

LEGAL UPDATES

INVESTMENT

Decree No. 86/2018/ND-CP regarding foreign cooperation and investment in education sector

Effective date: 1 August 2018

This Decree replaces Decree No. 73/2012/ND-CP regarding foreign cooperation and investment in education sector.

1. This Decree regulates foreign cooperation and investment in the education sector comprising of
 - 1.1 education and training in association/linking with foreign parties;
 - 1.2 educational institutions with foreign invested capital; and
 - 1.3 foreign educational representative offices in Vietnam.
2. **Educational association or linking** refers to cooperation between a Vietnamese pre-school or Vietnamese elementary educational institutions with a foreign educational institution to conduct an integrated educational program. Elementary schools include primary school, junior high school, high school or multi-level school.
3. **Training association or linking** refers to cooperation between a Vietnamese university and a foreign university aimed at running a training program in order to award diplomas or certificates without establishing a new legal entity. Training association or linking is permitted at the university, master's and doctoral levels or by way of holding exams to award certificates of foreign language skills from the foreign educational institution.
4. **Educational institutions with foreign invested capital**
 - 4.1 Permissible forms of an educational institution with foreign owned capital are
 - a) short term training/fostering institution;
 - b) pre-school educational institution;
 - c) elementary educational institutions;
 - d) universities; and
 - e) campus in Vietnam of a university with foreign owned capital.
 - 4.2 Investment capital

No.	Educational institutions with foreign invested capital	Investment capital (excluding land use fees)
1	Pre-school	VND30 million/child
2	Primary school, secondary school, high school, multi-level school	VND50 million/student The total investment capital must be not less than 50 billion VND
3	Short-term training institution	VND20 million/student
4	University	VND1 trillion As at the time of evaluation to grant permission to establish the university, the investment capital amount must be above 500 billion VND
5	Branch of foreign invested university	VND250 billion As at the time of evaluation to grant permission to establish the branch, the investment capital amount must be above 150 billion VND.
In case the educational institution with foreign owned capital does not construct new material facilities (i.e. leasing or receiving material facilities by way of capital contribution), the minimum investment capital must equal at least 70% of the capital prescribed above.		

- 4.3 **Enrolling Vietnamese students.** Pre-school, primary school, secondary school, high school and multi-level school are permitted to enrol Vietnamese students to study foreign educational program. The number of Vietnamese students must be less than 50% of the total number of students studying foreign educational program at those educational institutions.
- 4.4 **Operation term.** The operation term shall not exceed 50 years as from the date of issuance of the investment registration certificate, and shall not exceed the term of land rental.

COMMERCE

Competition Law No. 23/2018/QH14

Effective date: 1 July 2019

Competition Law No. 23/2018/QH14 ("**New Law**") replaces Competition Law No. 27/2004/QH11 ("**Old Law**") and regulates

- (1) practices in restraint of competition, which cause or may cause a competition-restraining impact, including anti-competitive agreements, abuse of dominant market position, and abuse of monopoly position;
- (2) economic concentration, which have or may have a competition-restraining impact on Vietnam's market; and
- (3) unfair competition.

We highlight below some noticeable updates of the New Law.

1. New types of anti-competitive agreements. The New Law introduces three new types of anti-competitive agreements including

- 1.1 agreement not to trade with parties not participating in the agreements;
- 1.2 agreement to restrain the product sale market or sources of supply of goods and services of parties not participating in the agreements; and
- 1.3 other agreements which have or may have a competition-restraining impact.

2. Prohibited anti-competitive agreements and prohibited economic concentration

A notable change under the New Law is that the Vietnamese competition authorities will have discretion to prohibit restraint of competition practices and economic concentration if they "*cause or have the ability to cause a significant competition-restraining impact in the market*". Under the Old Law, anti-competitive agreements or economic concentration may be prohibited subject to the combined market share of parties to the agreements.

The competition authority will apply several criteria on assessment of *competition-restraining impact*, such as market shares, market entry barrier, access to critical infrastructure facility, and/or extent of concentration in the relevant market before and after the economic concentration as the case may be.

3. Abuse of dominant market position

The New Law introduces the criterion "*significant market force*" in addition to *market share* when consideration of the abuse of dominant market position. The *significant market force* is determined based on the criteria such as financial strength and scale of the enterprise, advantages of technologies and technical infrastructure, ownership and right to possess and access infrastructure and other criteria.

INVESTMENT**Decree No. 82/2018/ND-CP regarding management of industrial zones and economic zones**

Effective date: 10 July 2018

This Decree replaces Decree No. 29/2008/ND-CP regarding industrial zones, export processing zones and economic zones.

