



OVERVIEW OF THE LEGAL FRAMEWORK AFFECTING THE PROVISION OF FOREIGN EDUCATION IN VIETNAM

Vietnam's legal framework differs substantially from that of Australia. This overview provides information on laws and associated regulations relevant to the provision of foreign education in Vietnam.

Disclaimer

This overview provides general information on the laws that affect the provision of foreign education in Vietnam. Care should be taken when interpreting Vietnam's legal framework, as:

- it is undergoing continual revision and reform;
- the structure and expression of Vietnamese legal instruments can be quite general or extremely precise;
- English translations of Vietnamese legal instruments are often contested and seldom definitive; and
- local interpretation and enforcement of the legal framework can vary.

The Australian Government assumes no responsibility for any reliance on information contained in this overview. In addition to doing their own market research and due diligence, foreign education providers seeking to operate in Vietnam should seek independent professional legal and other advice.

I Vietnam's legal framework ¹

The legal framework of the Socialist Republic of Vietnam is significantly different to that of Australia. While the National Assembly is the highest authority under the Constitution, Government Ministries are responsible for drafting and implementing legislation. These Ministries can effect changes in the legal framework quickly and with little notice. Consequently, the views of relevant Ministries hold significant weight in the Vietnamese legal framework.

The main types of legal instrument in Vietnam are:

- (i) **Laws** – drafted by the relevant Ministry and approved by the National Assembly at one of its twice-yearly sittings, after being first approved by the Government;
- (ii) **Decrees** – a statement of significant legal importance issued by the Government, without reference to the National Assembly, establishing detailed rules beneath a Law; and
- (iii) **Circulars** and **Decisions** – issued by the Ministry responsible for drafting the relevant Law and Decree, providing policy guidance for how the Law and Decree will be implemented.

Each of these legal instruments has the force of law and must be complied with.

¹ See <http://www.nyulawglobal.org/Globalex/Vietnam.htm>

II Governance of education and training in Vietnam

The governance arrangements for education in Vietnam are outlined at Attachment A.

III The Vietnamese Government's education goals

In 2005 and 2006, the Government of Vietnam announced a series of ambitious goals for the growth of Vietnamese education system to 2020². The Government has since undertaken reform of the education legal framework in pursuit of these goals. Nonetheless significant gaps in the regulatory framework remain and require further reform to meet the Government's stated targets.

IV The legal framework relating to education and training

Law on Education 2005 and Law on Vocational Training 2006

The **Law on Education 2005** (38/2005/QH11) describes the basic structure of the education system in Vietnam, as well as the qualifications a student must possess to enter each level. It establishes the centrality of MOET's overall role in the education system. The Law mandates and describes a quality assurance scheme. Religious instruction is expressly forbidden.

The *Education Law* is supplemented by the **Law on Vocational Training** (76/2006/QH11), concerning the operation, promotion and quality of the Vocational Education and Training (VET) sector in Vietnam. It codifies the levels of VET qualifications within the Vietnamese system (elementary, intermediate and diploma), and the objectives, duration and syllabus applicable to each level.

Both the *Law on Education* and the *Law on Vocational Training* encourage the establishment of foreign-invested education institutions. Foreign investors in education can be issued investment certificates (which register and authorise their investments) upon the submission of proof of adequate quality teachers, administrators, equipment, property and charter capital.

Law on Higher Education 2012

The *Law on Higher Education 2012* (08/2012/QH13) passed in June 2012, will take effect on 1st January 2013. Higher education institutions, relevant ministries and agencies must comply with this Law, the *Law on Education 2005* and other relevant law provisions.

The Law aims to support the sustainable development and reform of HE in Vietnam. It covers issues not previously included in legislation e.g. institutional autonomy and accountability; quality assurance; universities' roles in research; science and technology; private universities; national and regional universities; and university classification and ranking.

The Law lists forms of international education cooperation for higher education institutions, for example:

- Twinning programs
- Representative offices of foreign HEIs in Vietnam
- Research cooperation and technology transfer activities including technical conferences and workshops
- Consulting, funding, investing in infrastructure and facility development
- Exchange of teachers, researchers, students and educational administrators
- Library linkage, information exchange, curriculum provision, exchange of materials, publications, and training and research findings
- Participation in international and regional networks and organisations in education and science
- Representative offices of Vietnamese HEIs overseas

² See *Higher Education Reform Agenda* (Resolution 14/2005/NQ-CP) dated 2 November 2005, and *Socio-Economic Development Plan 2006-2010* (Resolution No. 25/2006/NQ-CP) dated 9 October 2006.

Twinning programs

The Law covers, for the first time, twinning programs (though such programmes have been in place in Vietnam for a decade). Article 45 of the Law defines twinning programs, including requirements for curriculum, teaching staff, facility, legal status, quality assurance and accreditation, and appropriate licences of academic programs.

