Some Reflections on Private Schools’ Withdrawal Mechanism from the Perspective of New “Non-Governmental Education Promotion Law”

Liguo Zhang¹,a

¹School of Economic Management, Dalian Nationalities University, Dalian 116600, China

Annual Meeting, Dalian Nationalities University, Dalian 116600, China

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Abstract. The new “Non-Governmental Education Promotion Law” established the classified management system of profit-oriented and non-profit-oriented private schools and confirmed it as the basic framework and orientation of legislation. To scientific design for-profit and non-profit school drop-out mechanisms, we defined the basic connotation of the exit mechanism of the private school. Hence, the conclusion obtained is that two occasions will appear, respectively withdrawal of private education due to “crisis” and because of “business opportunity”. So we improve some suggestions on improving domestic private schools’ withdrawal mechanism. For the non-profit private schools of the withdrawal mechanism, we should establish a risk alert mechanism, withdrawal property rights mechanism and stakeholder protection mechanisms. For profit-oriented private schools’ withdrawal mechanism, the author holds the idea that the following can be concentrated on based on referring to “Company Law” and “Bankruptcy Law”: construct property circulation mechanism based on efficiency, the third Party’s assessment mechanism based on justice and withdrawal supervision mechanism based on order.

1. Introduction

In November 2016, the new “Non-Governmental Education Promotion Law” (hereinafter referred to as “Education Promotion Law”) was passed and will be comprehensively implemented from September 1, 2017 in China. The most fundamental changes of this revision are the establishment of the classified management system of profit-oriented and non-profit-oriented private schools and confirmation of it as the basic framework and orientation of legislation. Many institutional innovations and breakthroughs have been made. Pitifully, in terms of private schools’ withdrawal problems, there are lacks of substantial changes. Except that Article 2 of Clause 59 “Residual property after non-profit-oriented private schools liquidate the above debts is continued to be used for other non-profit-oriented schools, while the residual property after profit-oriented private schools liquidate debts is dealt with in accordance with relevant regulations in “Company Law”. Except the revision, it completely follows Chapter 8 in the original law “Alternation and termination”. As the author is concerned, classified management, as a major institutional innovation in private education, exerts huge shocks on the pattern of traditional private education. What’s more, private schools’ re-shuffling, transformation and withdrawal will definitely become the new normal state in the development of private education. Crisis is transition. Orderly proposal is also the need of development. Based on the new “Education Promotion Law”, it is of great significance for the healthy and stable development of private education by accelerating the revision and improvement of “Regulations on Implementation of Private Education Law” and local relevant norms about private education.

2. The Internal Meanings of Private School Withdrawal Mechanism

Withdrawal mechanism, also called “exit mechanism”, as the name indicates, refers to the mechanism that the entity withdraws from the market. In the field of academy, private school withdrawal mechanism can be understood in narrow and broad sense. From the broad perspective,
some scholars include private schools’ “alternation behaviors” into the withdrawal mechanism, holding the idea that private schools’ withdrawal is the termination of private schools, disappearance or death of legal person according to relevant laws, regulations and administrative rules or organizers’ alternation (all or partial original organizers withdraw and assets replacement among the former and new organizers happens as a result) by assets transfer [1]. Some scholars classify all private schools into the withdrawal entities, claiming that private schools’ withdrawal is the fact or result of being closed (canceled, stopped, dissolved), transferred, acquired, institutionally changed, subjectively or passively retreating from private school education market, losing substantial school-running qualifications or changing the nature of school-running due to various factors [2]. From the narrow perspective, it is mainly demonstrated in the phenomenon that the withdrawal entities at present are not all private schools but “problematic schools”, i.e., a series of rules that cause private schools at the edge of shutting down to withdraw from education market or cause private schools to subjectively retreat from market due to poor management or for other reasons [3].