Below are notable regulations on **industrial zones (“IZs”)** under Decree 82

- 1. IZs and types of IZs.** IZ is a zone specializing in production of industrial goods and provision of services for industrial production. There are three types of IZs:
 - 1.1 *Export processing zone* means an IZ specializing in production of export goods and provision of services for production of export goods and export activities;
 - 1.2 *Supporting industrial zone* means an IZ specializing in production of supporting industrial products and provision of services for production of supporting industrial products; the ratio of land area to be leased or sub-leased to projects on investment in supporting industries and trades must be at least 60% of the rentable industrial land area of an IZ; and
 - 1.3 *Ecological industrial zone* means an IZ in which enterprises participate in activities of cleaner production and efficient use of resources, and cooperation with each other in production to carry out industrial symbiotic activities.
- 2. Relevant licensing procedures**

	Step 1	Step 2	Step 3
	Master plan	Decision on investment policy	Decision on establishment or expansion of an IZ
Competent authority	<p>Prime Minister; or</p> <p>The provincial people's committee, in the following cases:</p> <p>(1) initial expansion or reduction of the land area of an IZ by 10% (or less than 10%) of the area in the approved master plan and not exceeding 30 hectares, and not affecting any other master plans;</p> <p>(2) the difference between the actual area of the IZ, after the IZ is measured, and the area in the approved master plan is less than 10% and does not exceed 20 hectares;</p> <p>(3) amendment of the name of the IZ does not change the position, boundaries and/or area of the IZ in accordance with the master plan approved by the Prime Minister.</p>	Provincial people's committee	Provincial people's committee
Key Terms and Conditions	<p><u>Establishment of a new IZ</u></p> <p>The total aggregate area of industrial land of IZs which have been established in the locality of a province or city under central authority and which has been leased or sub-leased to projects for which investment registration has been made or which have been issued with an investment registration certificate must be at least 60%.</p> <p>The conditions on the occupancy rate of an IZ</p>	<p><u>Establishment of a new IZ</u></p> <p>(1) Being consistent with the approved master plan for development of IZs, and the land use zoning approved by the competent agency;</p> <p>(2) The total area of industrial land of IZs already established in the central province or city which has been leased or sub-leased to projects for which investment registration has been made and an investment registration certificate issued</p>	<p>The following documents are issued by the competent agency:</p> <p>(1) Decision on approval of the master plan for construction of the IZ;</p> <p>(2) an investment registration certificate or decision on the investment policy (in the case of a project for which an investment registration certificate is not required) issued to the IZ</p>

	Step 1	Step 2	Step 3
	Master plan	Decision on investment policy	Decision on establishment or expansion of an IZ
	<p>as mentioned above shall not apply in the following cases:</p> <p>(1) adjustment or change of the location of the IZ without increasing the area of land of such IZ;</p> <p>(2) amendment of the master plan for development of IZs in a locality without increasing the total area of land planned for IZs in such locality as approved by the Prime Minister.</p>	<p>must be at least 60%.</p>	<p>developer.</p>
	<p><u>Expansion of a formed IZ</u></p> <p>The formed IZ</p> <p>(1) must have the area of industrial land already leased or sub-leased to projects (for which investment registration has been made or which have been issued with an investment registration certificate) which represents at least 60% of the total aggregate area of rentable industrial land of such IZ; and</p> <p>(2) has built and commissioned centralized wastewater treatment facilities.</p>	<p><u>Expansion of a formed IZ</u></p> <p>(1) Being consistent with the approved master plan for development of IZs, and the land use zoning approved by the competent agency;</p> <p>(2) The formed IZ must have the occupancy rate of at least 60%;</p> <p>(3) The IZ has built and commissioned a centralized waste water treatment facility.</p>	

3. Outstanding policies

3.1 Investment incentives

- a) IZs are preferential investment areas and entitled to the incentive policies as applied to the areas included in the list of areas with difficult socio-economic conditions in accordance with the law on investment.
- b) Any IZ which is established in an area included in the list of areas with specially difficult socio-economic conditions shall be entitled to the incentive policies applied to the areas included in the list of areas with specially difficult socio-economic conditions in accordance with the law on investment.
- c) Investment projects for construction of residential housing and cultural and sports facilities and social infrastructure facilities servicing workers working in IZs are entitled to incentives in accordance with the law on construction of social residential housing and relevant laws.

3.2 Temporary residence

- a) No civilians are permitted to reside in IZs.
- b) Where necessary, foreigners (comprising managers, managing directors and experts) may reside temporarily in an enterprise in an IZ. A stay by a foreigner must meet the following conditions:
 - (i) Being required for the business or production activities of the enterprise;
 - (ii) There is no accompanying family or dependant;
 - (iii) Complying with the procedures for registration and declaration of temporary residence;
 - (iv) Accommodation for a manager, managing director or foreign expert must be separated from the production and office areas, and satisfy the standards set out in the law on construction applicable to residential housing.

3.3 Others

- a) IZ developers are required to determine rentals for the lease and sublease of land on which technical infrastructure has been constructed, and all kinds of charges for using other relevant infrastructure. The IZ developers must register price brackets and such charges with the IZ management board on a 6 monthly basis or upon and adjustment.
- b) IZ developers and investors leasing or sub-leasing land with infrastructure in an IZ may build and lease out various forms of factories, including high-storey factories in the IZ.

4. Transition provision

Any IZ which has completed the procedures for planning, investment and/or establishment in accordance with law prior to the effective date of Decree 82 (on 15 January 2018) is not required to carry out any other procedures for planning, investment and/or establishment in accordance with Decree 82.

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