



Education – Investment Outlook for the 2020s – Vietnam

The opportunity

Like many other countries, Vietnam closed its schools as a precautionary measure to deal with COVID-19. While initially many children hoped they could use the time off to play with their friends, in reality they were stuck at home with mum and dad and participating in lessons over Zoom and Google Classroom. Fortunately for their parents, having been off since February, children are now back at school and so some semblance of normality has resumed.

The issues being faced by international schools here are similar to those being faced by fee-paying schools elsewhere. Parents are reluctant to pay full whack when they know their children do not have access to school facilities and in-person teaching. Some landlords are willing to take a long-term view; others are refusing to budge on rent reductions. Ensuring that virtual classes and exams are properly accredited is not straightforward. Given that schools make most of their revenue up front and in a short period of time as fees come in, liaising with the tax departments to phase payments of employer contributions and other taxes remains a work in progress.

But if Vietnam is anything, it is a land of opportunity. It will take more than a pandemic to disrupt the workings of the behemothic Vietnamese education system. Indeed the number of international schools in the two major metropolises of Vietnam, namely Hanoi and Ho Chi Minh City, is staggering when you consider that neither city (unlike, say, Hong Kong or Singapore) is particularly well-known as a destination for expatriate workers. Ho Chi Minh City alone has over 50 international schools and Hanoi is not far behind. And there are certainly more in development.

The reason for this is simple. It is not the small expatriate population that is driving the need for international schools but Vietnamese mums and dads. The local education system struggles as a result of chronic underinvestment, and there is a view that the curriculum is old-fashioned and not equipping youngsters with skills that are necessary for working life. Vietnamese families are, therefore, willing to mortgage their homes, sell the family gold, and forego holidays and fancy trips, to pay for their children to go to a good school.

It doesn't stop at the age of 18. Many students and graduates (and their parents and grandparents) go to evening and weekend classes to improve their English and learn new skills.

Combine that with the hard facts: (1) Vietnam is a country with almost 100 million people, 70 per cent of whom are under the age of 35 and 40 per cent of whom live in fast-developing cities; and (2) the population is growing at a rate of 1 million people a year, and the economy (until recently) at 6.5 per cent a year. The potential for education businesses, whether they be schools or other forms of teaching, such as edu-tech, is still very strong in Vietnam.

The government's view

The Vietnamese government over the past ten years or so has softened its approach to foreign investment considerably. Although foreign ownership limitations still exist for a number of industries, education is a sector where there is no foreign ownership limitation. It is however a sector where the government still has approval rights over foreign investments. Nevertheless, it is possible for a foreign investor to own 100 per cent of an education business.

Foreign investors normally invest in schools that can teach a foreign curriculum. The most popular foreign curricula are US, Canadian, Australian and British but other options are available. There are three main models that permit the teaching of foreign curricula: (1) model 1 – an ‘international school’ teaching a foreign curriculum only, (2) model 2 – a ‘bilingual school’ teaching both foreign and Vietnamese curricula on an integrated basis and (3) model 3 – a ‘bilingual school’ teaching both foreign and Vietnamese curricula in parallel.

Catch 86 – limits

As always there is a (or indeed several) slight catches. Under Decree 86, the key piece of legislation that applies to foreign-owned education institutions (or FOEIs for short), the proportion of the students studying at an international school teaching a foreign curriculum who are Vietnamese may not be greater than 50 per cent. To be fair, this marks a noticeable improvement on the old law where there were a number of proportional limits depending on the stage of education (i.e. pre-school, primary and secondary), with the highest of those limits being 20 per cent and the lowest being zero.

There is no defined process at law for being able to increase this limit, though some international schools established in the early days were issued with “pilot” licences to admit unlimited Vietnamese students and it may also be possible to get a special waiver if you have an exceptionally good reason for it to be higher. It may be impossible in practice, however, to get a written document which “waives” or, more likely, changes the applicable threshold in any meaningful sense, though a little bit of comfort may be all that you need.

Catch 86 – edu-tech

Vietnamese children are now masters of learning online and online learning is unlikely to be a “here today, gone tomorrow” trend. Indeed, even before COVID-19, education providers from overseas were providing their teaching programmes to children here. Unfortunately, Decree 86 is not designed to regulate this mode of training as it contemplates only brick-and-mortar education businesses.