Domestic “Education Promotion Law” mainly clarifies the regulations on withdrawal problems in “Chapter 8 Alternation and termination”, according to the regulations on private schools’ termination in Clause 56 (termination is required according to the “Articles of School” and approved by examination authority; school-running certificate is canceled and withdrawn; no school-running is allowed because of excessive loans over assets”), China mainly adopts the narrow explanation in legislation of private school withdrawal, i.e., private school withdrawal is mainly pertinent to those that fall in dilemma or encounter failure in business operation. The author thinks that with the issuance of new “Education Promotion Law” with classified management reform as the frame, private schools’ withdrawal forms will be more diverse. Besides the “elimination-typed” withdrawal of mostly problematic schools, “development-based” withdrawal mainly characterized with inter-school and school-enterprise recombination and acquisition will appear. With regard to this, domestic private school withdrawal mechanism needs an explanation in the broad sense, i.e., private school withdrawal mechanism refers to a series of rules and procedures applicable to the subjective or passive withdrawal of some private schools that fall in a dilemma or encounter failure in operation from private school education market or one Party’s or two Parties’ withdrawal from private school education market in some private schools due to adopting combination, acquisition, recombination and other forms for the pursuit of development. The rules and procedures mainly include private school withdrawal criteria, withdrawal method, withdrawal procedure, applicable laws, monitoring management, etc.

3. Private Schools’ Withdrawal Has Become the New Normal State Under the Background of New “Education Promotion Law”

With issuance of new “Education Promotion Law” with classified management reform as the frame, private schools’ withdrawal forms will be more diverse. Besides the “elimination-typed” withdrawal of mostly problematic schools, “development-based” withdrawal mainly characterized with inter-school and school-enterprise recombination and acquisition will appear.

3.1 “Elimination-typed” withdrawal caused by the dilemma of development will further deteriorate.

Prof. Pan Maoyuan summarizes the dilemma of private colleges’ development from two perspectives, external environment and internal factors in the schools in “Dilemma and Prospects of Development of Private Higher Education”, raises that the main problems that hinder the development include student enrollment, teachers’ treatment, assessment, management, student source, faculty, fund, quality, school-running guiding notion and internal management [4]. New “Education Promotion Law” clarifies the classified management of profit-oriented and non-profit-oriented private schools. In the long run, it is beneficial for the standard development of schools. However, on the other hand, besides the difficulty in overcoming the inherent problems in a
short period of time, the revision also proposes higher and more urgent requirements on the transformation and quality of private schools.

For all the time, public and private education are unfairly treated in terms of social recognition, policy support, institutional guarantee and so on, which are highlighted by the differences and inequality in student enrollment, teachers’ treatment, support preferential and so on. Coupled with the institutional absence, inadequate innovation, imbalanced management of private education, the whole private education is still cast in the environment with relatively inadequate development and unfair competition on the market. Take the enrollment of college students, most students in private colleges are below Batch III and at the junior college level. On the contrary, public colleges adopt all-channel enrollment in all, with smooth student admission methods.

In particular, sub-replacement fertility and educational internationalization have become increasingly obvious, which results in the more fierce competition in student source in private schools. According to the sixth demographic census in China, the number of people aging from 0-14 years old in 2010 was 220 million, accounting for about 16.6% of the whole population. Based on the statistical criteria of demographics, when the people aging from 0-14 years old takes up for 15%-18% of the whole population, it means that society enters the age of “sub-replacement fertility”, while within 15% means “great super-replacement fertility”. According to this standard, China has entered the age of “super-replacement fertility” [5]. With the constant decline of birth rate, the population of the right age in colleges demonstrated the trend of keeping decreasing after 2008, which would at least continue to 2018. At the same time, the increasingly common and low-threshold overseas education has exerted shocks on the source of students in private colleges. In accordance with the statistics of national overseas students’ information service website, the number of Chinese overseas students reached 410,000, of which those in America and Canada exceeded 200,000. For the private schools that depended on tuitions as the school-running fund, they will face unprecedented pressure on survival and competition.

3.2 Transformation and policy risks compose severe challenges on some private schools.

After the execution of new “Education Promotion Law”, private schools have confronted with increasingly severe pressure on transformation. Besides the reduction of student source, deterioration of competition and so on, the new law has completely changed the current situation of the lack of distinguishing profit-oriented and non-profit-oriented schools. The option of “one of two” will result in the adjustment, reform and sequential distribution of private schools. Correspondingly, the pressure on transformation is also intensified. First, some organizers are not confident enough in the schools’ transformation, which is because the new law makes non-profit-oriented private schools have the feeling of being deprived of rights. On the other hand, the incompleteness and uncertainty of policies impose heavy pressure on organizers.

