



Vietnam – investing in the education sector

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BACKGROUND

Private schools have become an increasingly attractive business in Vietnam, as the large number of students from the growing middle class fuels demand for quality education, while existing public schools struggle to keep up.

In recent years, the sector has witnessed several high-profile transactions, such as Abraaj Group's investment in Vietnam-US Society English International; and Mekong Capital's sale of its stake in Vietnam Australian International School to TPG, and its investment in YOLA.

Set out below is, first, the general legal framework for investment in the education sector; and, second, the regulatory steps that investors must take when investing in an education institution in Vietnam.

Requirements applicable to FOEIs

Overview of requirements

Education is a highly regulated sector in Vietnam. While there is no foreign ownership limit and foreign investors can own up to 100 per cent of an education institution, foreign-owned education institutions (**FOEIs**) are subject to various stringent operational requirements, currently set out under Decree No. 86/2018/ND-CP regulating foreign cooperation and investment in the education sector (**Decree 86**). Decree 86 replaced the previous Decree No. 73/2012/ND-CP (**Decree 73**) on this subject. Although the requirements under Decree 86 have been significantly relaxed compared with Decree 73, they remain major hurdles for investors, in addition to the unclear and time-consuming licensing procedures.

This brochure sets out the strict requirements under Decree 86 (with references to the prior requirements under Decree 73). These should apply to any new institution established under Decree 73 or Decree 86. However, for older educational institutions established before the introduction of Decree 73, it will be necessary to review the specific licences and approvals granted, to determine whether such requirements are applicable to the relevant institution (eg restrictions on the number of Vietnamese students enrolled).

What is an FOEI?

An FOEI is defined as an education institution invested in by a *'foreign-invested economic organisation'*. Under the Law on Investment, a *'foreign-invested economic organisation'* is an economic organisation that:

- (a) has more than 51 per cent of its charter capital owned by foreign (ie non-Vietnamese) investors;
- (b) has more than 51 per cent of its charter capital owned by entities described in (a); or
- (c) has more than 51 per cent of its charter capital owned together by foreign investors and entities described in (a).

Accordingly, the management of an FOEI must be conducted via a holding company, and whether this holding company is deemed a *'foreign-invested economic organisation'* will also affect the status of the education institution as an FOEI. If an education institution is an FOEI, it will be subject to various requirements, as discussed below. Each investment would need to be assessed to determine whether it results in the institution being classified in an FOEI, and it may be possible to meet an investor's commercial goals while maintaining a local status for the institution, depending on the exact structure adopted.

Permitted curriculum

FOEIs are permitted to provide:

- domestic educational programs as prescribed by the laws of Vietnam;
- foreign preschool and general educational programs at preschool, primary, junior high and senior high school levels;
- foreign short-term training/fostering programs; and
- foreign training programs at undergraduate, master and doctorate levels within the framework of training twinning with foreign parties.

FOEIs are also required to provide compulsory Vietnamese educational and training content (to be detailed by the Minister of Education and Training) to Vietnamese students attending FOEIs.

A significant change introduced by Decree 86 is the removal of a previous caveat in the definition of FOEIs that limits them to providing foreign education programs. This definition seemed to suggest that they cannot provide a standard Vietnamese 12-year education (K-12) program, except for subjects compulsory for Vietnamese students, such as Vietnamese language or history.

By removing the reference to *'foreign education programs'* in the definition of FOEIs and setting out clear provisions on the permitted curriculum of FOEIs, as mentioned above, Decree 86 appears to clarify that FOEIs may offer the standard Vietnamese K-12 program without any limitation.

Enrolment of Vietnamese students

Vietnamese students admitted to a foreign education program at an FOEI must make up less than 50 per cent of the total number of students studying that program at the FOEI. However, it remains unclear how this cap is to be allocated among different education levels of a multi-level FOEI.

Given that FOEIs are permitted to provide Vietnamese K-12 programs, there seems to be no limit on the number of Vietnamese students to be admitted to such programs of an FOEI.

Notably, these restrictions are materially looser than those provided under Decree 73, according to which:

- at preschool level, Vietnamese students under five years of age are not permitted to attend FOEIs; and
- the maximum ratio of Vietnamese students to be admitted to an FOEI at primary and junior high school levels and at senior high school level is 10 per cent and 20 per cent of the total number of students, respectively.

Minimum investment capital

Foreign investors must prove they have the minimum investment capital required by law in order to establish an FOEI. The minimum investment capital is determined as follows:

- preschool level – VND30 million (c. US\$1290) per student;
- general education levels – VND50 million (c. US\$2145) per student but not lower than VND50 billion (c. US\$2.15 million) for the entire FOEI;
- university level – VND1 trillion (c. US\$42.9 million) for the entire FOEI.

