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Education Update

May 2005

This Education Update discusses the long-awaited guidelines on foreign investment in Vietnam's education sector, recently issued under Circular 14-2005-TTLT-BGD&DT-BKH&DT of the Ministry of Education and Training and Ministry of Planning and Investment dated 14 April 2005.

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Introduction

Foreign investment in for-profit education projects in Vietnam is regulated by the following principal legislation:

- > Law on Foreign Investment in Vietnam dated 12 November 1996 (as amended 9 June 2000) (**LFI**)
- > Decree 06-2000-ND-CP of the Government dated 6 March 2000 on Foreign Co-operation and Investment in the Fields of Medical Examination and Treatment, Education and Training, and Scientific Research (**Decree 06**)
- > Circular 14-2005-TTLLT-BGD&DT-BKH&DT of the Ministry of Education and Training (**MoET**) and Ministry of Planning and Investment (**MPI**) dated 14 April 2005 Providing Guidelines on Decree 06 (**Circular 14**).

All investment in the education sector - foreign *and* domestic, for-profit *and* not-for-profit - is subject to the Law on Education dated 2 December 1998 (which is currently being amended by the National Assembly).

Since Decree 06 first opened the Vietnamese education sector to foreign investment, investors have been waiting for detailed guidelines on what areas of the education sector they can have market access to, what forms of investment are available, and what restrictions apply to shape the education business they want to operate. Now, five years later, Circular 14 has finally arrived.

Of interest, the immediate issuance of Circular 14 by the MoET was instructed by the Prime Minister in his Directive 13-2005-CT-TTg dated 8 April 2005 on a Number of Solutions Aimed At Creating New Changes in the Work of Attracting Foreign Direct Investment to Vietnam. The Prime Minister also instructed the MoET to submit to him in the second quarter of 2005 a master plan for a network of universities to be used as the basis for attracting foreign direct investment consistent with the schedule for implementing international undertakings (see box at right).

Of note, Official Letter 180-VPCP-QHQT of the Office of Government dated 10 January 2003 on Consideration of Foreign Invested Projects in the Field of Education and Training had suspended the consideration and licensing of new foreign invested projects in the field of university education until issuance of MoET guidelines for implementation of Decree 06. Any applications for investment projects in the field of university education which were already under consideration at the time of Official Letter 180 were permitted to continue to be evaluated, but on the basis of the following principles: balancing regional master planning; priority to high quality manpower training, the scientific and technical branches, cutting edge technology, and the selection of entities with adequate capability and experience in university training and with an international reputation, ensuring a stable team of lecturers and a quality training program, with the necessary material facilities. Now that guidelines have been issued under Circular 14, the MoET has confirmed that consideration and licensing of new foreign invested projects in the field of university education will recommence.

The MoET's October 2004 draft of the master plan for the network of universities and colleges in Vietnam to year 2010 provided as follows:

- The current number of 244 universities and colleges should be increased to 354 by year 2010, with 40% to be non-public (current ratio: 11%).
- In 2004 and 2005, priority will be given to establishment of non-public universities and colleges schools and to foreign educational establishments of high repute and high quality to open cutting-edge universities and colleges in Vietnam.
- In the period 2006-2010, focus will be on developing technological and technical training, extending network of community schools, and continuing to open universities and colleges in the science and technology sector to cater for the manpower needed for the country's modernization and industrialization.
- The MoET will limit the number of new public universities which can be opened in Hanoi and HCMC, aimed at encouraging pilot schemes to open 100% foreign owned private universities. The MoET will open a number of non-public universities in neighbouring provinces to take the pressure off the two big cities.
- New universities will be set up in the following areas: Bac Lieu and Ca Mau to supply trained manpower for the Mekong Delta area; and in Nam Dinh, Hai Phong and Quang Ninh as high-level technical training centres to supply the north of Vietnam. In Khanh Hoa province (Central Vietnam, consideration is being given to the establishment of a new university. Investment will also be made in the following universities to make them technical training centres to supply their respective areas: Can Tho, Tay Nguyen, Hue, Da Nang, Vinh, Qui Nhon, Tay Bac and Thai Nguyen.

Foreign investment in not-for-profit education projects in Vietnam is regulated under Decree 18-2001-ND-CP of the Government dated 4 May 2001 issuing Regulations on Establishment and Operation of Foreign Cultural and Educational Establishments in Vietnam and implementing Circular 15-2003-TT-BGD-DT of the Ministry of Education and Training dated 31 March 2003. International co-operation in the education sector is regulated under Decree 165-2004-ND-CP of the Government dated 14 September 2004. This Update does not extend to a discussion of these areas of the education sector in Vietnam.