Under the Law, the Minister for Education and Training is responsible for approving twinning programs at diploma, bachelor, master and PhD levels. Presidents of two national universities and three regional universities are entitled to approve twinning programs at diploma, bachelor, master and PhD levels delivered by and at those universities.

The Law regulates the responsibilities of partners in twinning programs with the intention of protecting the rights of students and employees.

Curriculum

The Law also stipulates teaching by foreign - invested HEIs of some compulsory units designed by Vietnam Ministry of Education and Training. The precise units are not specified in the Law.

Compliance

In 2011, the Vietnamese government began checking compliance against regulations for in-country delivery of foreign programs. Some international partners were found to have entered into partnerships exceeding the licences of local providers. In addition to checking compliance with licences, MOET has plans to assess the quality of courses delivered through foreign partnerships.

Decrees relevant to the provision of education

Vietnam's legal framework contains components that limit the flexibility of foreign-invested institutions. The following information outlines some areas of law relevant to foreign education providers.

Decree 18/2001/ND-CP established rules for foreign investment in non-profit education. Although now supposedly superseded by the *Law on Investment 2005*, this decree nevertheless authorises foreign investors to establish representative offices, joint ventures and wholly-owned education non-profit institutions in Vietnam. This authority, however, came with strict rules on enrolments, tuition fees, course content and course delivery that have been only slightly modified by government Decrees in subsequent years.

Decree 06/2000/ND-CP regulates the Foreign Co-operation and Investment in the Fields of Medical Examination and Treatment, Education and Training, and Scientific Research. While the Decree 18 looks at non-profit education investment, the Decree 06 looks at for-profit ones;

Circular 14/2005/TTLT-BGD&DT-BKH&DT of the Ministry of Education and Training (MOET) and Ministry of Planning and Investment (MPI) providing details to implement Decree 06 if foreign investment involved in other sectors than vocational training;

Circular 20-2004-TTLT-BLDTBXH-BKH of the MOLISA and MPI dated 3 December 2004 providing details to implement Decree 06 if foreign investment involved in vocational training sector;

Decree 06, Circular 14 and Circular 20 cover legislative requirements relating to investment in the education sector; conformity with the education master plan; qualifications of teaching staff; infrastructure and facilities; curricula content; financial capability. These legal documents also outline the licensing, approval/accreditation and registration processes such as minimum investment capital rates, licensing, business registration process and registration to come into operation.

With the new investment law, replacements of Decree 06, Circular 14 and Circular 20 are being developed accordingly. While waiting for the replacements to be introduced, decree 06 and circulars

14 and 20 are referred to by local authorities when foreign investment education and training projects are considered.

The **Regulation on Vocational Training Registration**, issued in 2008, details requirements for the registration of VET courses by approved institutions. The Regulation is highly prescriptive and sets out requirements specifically for providers of VET, including:

- Mandatory class size limits for lectures and practical tutorials;
- Mandatory standards for the minimum square footage per student in training rooms;
- The minimum ratio of full-time staff to part-time staff; and
- Mandatory re-registration of VET institutions in an expanded range of circumstances.

Decree 139/2006/ND-CP reiterates the Government's support for foreign investment in VET and expands on the Law on Vocational Training's establishment of three types of VET qualification:

- The objectives of the three different types of VET course qualifications (elementary, intermediate and diplomas);
- Which institutions may offer them and under what circumstances; and
- Which Ministries regulate course content and quality.

Decree **70/2009/ND-CPA** codifies the responsibilities of various government authorities (including Ministries, provincial Departments and local People's Committees) in the VET sector. MOLISA and GDVT are central to VET operation and oversight.

Circular 27/2010/TTLT-BGDDT-BLDTBXH outlines a **Memorandum of Understanding** between Vietnamese Government Departments that allows graduates from VET institutions with any of the three defined qualifications who pass a "connection training entrance exam" to articulate to a related university course. In practice, articulation for these groups of students may be restricted by the limited number of university places available.

Decree 31/2011/ND-CP expands the basic items that the Law on Education mandates any provider must have at their institution, e.g. an approved charter and a safe built environment. It also expands the cohort of persons eligible for Vietnamese Government subsidies and assistance with fees to any graduates of secondary VET institutions.

V General laws affecting foreign investment in education

As in any country, foreign investment in education is governed by a range of laws, including those relating more generally to business investment and to workplace relations.

Law on Investment and Law on Enterprises

Vietnam's investment framework rests on the **Law on Investment** and the **Law on Enterprises** (both updated in 2006).

The *Law on Investment* states that foreign investment in the education sector attracts both stricter conditions (including requiring foreign-investor-specific approvals for investment) and higher investment incentives (including tax breaks, land grants and preferential accounting treatment) than other types of foreign investment.

The *Law on Enterprises* sets out the enterprise structures relevant to foreign providers of education in Vietnam:

- **100% Foreign Owned Institutions (100%FOI)**
RMIT International University Vietnam was the first 100% FOI in Vietnam and there are few that have followed, apart from some English and IT teaching centres.

