

COMMENTS ON THE DRAFT DECREE PROMULGATING REGULATIONS ON COOPERATION, INVESTMENT IN EDUCATION, TRAINING AND VOCATIONAL TRAINING INVOLVING FOREIGN PARTNERS

*Presented by
AEI, RMIT, FPT*

The VBF Education Working Group welcomes the opportunity to provide input on the Draft of the Decree “Promulgating Regulations on Cooperation and Investment in Education with Foreign Partners”. We would like to submit some comments on the Draft Decree as presented below. These comments are consolidated from the inputs provided by several local and foreign educational institutions in Vietnam, namely Australian Education International (AEI), RMIT University and FPT University, as well as some international leading specialists in education.

We would highly appreciate if the comments are taken into account and look forward to continuing to work closely with the Ministry of Education and Training in the drafting of this very important decree.

2. Comment Summary

General comment

The Decree primarily seeks investment and management efficiencies of reputable foreign institutions in the education and training. It should be therefore structure the Draft Decree in a manner in which it specifies and monitors project outputs and performance obligations than specifying input parameters and specifications. This results in better control of the government on the foreign co-operation/investment in education and training.

In view of above, the Draft Decree should be revised to bring in this philosophy. It is expected that the private sector focus will be foreign institutions who will bring in technical/managerial expertise and investments. The response of the private sector therefore will be better if the approach is in line with internationally accepted practices.

Our overall impression is that the Draft Decree is very prescriptive (as opposed to outcome/objective-driven) and is somewhat ambiguous. Potential investors could be deterred by regulations that are unclear, unnecessarily prescriptive and/or create unreasonably burdensome reporting requirements. Instances of ambiguity in the current Draft would add to confusion for potential investors. We are hopeful that further revision of the Draft will achieve a balance between ensuring quality/standards and providing potential investors with certainty and minimising prescriptive requirements.

Specific comments on Draft Decree individual articles

Article 3- Areas in which cooperation and investment are encouraged

Point 3.1

The Draft now reads:

“Training of high skill engineering worker, technician, technologist in the following industries: information technology, industry informatics, telecommunication, mechanical-electronic, precise mechanics, industry maintenance, food technology,

electronics, electronic commerce, environment protection, agriculture, tourism, energy, civil engineering and other areas which are necessary for Vietnam's development but the training is not available in Vietnam yet".

Comment

Does this mean that cooperation and investment from foreign providers will only be encouraged where training is not yet available in Vietnam, or does that just relate to the "other areas"? Presuming it is the latter, there is already training provided in the fields listed in 3(1)- in which case the Article as worded is somewhat ambiguous (e.g. should be "or other areas" instead of "and other areas". If it is the former it is a very restrictive arrangement and likely to be inconsistent with WTO commitments.

Article 4 - Forms of partnership and investment

Point 4.1.d

The Draft now reads:

"Other forms to be agreed by both parties and approved by the Ministry of Education and Training and Ministry of Labor – Invalids – Social Affairs of Vietnam".

Comments

This provision seems unreasonable. In case where "other" form of international co-operation is allowed only if "being accepted and approved" by Ministries, educational institution couldn't do anything. We suggest that the provision to be removed.

Article 5: Duration of operation

The Draft now reads:

"Duration of operation of joint training programs shall not exceed five years after licensing day, and can be extended, but not beyond five years for each time".

Comments

This needs to be clarified. Does it mean that after five (5) years an organization needs to apply for a new license?

Article 7: Conditions for joint training

- **Point 7.1.a - Faculty qualification for occupational education**

Comments

Relevant trade and training qualifications would be relevant here.

- **Point 7.3 - Physical infrastructure qualification**

The Draft now reads:

"Physical infrastructure needed for joint training programs includes classrooms, computer rooms, language rooms, practice rooms, laboratories, libraries and other necessary equipment, ensuring for learners, teachers and tutors to be able to work in a quality environment, appropriate to both Vietnamese and foreign standards".

Comments

"Appropriate to both Vietnamese and foreign standards" is vague and open to varying interpretations. A clearer definition of standards would provide potential investors with

greater clarity. MOET will need to clarify in its subsequent Circular guiding this Decree”.

- **Point 7.9.b - Qualification for network-based distance education**

The Draft now reads:

“In addition to the faculty qualification specified in item 2 above, to deliver a network-based distance education program, the educational institution must secure a learner advisor team by mandate. The team members must be holders of teaching and distance education certificates and be able to take part in teaching and learner guidance via computer-based or telecommunication networks”.

Comments

There is no clarification on what “teaching and distance education certificates” are and who are the authorities granting these certificates. We also think this regulation should be removed.

Article 11- Obligations of associated parties

- **Point 11.5. b – Reporting procedures**

The Draft now reads:

“The report shall include information about implementation of provisions stated in the decision approving the proposal for implementation of the joint training programs, training plans, learning performance of students, number and proportion of graduated students, granted diplomas and certificates, financial audit statements, favourable & unfavourable factors encountered during implementation, proposals and recommendations, etc.”

Comments

The reporting requirements are very broad, open-ended ("etc.") and lacking in specificity eg. "favourable & unfavourable factors encountered during implementation". More specific reporting requirement guidance should be given: requirements need to be clear, relevant and not unduly burdensome.