Market access

Under Decree 06 and Circular 14, for-profit foreign invested education projects may be licensed in the following areas of education and training:

- (a) Education at all levels (from nursery school through to university and postgraduate, and including short-term training) for foreigners currently living and working in Vietnam;
- (b) High school education (for students in grades 10 to 12) for foreigners and Vietnamese;
- (c) Specialized (not vocational) secondary schooling and short-term training (foreign language teaching and upgrading professional skills and qualifications) for foreigners and for Vietnamese;
- (d) Tertiary (college, university and postgraduate) education for Vietnamese and foreigners.

Under Decree 06, the areas of tertiary education under (d) are limited to technological science, technology, natural sciences, economic management science and languages. Under Circular 14, priority will be given to tertiary education establishments which provide the following faculties: bio-technology; IT; new materials technology; chemical technology; knitwear technology; machine manufacture and engineering; electrical engineering; electronic technology; power technology; computer technology; petrochemical technology; environmental studies; agricultural studies; veterinary science; civil and industrial construction; ship building and operation; land and water science; and industrial fine arts.

Under Circular 14, priority will be given to foreign invested education establishments which provide training to the diploma level in the following faculties: informatics (advanced skills, programmers and graphic designers); computer technology (technician level); electrical engineering (technician level); foreign Languages; business administration (basic and advanced); international accounting; auditing; office management (not including secretarial training); hotel management; marketing.

Under Circular 14, priority will be given to specialized secondary schooling in: informatics; computer technology; telecommunications technology; electrical, chemical or thermal engineering; metal materials processing; civil and industrial construction; knitting mills construction; leather footwear; veterinary science; fisheries; agriculture; food and beverage processing; agricultural products processing.

Commercial presence

Under Decree 06 and Circular 14, for-profit foreign invested education projects may take the following forms:

- > Joint venture enterprises (**JVEs**), business co-operation contracts (**BCCs**) and 100% foreign owned enterprises may be established to undertake (a), (c) and (d) above;
- > Pilot JVEs and BCCs may be established in Hanoi and HCMC to undertake (b).

Foreign educational establishments, other foreign economic organizations and individuals, and overseas Vietnamese may invest in foreign invested education projects. Vietnamese partners may be educational establishments within the Vietnamese national education system; professional units with the function of providing training; private enterprises, State owned enterprises, foreign invested enterprises, enterprises belonging to political organizations and socio-political organizations, and co-operatives.

Licensing

As stipulated in Decree 06 and Circular 14, licensing of foreign invested education projects is in accordance with the LFI regulations, which provide:

- > Projects at the pre-tertiary, college or university level are subject to Prime Ministerial approval, and
- > Projects in all other areas are subject to licensing by the MPI.

Provincial and municipal people's committees have no licensing authority with respect to foreign invested education projects.

All foreign investment license applications in the education sector are submitted to the MPI.

Circular 14 requires education projects to include the following items in the application file for investment licensing, in addition to the documents normally required for foreign investment projects (ie application, charter, feasibility study, legal status documents, financial status documents, etc.):

- Sample form of the degree/diploma which will be issued to students;
- List of equipment servicing lectures and study work;
- Teaching programs, materials and data which will be used;
- List of staff, teachers and lecturers, including guest lecturers (if any);
- Contract for lease of buildings, and land allocation documents (or land lease documents) from the competent authorities;
- Ground plan of the educational establishment.

The conditions for establishment and operation of foreign invested educational projects under Decree 06 and Circular 14 are as follows:

- > *Conformity with education master plan:* The educational project must accord with the strategy for the development of education and the master plan for the network of education and training establishments of Vietnam as approved by the authorized State body. Further, Circular 14 requires that there must be written approval for the project from the local people's committee of the province or city under central authority. If the project is for college or university level education which is not yet mentioned in the master plan, the MPI and the MoET will investigate and make a submission to the Prime Minister for his consideration and decision on a case-by-case basis.
- > *Qualified teaching staff:* The educational project must have qualified teaching staff as stipulated by the law of Vietnam. Circular 14 imposes specific requirements with respect to qualifications of staff and staff-to-student ratios, which vary depending on the level of education being offered.
- > *Infrastructure and facilities:* The educational project must have technical infrastructure, facilities and equipment commensurate with the scale and level of education and training. Circular 14 also provides in detail as follows:
 - A foreign invested college or university (including a branch of an overseas college or university) may only sub-lease physical facilities in order to conduct its activities for 5 years.
 - All foreign invested education establishments wishing to operate for more than 20 years must have written approval from the people's committee of the province or city under central authority to allocate or lease land to build the establishment; for the first 5 years, they may lease a building so as to be able to commence teaching and training but they must guarantee that investment in facilities will correctly accord with the schedule for the project.

