

SMALL AND MEDIUM-SIZED FOREIGN SCHOOLS ASPHYXIATED BY NEW REGULATION

In the wake of its release, the Decree 73/2012/ND-CP disposing new regulations for foreign investments in education has forthwith been in praise on national newspapers for its open-minded spirit. This Decree is said to enhance not only the quality but also the wingspan of foreign-capitalized educational projects. However, the practice reality seems to reflect the contrary: Since the Decree implementation on November 15, 2012, small and medium-sized foreign operating projects feel asphyxiated.....

Enlarging activity scope but imposing more stringent requirements

Decree 73/2012/ND-CP issued by the Government on September 26, 2012, which has come into force on November 15, 2012 is said to be more open than the former legislation, as it allows foreign investors to provide primary and secondary education to Vietnamese students which was not allowed before. In fact, prior to the release of Decree 73/2012/ND-CP, foreign investors were allowed to develop nursery, primary and secondary education facilities, but they could only admit foreigners living in Vietnam. According to the Decree 73/2012/ND-CP, foreign-invested schools are allowed to enroll Vietnamese pupils, but the number shall not exceed 10% for elementary and junior high schools. For senior high schools, the percentage is 20%.

As a consequence, it will prevent Vietnamese pupils and parents from their right to chose school they appreciate and may open the door to bribery.

In parallel, the new regulation imposes higher requirements for teaching programs and staff, as well as for education infrastructure, student number, school size and investment capital. Concretely, nursery school projects must ensure an investment amount of VND30 million per pupil, exclusive of land use fees. Regarding secondary education, the compulsory expenditure is VND50 million a pupil, and total investment capital required must be at least VND 50 billion.

Meanwhile, short-term training centers, vocational schools and professional education facilities must ensure respectively VND20 million, VND60 million and VND100 million per pupil. The total minimum investment capital is calculated when the estimated education scale is greatest, but must not be lower than VND 100 billion.

The capital requirement for university and college projects is substantially high, VND150 million per student and total investment capital of at least VND300 billion, all above mentioned amounts not including the expense on land tenancy.

In terms of school size, the decree lays down the highest requirement on investors in higher education projects. In particular, schools must provide a space of 25 square meters for each student.

More license and retroactivity suffocating small and medium-sized operating projects.

Although the new regulation does not touch on the term "retroactivity", its binding force does.

Concretely, Article 74.1 disposes: *"Foreign-capitalized educational institutions and their campuses that have been issued with the Investment certificate concurrently the Business registration certificate and the License to provide education service before this Decree takes effect are exempted from reappraisal, but they must supplement and complete the dossiers within 06 months as from the effective date to be issued with the **Decision on approving the establishment of educational institutions and campuses**"*

As indicated above, the Decree 73/2012/ND-CP clearly has a retroactivity impact on remaining and operating projects, swating seriously small and medium-sized ones who seek desperately to meet requirements exceeding their capacity. For small and medium-sized projects investors, things are shaken and upset because to meet the new requirements, they have to change all existing infrastructure, multiply their investments, redesign construction plan in order to modify built infrastructure...etc. That seems to be an impossible mission. Most of them have obviously shown their disappointment about additional investment obligation which they considered the aiming at restricting the access for foreign investors to education sector.

In reality, for each application file submitted to the competent authorities, in order to get minor changes such as change of address of the head office, or a branch opening for instance, investors have been required to provide complementary documents justifying that conditions disposed by Decree 73 are already met. This matter has already caused great troubles for small and medium-sized projects investors without they possible satisfactory solution, but to adopt methodology that may be not legal.

Orientation toward M&A

While small and medium-sized projects investors are confused and do not know how to solve their troubles, lawmakers seem to provide the orientation for small and medium-sized schools that are unable to meet new requirements. As such, Article 54 disposes division, splitting, merger and consolidation of foreign-capitalized educational institutions. But besides other conditions, that Article points out that new educational institutions established from division, splitting, merger or consolidation must (also) satisfy the conditions prescribed in the Articles 28, 29,30¹ of this Decree. Concerning investors willing to maintain their projects without getting into M&A process, the answer remains pending.

What has been analyzed shows up a remodeling tendency of the education sector in Vietnam, touching not only future foreign owned educational projects, but also operating ones. According to the Foreign Investment Department under the Ministry of Planning and Investment, as of September 20 2012, 158 foreign-invested education projects were still valid in Vietnam, with total pledged capital of US\$432 million. Although national capitalized educational projects may also soon be subject to such a policy², the fact that Decree 73/2012/ND-CP extends its application scope to operating projects should have a negative impact on foreign investment flow into Vietnam in the education sector, of which the consequences may be revealed shortly during the Decree implementation process./.

¹ The Articles 28,29,30 dispose requirements for teaching programs and staff, as well as for education infrastructure, student number, school size and investment capital

² Recently, the vice Prime Minister Nguyen Thien Nhan, in charge of education field has stated his opinion about the draft of the "Decision disposing conditions, procedures and steps in applying for establishment licence, educational activity licence; in suspending educational activity, in merging, dividing, splitting, dissoluting national universities. This draft of governmental Decision shall be submitted to the Prime Minister after January 25, 2013 for approval.