



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

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.

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

The Government of Vietnam announced a series of ambitious goals for the growth of the Vietnamese education system to 2020, including the Foreign Languages Project, VET reform and development, and training of 23,000 lecturers at PhD level by 2020. The Government has since undertaken reform of the

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

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 the Ministry of Education and Training (MOET) 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, took 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 higher education 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 higher education institutions (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, and
- Representative offices of Vietnamese HEIs overseas.

Twining 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, MOET 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 MOET. The precise units are not specified in the law.

Compliance

The Vietnamese government checks compliance against regulations for in-country delivery of foreign programs. Some international partners have been 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 and has recently set up two external assessment centres, one at VNU Hanoi and one at VNU HCMC.

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 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.

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. The Ministry of Labour, Invalid and Social Affairs (MOLISA) and General Department of Vocational Training (GDVT) are central to VET operation and oversight.

Decree 73/2012ND-CP, under *Investment Law* (2005), took effect on 15th November 2012. Decree 73 replaces Decree 06, and applies to foreign investment and cooperation projects in education and VET in Vietnam including foreign-invested tertiary institutions, schools and kindergartens, twinning programs, and representative offices of foreign education institutions. Decree 73 covers many aspects relating to investment in education, including.

Authority to approve establishment of:

- Twinning programs
 - o The *Minister of Education and Training* shall approve twinning programs at diploma, bachelor, master and doctorate levels²;
NB: *Presidents* of Vietnam National University, University of Thai Nguyen, University of Hue, and University of Da Nang may approve twinning programs at diploma, bachelor, master and doctorate levels at their institutions.
 - o *Directors of Departments of Education and Training (DOET)* shall approve twinning programs at intermediate level;
 - o *The Minister of Labour, Invalids and Social Affairs* shall approve VET twinning programs at diploma level;
 - o *Directors of Departments of Labour, Invalids and Social Affairs (DOLISA)* shall approve VET twinning programs at intermediate level.

- Foreign-invested education institutions
 - o The *Prime Minister* shall approve establishment of universities;

² Levels of education in Vietnam and the authorising ministries are outlined in the "Overview of the level framework affecting the provision of foreign education in Vietnam", August 2012.

- The *Minister of Education and Training* shall approve establishment of
 - Colleges (under MOET authority); and
 - pre-schools, primary schools, middle schools and high schools, when the establishment is requested by a foreign diplomatic mission or inter-government international organization;
 - The *Minister of Labour, Invalids and Social Affairs* shall approve establishment of VET colleges (under MOLISA authority);
 - *Provincial People's Committees* shall approve establishment of
 - short-term training institutions;
 - high schools;
 - multi-level education institutions which include high schools, (except for the compulsory education institutions prescribed in Clause 2 of *Article 39* of the decree); and
 - VET institutions (under MOET authority).
 - *District-level People's Committees* shall approve establishment of
 - pre-school education institutions;
 - primary schools;
 - middle schools; and
 - multi-level education institutions (which do not include high schools).
- Representative offices
 - The *Minister of Education and Training* shall approve establishment of representative offices of foreign education institutions.
 - The *Minister of Labour, Invalids and Social Affairs* shall approve establishment of representative offices of foreign education institutions engaged in VET.

Enrolment of Vietnamese students into foreign-invested education institutions

- Tertiary
 - the Vietnamese government puts no limitation on the percentage of Vietnamese students at foreign-invested universities and colleges.
- Schools
 - primary and middle schools: 10 per cent limit on Vietnamese pupils;
 - high school: 20 per cent limit on Vietnamese pupils.
- Pre-school
 - Vietnamese children under five years of age are not allowed to enrol in foreign education programs.

Teaching staff

- *Decree 73* outlines requirements for teaching staff in terms of qualifications, teaching experience, and the teacher/ student ratio for each level of training, for example:
 - Foreign teachers must have at least five years of experience to be allowed to teach twinning programs at Vietnamese institutions or at foreign-invested schools, colleges and universities.
 - For tertiary education institutions, 60% of course modules must be delivered by permanent teachers, and 80% of teaching staff must hold postgraduate degrees.