- Any foreign invested educational establishment wishing to operate for 20 years or less is not required to construct its own building but must have an appropriate contract or agreement in principle for the stable lease of a school, classrooms, working areas and subsidiary areas for a minimum period of 5 years.
- > *Curricula content:* The educational project must have appropriate curricula and curricula content as stipulated by the Law on Education and other relevant provisions. Of note, Circular 14 prohibits foreign invested educational establishments from teaching religion. Circular 14 also imposes a number of specific requirements, including:
 - In the case of foreign invested colleges and universities, for the first 5 years, there must be an official written undertaking to give support from a foreign college or university which has been operating for at least 15 years ensuring supply of training programs and lecturers, until such establishment is itself able to ensure formulation of a training program and development of a staff of teachers. The MoET and the MPI will supervise the provision of this support.
 - Students who are Vietnamese citizens must, in addition to completing the particular training program of the foreign invested establishment, study and obtain a full diploma in Marxist-Lenin philosophy, Marxist-Lenin political economy, scientific socialism, history of the Communist Party of Vietnam, and ideology of Ho Chi Minh (as currently being taught in the Vietnamese national education system). Students who are Vietnamese citizens and studying at a foreign invested specialized secondary school must study and obtain a diploma in the subject of politics (as currently being taught in the Vietnamese national education system). Foreign invested high schools with Vietnamese students must, in addition to using the particular teaching programs which the investor designed as part of the project, teach the subjects of Vietnamese philology and history (as currently being taught in the Vietnamese national education system). Foreign invested educational establishments must liaise with an equivalent training establishment within the Vietnamese national education system in order to undertake these additional training activities.
- > *Financial capability:* Circular 14 requires that investors must have sufficient financial capability to implement the investment project (as certified in writing by the relevant body/bank and as evidenced in the audited financial statements for the two most recent years).
- > *Minimum investment capital rates:* Circular 14 sets the following minimum investment rates:
 - New foreign invested nursery school or high school projects - USD1,000 per student (excluding land use costs);
 - New foreign invested short-term training establishments - USD700 per student (excluding land use costs);
 - New foreign invested specialized secondary schools - USD3,500 per student (excluding land use costs);
 - New foreign invested colleges or universities (or Vietnamese branches of an overseas college or university) - USD7,000 per student (excluding land use costs).

In the first category, the number of students to be used when calculating the scale of students is the number at the final investment stage of the project. In the last three categories, the number of students to be used when calculating the scale of students is the number converted from all stages at the final investment stage of the project. In all categories, planned investment capital must match the proposed scale of each stage.

In cases where the foreign invested educational establishment does not construct new physical facilities but sub-leases them or where the Vietnamese partner contributes capital in the form of existing physical facilities, the minimum investment rate is 60% of the levels stipulated above. In the case of JVEs and BCCs between a foreign party and a Vietnamese party which is an educational establishment at the same level at which the foreign invested educational

establishment proposes to conduct teaching and training, the minimum investment rate will be considered on a case by case basis.

Circular 14 provides in detail for, amongst other things, the naming of foreign invested educational establishments, the languages used in teaching, the conferring of degrees and diplomas, the sector-specific registration requirements upon commencement of operation, the procedures for merger or dissolution, and the inspection of foreign invested educational establishments.

Incentives

Under Decree 06, incentives for foreign investment in education and training sector include:

- > 10% corporate income tax (**CIT**) for entire duration of operation of foreign invested educational project; CIT exemption for 4 years (8 years in special prescribed cases) from first profit-making year; 50% CIT reduction for the next 4 years;
- > Foreign investors will be entitled to a 100% refund of CIT paid on that portion of profits which is re-invested in the expansion or intensification of existing facilities or which is used for new investment in these fields;
- > Lowest rate of land rental under current regulations;
- > Foreign currency requirements will be assured for the entire duration of operations.

A number of incentives offered under Decree 06 have become redundant due to tax reforms since 2000 (eg, preferential withholding tax rate is redundant since withholding tax was abolished as of 1 January 2004).