Certain companies in the market have become comfortable operating in this grey area by opening one or more brick and mortar locations in Vietnam that do comply with the requirements of Decree 86 to obtain the relevant education licences and, at the same time, provide online training programmes.

In practice, therefore, foreign companies may provide online training platform for Vietnamese students on a cross-border basis and establish an onshore representative office or local company to support the business. The key difficulty/uncertainty with this arrangement is that Vietnam has no WTO commitment relating to the provision of online training platforms for Vietnamese students on a cross-border basis. At the moment, there is no clear evidence that the regulators support such activities. However, so far as we know, they have not taken any action to prevent this practice either.

Thinking of setting up or buying a school? You should bear these key points in mind.

There are numerous rules and requirements when it comes to schools. Decree 86 contains numerous requirements for FOEIs but it is only part of the picture.

If you want to set up or acquire a school here, you should bear at least the following in mind. If you are investing in an existing school here, you should bear these in mind as well – the current school may need to change what it has or you may find that it doesn't quite have what it should.

- **Deal structure** – requirements and conditions applicable to an FOEI are much higher than those applied to local private schools. If you want to set up a new school (i.e a greenfield project) then, looking at the three models of an FOEI as set out above, it is easiest to do it under model 1. Most of the foreign investment transactions in models 2 and 3 are done by acquiring existing local private schools already set up by Vietnamese shareholders. You may need to do this in a way which means the acquired school is not technically an FOEI.
- **Land** – what is the deal on the land? You can't own it outright. An FOEI can lease land from the government only, for a maximum of 50 years. Make sure you get your land use right certificate and it has all the correct information in it. An alternative, offered by Decree 86, is that you can lease buildings from an individual or organisation for educational purposes. Remember that having facilities is an important part of a school's ability to operate – the licensing authorities may look on your application quite unfavourably if this is not in place or ready to go when you make the relevant applications (see below).
- **Education licences** – take a deep breath. To get the relevant decisions and licences, you must prepare and provide a comprehensive plan for developing and operating the institution including detailed development and training plans, the ability to meet statutory investment conditions, the nature of your teaching programme, the teaching materials you will use, a list of teachers and lecturers, a description of the teaching or training levels, among many other things. Once you've submitted all of these, prepare to wait. Statutory time limits are a couple of months, but it can drag on much longer. If you want your new school to start around the time of the next school year, you need to be thinking at least one year ahead.
- **Corporate licences** – you will need some corporate licences as well. If you're an FOEI, you'll likely need an investment registration certificate in addition to other things (though in some cases, you may not). Vietnamese law requires that this be obtained before getting any other corporate licences so check with your lawyers first before proceeding with any applications.
- **Staff** – be careful of falling into the start-up trap. While it might be tempting to follow the lead of many start-ups, and indeed other education businesses here, and contract with your staff as service providers rather than employees, the Vietnamese government is well-aware of this practice and is keen to stamp it out. From 1 January 2021, a new Labour Code will apply. If a contract contains the elements of an employment contract, it will be treated as an employment contract irrespective of how it is described. Employees have certain rights under the law and employers have certain obligations to them (including payment of compulsory social insurance, health insurance and unemployment insurance). If there is a union, or you think the staff will want to be part of one, start talking with them. You can't stop them from forming one but it's better to be prepared than not.

2030 – what to expect?

COVID-19 could have a remarkable effect on the education industry. But it will probably act only as a catalyst for changes that were already on the horizon. We expect the decade of the twenties to see not just advances in edu-tech but also the growth of vocational and learning centres as people look to up-skill themselves to capitalise on the opportunities afforded by Vietnam’s generally high rate of economic growth and potential. Coding classes could become the new piano lessons. Perhaps there will also be an increase in foreign universities setting up brick-and-mortar or even virtual campuses and/or entering into collaboration programmes with their local counterparts. Expect more international schools to open outside of Hanoi and Ho Chi Minh City. For example, Da Nang, often considered Vietnam’s third city, has only a handful at the moment.

Who should I reach out to if I want to know more?

Freshfields has worked on more than 30 deals in the education sector, including K-12 schools, as well as learning centres and universities. We also practice significantly in the tech space. Please contact any of the contacts listed below to find out more about the education sector in Vietnam.



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