

## LEGAL ALERT – 3 AUGUST 2018

### **New Decree No. 86/2018/ND-CP implementing the Law on Education**

On 6 June 2018 the Government issued the new Decree No. 86/2018/ND-CP implementing the Law on Education (**Decree 86**), which took effect on 1 August 2018 and replaces the former Decree No. 73/2012 /ND-CP dated 26 September 2012 (**Decree 73**). Some of the key provisions contained in Decree 86, include:

#### **1. Fewer restrictions on enrolment of Vietnamese students**

- Under the old Decree 73, the number of Vietnamese students in a primary school or secondary school could not exceed 10% of total students; and the number of Vietnamese students in a high school could not exceed 20% of total students. Vietnamese students under 5 years old could not be admitted to study foreign programs.
- Under the new Decree 86 (Article 39), from 1 August 2018, the number of Vietnamese students in kindergarten, primary school, secondary school and high school participating in foreign teaching program is increased up to 50% of the total students. Furthermore, the restriction under Decree 73 prohibiting Vietnamese students being less than 5 years old to participate in foreign teaching programs is removed. Under Decree 86, a foreign-invested kindergarten using a foreign education program is now permitted to accept Vietnamese students for such program.

#### **2. Increase of the term of operation for education units which do not construct their own facilities:**

- Under the old Decree 73, only educational units registering an operation term of less than 20 years could lease facilities from a third party to operate. In other words, if an education unit did not construct its own facilities, it was only allowed to have an operation term of maximum 20 years.

- Under the new Decree 86 (Article 30), the above restriction is removed. In other words, in both cases where an education unit constructs its own facilities or leases it from a third party, it can have a term of operation of up to 50 years (subject also to the duration of the relevant land lease period).

### 3. Increase in the minimum investment capital to establish a foreign-invested university

- Under the old Decree 73, the minimum investment capital to establish a foreign-invested university was VND300 billion.
- Under the new Decree 86 (Article 35.4), the minimum invested capital is increased to VND1,000 billion (excluding the land-use fees).

### 4. Simplification of the requirements applicable to foreign short-term training institutions

The former requirement for obtaining a “Decision on Approval of Establishment” in order to set up a foreign short-term training institution is now removed. Under the new Decree 86 (Article 31.1), a foreign short-term training institution only needs to undergo the following procedures before starting operations: (a) obtaining an investment registration certificate; (b) obtaining a “Decision on Operation” from the local Department of Education and Training (**DOET**), and (c) obtaining an “Announcement of Operation” on the website of the Ministry of Education and Training (**MOET**).

### 5. Key provisions remaining unchanged

Other provisions remain unchanged under Decree 86, including, among others, the requirements on the number of kids, the minimum investment capital for education institutions (apart from foreign-invested universities), the curriculum requirements and the requirements applicable to teachers. In particular:

- **Restriction on number of students:** Similarly to Decree 73, under Decree 86, at kindergarten level, the number of students per class shall not exceed 15-35 (depending on the age). At primary school level, the number of students per class shall not exceed 30. At secondary and high-school level, the number of students per class shall not exceed 35.
- **Minimum investment capital for education institutions apart from foreign-invested universities:** Similarly to Decree 73, under Decree 86, kindergartens are required to maintain minimum investment capital of VND 30 million per full time student (excluding land costs). For primary, secondary or high schools, the minimum investment capital is VND 50 million per full time student (excluding land costs). It is to note that for primary, secondary or high schools, the total minimum capital is calculated based on the time the relevant educational unit is expected to have the biggest training scale, and must not be lower than 50 billion VND. For education units leasing their facilities from a third party, the minimum investment capital must be at least 70% of the amounts prescribed above.
- **Curriculum requirements:** Similarly to Decree 73, under Decree 86 the educational programs (a) must not go against the national security and public interests of Vietnam, (b) must not spread religion and distort history, (c) must not negatively affect the cultures, ethics, and traditional customs of Vietnam, and (d) must ensure the connection between all the levels and grades.

- **Teachers, requirements:** Similarly to Decree 73, under Decree 86 kindergartens must ensure the minimum ratio of 5-12 kids per teacher (depending on the specific level), and the teacher must hold at least a college qualification in preschool pedagogy. For primary, secondary and high schools, the number shall not exceed 1.5, 1.95 and 2.25 teachers per class, respectively, and the teacher must hold at least a bachelor degree in the relevant pedagogy.

Please contact us at [legalenquiries@frasersvn.com](mailto:legalenquiries@frasersvn.com) if you are interested in receiving further updates on Decree 86, or would like to receive an English or Vietnamese language version of Decree 86.

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