- **Joint ventures (JV)**
A JV creates a new entity with at least one foreign and one Vietnamese investor. The Vietnamese investor may be a private individual, registered company or government authority. By way of example, Hanoi International School is a JV between the Centre for Educational Technology under MOET and a foreign partner.
- **Business cooperation contracts (BCC)**
This is the most frequent form of foreign investment in education in Vietnam. Foreign providers partner with Vietnamese investors without the creation of a new entity (such as a JV or 100%FOI). Under this model, foreign providers and local education institutions may offer training courses, conduct twinning programs, and/or offer student exchange and internship programs. One example of a BCC is the English Language Institute (ELI) established under the BCC between the University of Danang and the University of Queensland.
- **Establishing a representative office**
Some foreign institutions choose to set up a representative office in Vietnam in order to investigate the market in depth. There are restrictions on the activities a representative office can undertake in Vietnam and establishment can be a drawn-out process, but it can allow a prospective investor to build local relationships prior to committing significant capital.

All foreign-invested projects must obtain an investment licence from provincial authorities, often a time-consuming and uncertain process. However, once registered, the interests of foreign investors may, in theory, be guaranteed by the Government should a change in laws or policies adversely affect their financial interests.

The Labour Code and related instruments

Vietnam's **Labour Code** and associated instruments provide strong protections for employees, particularly in relation to mandatory leave, allowances and termination. The labour law framework also makes very specific provision for probation, insurance contributions, personal taxation, work hours, minimum wages, termination, severance and the employment of foreign workers.

The Labour Code and subsequent Decrees (including Decree **98/2009/ND-CP**) subject foreign companies and foreign-invested companies to a more exacting set of requirements than locally-owned companies, including the payment of higher minimum wages.

The framework governing the employment of foreign nationals was further tightened in August 2011 with Decree 46 (**Decree 46/2011/NP-CD**) which introduced provisions intended to encourage the employment of Vietnamese nationals over foreign workers. This Decree covers almost all categories of foreign workers, including teachers, lecturers and professional staff.

VI Further information

Vietnam's legal framework can be difficult to navigate, and seeking local advice is critical. Before investing in international education in Vietnam, education providers should consult widely and seek professional legal advice.

Vietnam Ministry of Education and Training – <http://en.moet.gov.vn>

Vietnam Ministry of Labour, Invalids and Social Affairs – <http://english.molisa.gov.vn>

Vietnam Chamber of Commerce and Industry – <http://vccinews.com>

Vietnam Trade Promotion Agency – www.vietrade.gov.vn

Vietnam Institute of Educational Sciences – www.niesac.edu.vn

Vietlaw – www.vietlaw.gov.vn

Governance of education and training in Vietnam

The administration of education in Vietnam is undertaken at three levels:

- **Ministry of Education and Training (MOET)** – overall responsibility for the education policy and the operation of the national system , including
 - control of student admission regulations;
 - administration of the national university entrance examination;
 - approval of curricula and training program content;
 - issue of certificates and diplomas; and
 - regulation of all major decisions about state income expenditure, including the establishment of new institutions.
 - Oversight of those universities and centrally controlled colleges which report directly to MOET
- **Provincial Departments of Education and Training** - responsible for the oversight of District Offices of Education and Training, upper secondary schools and vocational and technical colleges in each province or city. DOET offices report to the Ministry in Hanoi; and
- **District Offices of Education and Training** - govern primary and lower secondary schools in their district and report to the provincial Department. Four to six wards/communes form a district (*Huyện* in provinces and *Quận* in cities). Communes/wards (*Xã/Phường*) are the lowest administrative unit of Vietnam.

Whilst MOET as the largest role in education in Vietnam, it does not exercise exclusive control . For example, more than 85% of Vietnam’s 376 universities and colleges are governed by local People’s Committees, private groups and Ministries other than MOET³.

Education law also involves the **Ministry of Labour, Invalids and Social Affairs (MOLISA)** in vocational education and training (VET), through the **General Department of Vocational Training (GDVT)**.

Through GDVT, MOLISA is responsible for:

- Planning, setting policies and developing standards for VET;
- Coordinating and overseeing the implementation of VET policy across the relevant Ministries and local authorities;
- Accrediting and withdraw accreditation from training colleges;
- Directing and organising, but not necessarily funding, technological research in VET institutions;
- Funding equipment and materials for VET training programs (although not necessarily the exclusive funding of ongoing general expenses and the purchase of other assets); and
- Ensuring the adequate “political, ideological, moral, cultural and aesthetical education of vocational trainees”.

³ Gai Sheridan, “Vietnam Higher Education Sector Analysis”, ADB project ADB TA 7105 VIE, June 2010 (<http://www.adb.org/Documents/Reports/Consultant/VIE/42079/42079-01-vie-tacr-03.pdf>).