**LEGAL NOTABLE POINTS RELATING TO THE ESTABLISHMENT OF A FOREIGN-INVESTED EDUCATIONAL ORGANIZATION IN VIETNAM**

**Whether the foreign individual investors are allowed to establish an educational organization in Vietnam?**

Firstly, it should be noted that education is defined as a national policy of Vietnam. According to Article 17 of the Law on Education 2019, the State of Vietnam has strongly affirmed the importance of investment in education. Accordingly, investment in education is considered as a particular investment in the domain subject to conditional investment and is entitled to investment incentives. Furthermore, the State prioritizes investment in education, encourages foreign organizations and individuals, besides domestic organizations and individuals and overseas Vietnamese, to invest in education, and protects their legitimate rights and interests.

In addition, under the Schedule of Specific Commitments in Services of Vietnam to World Trade Organization (WTO), it is permitted to invest in higher education services under the form of 100% foreign-owned investment. Furthermore, under Article 3 and Article 28 of Decree No. 86/2018/ND-CP dated June 06, 2018, of the Government of Vietnam on foreign cooperation and investment in education (“**Decree 86**”), foreign investors irrespective of individuals or organizations are allowed to invest in education and training sector to provide educational services to Vietnamese nationals from (i) short-term training institutions; (ii) pre-school educational institutions; (iii) compulsory educational institutions (elementary schools, middle schools, high schools, universal schools); (iv) higher educational institutions; and (v) branch campuses of foreign-invested higher education institutions in Vietnam.

In light of the above, from the legal point of view, foreign investors are technically permitted to invest in the educational sector in Vietnam.

Furthermore, under the Law on Investment of Vietnam, foreign investors are free to choose one of the following investment forms to do their business in Vietnam: (i) a 100% foreign-owned enterprise; (ii) a joint venture enterprise; or (ii) a business co-operation contract (BCC). Except for the BCC which will not be considered as a separate legal entity, the rest investment forms (i.e. 100% foreign-owned enterprise and joint venture enterprise) are legal entities under the laws of Vietnam. In case, there are two individual investors or more, the available options are: (i) a limited liability company with two members and more; or (ii) a shareholding company (as known as joint-stock company).

It is worth being advised that investment in the educational services is conditionally applied to the foreign investor under the Law on Investment of Vietnam and is far more sensitive from the point of view of the State authority of Vietnam due to the conventional idea that the education quality should be kept in the right way to enhance the labour force of Vietnam as well as to meet Vietnamese living traditions.

The investment projects of foreign investors in this educational sector, thus, must satisfy certain strict conditions and requirements as set out in the laws of Vietnam. In addition to the conditions applied to foreign investment in the educational sector, the investment in the establishment of the foreign-owned university (“**University**”) is subject to approval on the investment policy of the Prime Minister under Article 34.1 of Decree 86.

The legal conditions will be listed out in detail below.

**Conditions for the establishment of a foreign-owned University**

As advised above, the establishment of the University is a conditional investment sector. Moreover, being foreign investors, the Investors are required to draw up an investment project to the establishment of the University (the “**Investment Project**”) and submit the application dossier for the obtainment of the investment registration certificate for the Investment Project to the local licensing authority of Vietnam where the University is expectedlylocated (the “**Investment Registration Certificate**”). With the objective of establishing the University, the Investment Project must satisfy all of the following conditions under Decree 86:

* 1. Investment capital (Article 35 Decree 86)

An Investment Project in establishing a higher educational institution such as the University shall reach an at least total minimum capital of 1.000 billion VND (exclusive of the expense incurred from land tenancy). The foreign-invested business entity which is the investor of the Investment Project shall prove its financial capacity according to the Law on Investment. During the time appraising the application for the University establishment, the investment value shall reach more than 500 billion VND.

An Investment Project in establishing a branch campus of foreign-invested higher education institution in Vietnam shall have a capital of at least 250 billion VND (exclusive of the expense incurred from land tenancy) During the time appraising the application for the establishment of the campus, the investment value shall be more than 150 billion VND.

As for the foreign-invested educational institutions of which the facilities are not newly built but are leased or contributed by the Vietnamese partner, the capital shall reach at least 70% of the capital specified above.

* 1. The facilities and equipment (Article 36 Decree 86)
     + - The area for building the school shall reach at least 25m2 per student at the time the training scale in the development plan of the school is greatest;
       - The average area for a building shall be at least 09 m2 per student; the studying area shall be at least 06 m2 per student; the dormitory area shall be at least 03 m2 per student;
       - There must be enough lecture halls, classrooms, and functional rooms that satisfy the training requirements in the disciplines and the forms of training;
       - There must be enough offices, administration area, and managing board that suit the organizational structure of the academic departments, faculties, and disciplines. The minimum area shall be 08 m2 per person;
       - There must be conference rooms, libraries, testing labs, workshops, and other facilities that satisfy the requirements of the training program and science and technology activities;
       - There must be canteens and constructions serving the recreation, sports, and cultural activities, and medical constructions and services serving the managers, lecturers, and students;
       - There must be a technical construction area and a parking lot.

Renting the facilities:

A foreign-invested educational institution shall also have the authority to rent the facilities for at least 5 stable years and shall ensure that the facilities satisfy the above requirements.

* 1. The education program (Article 37 Decree 86)

The education program provided at the foreign-invested educational institution shall demonstrate the educational target, without damaging the national security and public interests; without spreading the religion and distorting history; without negatively affect the cultures, ethics, and traditional customs of Vietnam, and shall ensure the connection between levels and grades.

Accordingly, the foreign-invested educational institutions may offer: (i) Vietnamese education program according to Vietnam’s laws; (ii) foreign pre-school and compulsory education program; (iii) foreign short-term training programs; programs at bachelor’s, master’s, and doctorate levels within the joint training programs conducted with foreign partners.

The Minister of Education and Training of Vietnam shall specify the contents of education and training for the Vietnamese students who are studying at the pre-school educational institutions, compulsory educational institutions, higher educational institutions, and branch campuses of foreign-invested higher education institutions.

* 1. Lecturers of the University (Article 38 Decree 86)
     + - The lecturers shall hold at least master’s degrees or higher. The proportion of lecturers that hold master’s degrees shall not be lower than 50% of the total lecturers, except in some particular disciplines specified by the Minister of Education and Training;
       - The maximum ratio of students to lecturers is 10:01, applicable to art majors; 15:01 applicable to science and technology majors; 25:01, applicable to social science, humanities, and economics majors – business administration major;
       - The higher educational institution shall have enough permanent lecturers to undertake at least 60% of the program of each discipline;
       - The foreign lecturers teaching at a foreign-invested educational institution shall have experience in the discipline that they teach except the cases that the foreign lecturers who teach foreign language skills at a higher educational institution shall hold bachelor’s degrees or higher and qualifications for teaching foreign languages.

**Procedures for establishment of the University**

Under Decree 86, the establishment of the University shall be decided by the Prime Minister of the Government. The Investment Project on the establishment of the University shall be carried out in three steps:

**Step 1**: Obtainment of the in-principle approval of the Prime Minister on the establishment of the University;

**Step 2**: Issuance of the Investment Registration Certificate for the Investment Project by the local Department of Planning and Investment;

**Step 3**: Obtainment of the decision on the establishment of the University by the Prime Minister;

**Step 4**: Registration of the educational provision applicable to the University and post the decision on the Ministry of Education and Training’s website.

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