First of all, the new “Education Promotion Law” cancels non-profit-oriented private schools’ right to earnings and the right to apply for allocation of residual properties and deletes the regulations on reasonable returns. Clause 19 clarifies “Organizers of non-profit-oriented private schools shall not obtain the earnings of school-running. The entire residual amount shall be used for school operation.” Clause 59 stipulates on the residual property right of private schools that: After debt liquidation, the residual property of non-profit-oriented private schools shall still be used for education cause, while profit-oriented private schools shall handle and allocate it according to “Company Law”. In addition, new “Education Promotion Law” further enhances the supervision on private schools. For example, in terms of legal person governance in private schools, they emphasize that private schools should set up council, Board of Directors or decision-making organizations in other forms, and establish corresponding monitoring mechanism. In terms of governmental supervision, Clause 41 in the new “Education Promotion Law” first proposed “Educational administration and relevant department shall supervise private schools legally, set up the system of information announcement and credit file in private schools”.

The systems objectively severed the system space and profit channels that private school organizers could obtain the right to earnings by “reasonable return” system or school control right, by
associated trading, non-paid assets occupation, non-authentic high cost and in other forms. As a result, organizers were quite worried when choosing non-profit-oriented private schools. Some even chose to withdraw from private education market. Some scholars made a statistics of over 100 private schools all over the country, finding that 64.1% organizers chose non-profit-oriented schools, while 28.1% chose profit-oriented schools and 7.8% expressed the possibility of terminating schools [6].

Second, the inadequate institutional supply, non-completeness and uncertainty of policies add fuels to the withdrawal of private schools. On the one hand, the inadequate institutional supply is demonstrated in the protection of and restrictions on property system and private school organizers’ profits, withdrawal of private schools, structure of legal person governance and the lack of other systems. On the other hand, it is revealed by the invalidity, low efficiency and even effectiveness of institutional execution, such as format-oriented Board of Directors, “double legal person” phenomenon and assets transfer. Moreover, the development of domestic private education has been intensely marked with “government dominance”. The non-completeness and uncertainty of policy also have huge effects on private schools’ development. The policy adjustment and changes caused by government’s limited rationality result in some private schools’ confrontation with serious “policy risks” and even “disaster of shutting down”. The most typical example is two policy adjustments: First, “Multiple Suggestions on Organizing Medical Education in Colleges” issued in 2002; second, “Notification about Higher Education Diploma Examinations” issued in the second half of the 2004. The issuance of the two policies threw a majority of private medical colleges and academic diploma examination trial schools to the dilemma of closing down or going bankruptcy.

One noticeable change of the revision is the regulation that private schools that provide obligatory education are not allowed to be private-oriented ones, which means that private primary and middle schools in China can only choose the path of non-profit-oriented private education, standardize their school operation behaviors in accordance with the rules in non-profit-oriented schools, and improve their governance institution. For most private schools providing obligatory education characterized with investment-based school operation, they will have to face transformation or directly withdraw from education market. Statistics show that 16.7% private schools at the education phase may termination operation after revision of new “Education Promotion Law” [6]. At present, classified management system, in essence, is the compulsory institutional change under the dominance of government. The new “Education Promotion Law” under the framework of classified management merely lists the principles of many problems. For example, the new “Education Promotion Law” clarifies that non-profit-oriented private school organizers can give corresponding compensations or rewards to fund contributors at the time of termination. However, there are no specific regulations on how to make compensations or reward, the form of compensation or reward, criteria on compensation or reward. As for private schools’ withdrawal criteria, form, transformation and so on, there are no clear explanations. “Regulations on Implementation of Private education Law”, local norms that facilitate private education and operable matching policies are in urgent need. Therefore, the policy risks of private schools’ withdrawal because non-completeness and uncertainty of private education policies cannot be overcome in a short period of time cannot be ignored and under-judged.

3.3 “Development-based” withdrawal mainly in the form of acquisition and re-combination becomes the new trend.

In recent years, private schools’ acquisition and re-combination have become a hot topic in the field of education. After the first educational tutoring brand in China, Noah acquired New Star in 2009 and the largest judicial examination training organization in China, Wanguo School acquired Guopei Website in 2011, the acquisition and re-combination in the education industry accelerated the pace. In accordance with incomplete statistics, since 2013, A-share market has encountered at least 21 acquisitions about education (excluding failed cases). In 2015 only, there were 14 cases. In only two months in 2016, three acquisition cases in the field of education, respectively Kingsun, Baolingbao, and the Cultural Great Wall happened successively [7].

