in a joint degree program offered in partnership with China Agricultural University. The program fell apart in 2005, only to be resurrected in 2007. Of course, such problems can occur in any relationship, so it is best for institutions considering such a partnership to “choose wisely.”

---

238. Id.
240. Id.