Article 18 – Investment Capital

Comments

- What does per capita investment mean? How were all these minimum per capita investment figures calculated? Does per capita investment apply to every ‘physical body’ that attends the institution regardless of time fraction (viz. part-time versus full-time students) OR is it calculated on full-time student equivalence?
- What does per capita investment consist of?
If the definition is not more specific, it may lead to very complex administrative calculations, especially for existing institutions, and could be the source of disputes.
This is a prescriptive approach that doesn't take into account varying construction and other costs across Vietnam. They also focus only on the setting up of an institution - what about funding for recurrent costs e.g. staffing, training, materials, utilities?

Article 19- Physical Infrastructure

Comments

While it is commendable to see efforts to improve quality, these requirements (eg school location, size, types of facilities) are very prescriptive. It would be useful to know how these requirements were determined.

In addition, broadened and extensive study is needed to clarify some issues such as:

- The stipulations may in some cases be far in excess of the physical infrastructure resources of the overseas institutions who are financing the off-shore ventures.
- Are the requirements calculated on a ‘nation’ wide basis for institutions where there are multiple campuses across the Nation Or are the calculated for each site of an educational institution?
- How are students defined – bodies who attend the campus for any fraction of the week or for students who are enrolled as full-time students?
- What if there are multiple sessions throughout the day? E.g. A morning session and an afternoon session catering for different cohorts of students?
- The issue of land acquisition and suitability of site. What if the institution cannot acquire land to construct a campus facility within an area that would be appeal to its target market?
- To what extent do quality multi-level facilities compensate for actual land space stipulations?

Considering the very long history of many Vietnamese higher education institutions, it would seem impractical to try to achieve the same levels of land per student for foreign institutions that may be the norm/ case at Vietnamese institutions. Regarding the constructed space per student, it would seem important to emphasize quality of facilities, with less emphasis on the quantity i.e. the square meters per student. The draft decree goes only some way towards that.

Article 20: Teaching Program

Point 4

The draft now reads:

“The Ministers of Education – Training and Labor – Invalids – Social Affairs define compulsory academic disciplines for students who are Vietnamese citizens attending foreign training programs in foreign-invested tertiary and occupational secondary institutions and occupational colleges”

Comments

This point requires clarification and attention.

- To what extent do the Ministers of Education and Training, and Labor, Invalids and Social Affairs determine the compulsory academic disciplines for students who are Vietnamese citizens attending foreign training programs in foreign-invested tertiary institutions?
- If there are mandated requirements who is permitted to teach these courses?
- Can such courses be delivered in languages other than Vietnamese?

- Who determines the curriculum, the Ministries or the Institution?
- Who accredits the courses if it is not the Institution?

Article 21: Faculty

Comments

Clarification is required on the following:

- The student/teacher ratio appears far in excess of what is required for successful educational outcomes (10 to 1 for aptitude-related disciplines). How is an aptitude-related discipline defined?
- How are student/teacher ratios determined?
- Can the student/teacher ratios be averaged over the entire institution?
- Does the proportion of teachers with master qualification/doctorate degrees apply university wide? What about English language teachers who are teaching in a University setting?

Article 41 - Decision-making Competence

Point 1:

The draft now reads:

“MOET Minister shall grant operational qualifying certificate for higher education institutions and their branches.”

Comments:

MOET Minister shall grant operational qualifying certificate for colleges as well, not only for higher education institutions and their branches.

Article 48: Representative Office of Foreign Educational Institutions in Vietnam

Point 3:

The Draft now reads:

“3. Foreign education Representative Office in Vietnam is not allowed to set up representative office or branch of Representative Office in Vietnam.”

Comments

Is there a rationale why Foreign education Representative Office in Vietnam is not allowed to set up representative office or branch of Representative Office in Vietnam?

Article 58- Financial regime of joint education project with foreign partners

Point 3

The Draft now reads:

*“Incomes of joint education programs with foreign partners shall be used solely for training expenses, reinvestment, establishment of scholarship fund, debt payment (if any) **without overseas remittance** (except for loan and interest payment, and settlement of procurements of equipments for teaching, training and science research.”*

Comments

If overseas remittance is not allowed except the circumstance stipulated in this provision, how payment for foreign partners be settled? Is it the view from the government that only non-profit joint training with foreign partners should be accepted. We recommend to abolish the regulation.

Article 68: Application of law for representative offices and foreign invested educational institutions having operated before this Decree comes to effectThe Draft now reads:

“1. Representative offices and foreign invested educational institutions that have acquired establishment permits before the promulgation of this Decree are not subject to re-appraisal, but are required to supplement and complete their dossiers within 60 (sixty) days of this Decree’s effect and fully comply with the stipulation of this Decree.

2. Representative offices and foreign invested educational institutions that are operating in Vietnam without establishment permits are, within 60 (sixty) days of this Decree’s effect, to perform application procedure for licensing as stipulated by this Decree. Beyond this deadline, they are forced to terminate operation and are subject to sanctions as stipulated by law.”

Comments

- To what extent does the decree impact on institutions currently licensed to operate in Vietnam?
- If there is a requirement that institutions currently licensed to operate in Vietnam implement the decree in its fullness, what is the time frame for this implementation?
- Should the requirements construct insurmountable barriers for institutions currently licensed to operate, what right of appeal is there against such?