The persistent overheating of school acquisition and re-combination mainly comes from robust need of diverse education in China and the policy environment that China encourages
non-governmental sectors to start schools. According to the investigation jointly carried out by Beijing Academy of People Education Information Sciences and Tencent Education, over a half families spent over 5,000 Yuan on education in 2013. 29% interviewees said that the education consumption exceeded 10,000 Yuan. In the future several years, China’s education service market will step onto the track of rapid growth. As predicted in “Report on China’s Education Development in 2014”, one family’s expenses on education in 2015 will reach about 20,000 Yuan. In particular, the overall scale of training market is predicted to total up to 882.1 billion Yuan.[7]

On the other hand, the constantly issued support policies also facilitate the acquisition and re-combination of education, including private education. In May 2014, the State Council also clarified the need of accelerating the development of vocational education. In November 2014, Ministry of Education further clearly stated the basic policy and management mechanism of pre-schooling education in China. In March 2015, the State Council’s “Government Work Report” descended “Internet+” concept to be a national strategy. In September 2015, the policies issued by Ministry of Education pointed out the necessity of speeding up educational informatization and encourages governmental guidance and active participation of social capital.

At the meanwhile, some policies that encourage private education are also issued frequently. In particular, the new “Education Promotion Law” stated in November 2016 proposed the establishment of profit-oriented private schools. It further eliminated some institutional barriers, stimulated the prosperity of private schools, especially profit-based ones, and caused a large number of private schools to retreat from education market due to being acquired and combined. Hence, two occasions will appear, respectively withdrawal of private education due to “crisis” and because of “business opportunity”.

4. Suggestions on Improving Domestic Private Schools’ Withdrawal Mechanism

4.1 Non-profit-oriented private schools’ withdrawal mechanism

For non-profit-oriented private schools’ withdrawal mechanism the author thinks that the following aspects are the main focuses:

(1) Construction of risk warning indication system in private schools, i.e., design risk warning indicator system in private schools and establish risk warning mechanism by controlling financial risks in Taiwan private schools, setting up warning indicators and analyzing the re-appearance and re-adjustment system in Japanese private schools.

(2) Analyze private schools’ property withdrawal. In terms of the property problems involved in private schools’ withdrawal, such as demarcation, circulation, protection and allocation (mainly the allocation of residual property) of property and so on.

(3) Study the practical path of private schools’ withdrawal. Focus on the diverse paths of non-profit-oriented schools’ withdrawal, such as transformation, combination, re-combination, dissolution, termination and so on by analyzing the examples of Japanese and Taiwan’s private schools’ transformation and withdrawal from the market, based on the actual situation in our country, and delve into the property liquidation system, re-combination and re-appearance system that may be associated.

(4) Protect relevant stakeholders’ rights in private schools’ withdrawal. Borrow references from relevant regulations on protecting teachers’ and students’ rights in American, Japanese and Taiwan’s private schools’ withdrawal, focus on exploring into the protection of teachers’, students’ and creditors’ interests involved in private schools’ withdrawal.

4.2 Profit-oriented private schools’ withdrawal mechanism

For profit-oriented private schools’ withdrawal mechanism, the author holds the idea that the following can be concentrated on based on referring to “Company Law” and “Bankruptcy Law”:

(1) Construct property circulation mechanism based on efficiency. With efficiency as the basic value, taking profit-oriented educational organizations’ re-combination and acquisition as example, investigate into profit-oriented private school’s property circulation mechanism, including the
principle of property circulation, destination of property circulation, establishment of property circulation market, information disclosure, securitization of education assets, etc.

(2) Construct the third Party’s assessment mechanism based on justice. At present, non-profit-oriented private education market is still at the preliminary stage. The industry is characterized with high dispersion, lack of criteria, inadequate supervision and other problems. With justice as the basic value, borrowing references from Taiwan’s private schools’ assessment system, focus on how profit-oriented private schools introduce the third Party’s assessment mechanism and retreat from the market in a standardized way.

(3) Construct withdrawal supervision mechanism based on order. With order as the basic value, pertinent to the disorder that may be caused by profit-oriented schools’ withdrawal after the overall implementation of classified management system; it focus on how government should enhance withdrawal supervision.

5. Conclusion

In China the newly revised and drafted “Non-Governmental Education Promotion Law” establishes the basic framework of profit-oriented and non-profit-oriented private schools. However, the new law does not make substantial changes of private schools’ withdrawal problems. We should provide a broad explanation of private schools’ withdrawal mechanism. Under the background of classified management, private schools’ reshuffling, transformation and withdrawal appear as the new normal state of private educational development. Thus, there is a need to reasonably design corresponding withdrawal mechanism based on combining different characteristics of profit-oriented and non-profit-oriented private schools.

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7. References