It is not clear under Decree 86 whether these minimum investment capital requirements apply to newly established FOEIs only or also to FOEIs converted from existing Vietnamese education institutions after investment by a foreigner. From our reading of Decree 86, it seems that these minimum investment capital requirements apply to newly established FOEIs only.

Facilities and teaching staff

FOEIs are subject to various requirements relating to facilities and teaching staff, such as the ratio of teachers per class and per student, minimum area (calculated based on the area per student), required specialised classrooms, playgrounds and canteens.

In some instances, these requirements are greater than those applicable to Vietnamese-owned education institutions. It is not entirely clear whether these requirements apply to newly established FOEIs or also extend to FOEIs converted from existing local education institutions. Under Decree 73, facilities/teaching staff requirements were among the conditions to establish and put an FOEI into operation. Therefore, under a technical reading of the law, it might be argued that these requirements apply to newly established FOEIs only and do not extend to FOEIs converted from existing local educations. However, under Decree 86, these are provided as requirements to ensure quality of FOEIs in general. This seems to be an intentional amendment, and it is likely that the authorities would require existing education institutions be subject to those requirements once becoming FOEIs. Therefore, foreign investors should consider the costs required to upgrade an education institution after it becomes an FOEI.

Procedures for foreign investment in education sector

Foreign investors can invest in an FOEI either by establishing a new FOEI or investing in an existing education institution.

Establishment of a new FOEI

The general licensing process for setting up an FOEI comprises the following main steps:

- **Registration of investment project:** The investor(s) applies to the local Department of Planning and Investment (**DPI**) to obtain an investment registration certificate (**IRC**) to register its investment project for establishment of the FOEI.
- **Establishment of the company holding the FOEI:** The investors apply to the DPI for an enterprise registration certificate to establish the holding company that will operate the FOEI.
- **Establishment of the FOEI:** The holding company applies to the Prime Minister (for FOEIs at university level) or the provincial Chairman of the People's Committee (for FOEIs at preschool, primary, junior high and senior high school levels) to obtain a decision permitting establishment of the FOEI (**establishment licence**).
- **Registration of operation of the FOEI:** Once satisfying all facilities, curriculum and teaching staff requirements, the FOEI may apply to the Minister of Education and Training (for FOEIs at university level) or the Head of Department of Education and Training (for FOEIs at preschool, primary, junior high and senior high school levels) to obtain a decision permitting the operation of the FOEI (**operating licence**).

Investing in an existing education institution

Decree 86, for the first time, provides a basic framework for M&A activities in the education sector. Accordingly, foreign investors may invest by contributing capital to, or purchasing shares or a capital contribution in, a Vietnamese educational institution or an existing foreign-invested company holding an FOEI. Decree 86 does not clearly set out the applicable procedures but generally provides that they will follow the Law on Investment.

Accordingly, we expect that the following process would apply, though various issues have not been clearly clarified under current regulations, and would, in practice, be subject to further guidance and confirmation from the relevant authorities:

- **M&A approval:** As the first step, the foreign investor would need to apply to the local DPI to obtain an approval for its proposed investment. As education is a conditional sector, it is likely that such so-called 'M&A approval' would be subject to the opinion of the Ministry of Education and Training, and various relevant ministries.
- **Corporate information registration:** Where there is an existing operating company, it would need to register or notify the local DPI about the foreign investor as the new investor in the company. However, in the case of acquisition of a Vietnamese education institution that is not operated by a holding company, it is not clear whether the foreign investor would be required to set up an operating holding company to hold the relevant education institution.
- **Amendment to establishment licence and operation licence:** The FOEI would need to apply for amendments to the establishment licence and operating licence if the acquisition results in any changes in details set out therein (eg name of the FOEI, education level etc.). However, if there is no such change, it is not clear whether the acquisition by the foreign investor must be notified to the authorities that have issued the relevant establishment licence and operating licence.
- **Amendment to existing IRC:** Where there is an existing IRC (ie investment in an existing FOEI), we expect that amending the IRC to record the foreign investor as a new investor would be required. However, procedures for amendments in such cases are not clearly set out under the law.
- In the process described, it remains unclear at which stage the capital, facilities and teaching staff requirements as discussed above (if applicable) would need to be satisfied. Furthermore, the investment process may take a considerable amount of time, and may be heavily subject to the interpretation and guidance of the authorities on a case-by-case basis.

IN CONCLUSION

While Decree 86 aims to create a clearer and more friendly foreign investment regime for the education sector, the process is still not entirely clear or straightforward. In practice, foreign investors will probably need to obtain further guidance from, and consult with, the relevant authorities on a case-by-case basis before any investment in the education space.

Please do not hesitate to contact us if you would like further information on the educational businesses and investing in the education sector.

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