Quality assurance

- Twinning programs:
 - Either the foreign partner institution or the twinning program must be accredited in their home country.
- Foreign-invested education institutions:
 - Foreign-invested education institutions are entitled to issue or request the issuance of:
 - qualifications of the Vietnamese national education system in accordance with Vietnamese law;

- A qualification issued by a foreign education institution must comply with that country's law and be accredited by relevant Vietnamese agencies (to be determined by MOET).
- o Foreign-invested education institutions must register for nationwide accreditation of their qualifications with MOET or MOLISA.

Circular 23/2013/TT-BLDTBXH by MOLISA dated 16 October 2013 provides details related to implementing Decree 73 if foreign investment involved is in the VET sector.

Circular 55/2012/TT-BGDDT by MOET dated 25 December 2012 provides regulations on articulation for graduates from professional, technical and vocational schools and colleges to a related higher qualification levels such as from diploma to bachelor. This legislation opens the door for graduates from VET institutions under MOLISA to HEIs under MOET. There was no pathway between the two systems before 2010.

Circular **29/2011/TT-BLDTBXH** on **Vocational Training Registration**, issued in 2011, details requirements for the registration of VET courses by approved institutions. The Circular 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.

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 new Labour Code was passed by the National Assembly on 18 June 2012 and formally entered into force on 1 May 2013.

Decree 102/2013/ND-CP issued on 5 September 2013 to implement provisions of the new Labour Code of Vietnam. Decree 102 entered into force on 1 November 2013 and replaces Decree 34/2008/ND-CP dated 25 March 2008 (Decree 34) and its amending Decree 46/2011/ND-CP dated 17 June 2011 (Decree 46) on 'recruitment and management of foreign employees in Vietnam'. This Decree covers almost all categories of foreign workers, including teachers, lecturers and professional staff. Decree 102 regulates issues including requirements on registration/ approval of foreign employees' recruitment demand, work permit issuance including cases of permit exemption, work permit re-issuance, work permit revocation, and deportation of foreign nationals working illegally in Vietnam.

Decree 102 includes some positive changes including removal of the requirement to advertise for foreign workers, removal of apprenticeship contracts as part of the work permit renewal process, and provision of additional classes of permit exemptions for diplomatic mission-owned educational institutions. However the decree also includes a number of negative changes, the most concerning being a requirement for employers to seek approval from Vietnamese authorities when recruiting foreign labour.

According to Article 4 of the Resolution 47/NQ-CP of the Government dated July 8, 2014 following the Government Meeting in June 2014 ("Resolution 47"), the conditions of work permit issuance for foreign employees have been relaxed to **either** 5 year experience **or** an equivalent degree (previously both were required). The Government has also agreed to adjust conditions for foreign workers working in Vietnam who fall under one of the cases below:

- a) Foreigners who are experts, technicians who satisfy requirements for professional training qualification or have acquired at least 5 year working experience in the field that they are expecting to work in Vietnam;
- b) Foreigners who have diploma certificate or equivalent and above and who have specialised training suitable to their majors at foreign language training centres, and preschools;
- c) Foreigners who have bachelor degree or equivalent and above and who have specialised training suitable to their majors at general educational institutions.

The resolution 47 also requests MOLISA and MOET in cooperation with the Ministry of Justice and the Government Office to propose amendments to Decree No. 102/2013/ND-CP dated September 5th, 2013 of the Government detailing implementation of a number of Articles of Labor Code in regard to foreign employees working in Vietnam and Decree No. 73/2012/ND-CP dated September 26, 2012 of

the Government providing guidelines for the foreign cooperation and investment in education sector in accordance with shortened proceedings for the Prime Minister's review and decision.

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 has 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>),