

Recent Updates and Overview of Foreign Investment in the Education Sector in Southeast Asia



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Introduction

With rapid economic development and rising income, there has been an increase in demand for high-quality education throughout Southeast Asia. As a result, private equity sponsors and strategic investors have expressed a growing interest in investing in the education sector in Southeast Asia across a broad range of services with particular focus on private K-12 institutions.

Mayer Brown has advised a range of clients on their investments in the education sector, particularly in Vietnam. Vietnam is an example of a country in Southeast Asia that has gradually liberalised regulations concerning foreign investments. In this article, we provide a summary of regulatory changes in Vietnam and Myanmar in the past several years, and a general overview on the private education sector in other countries in Southeast Asia.





Vietnam

Vietnam has encouraged foreign investment in its education sector. The regulatory framework is based on Decree No. 86/2018/ND-CP (**Decree 86**), stipulating co-operation and investment by foreign business in the education sector; the University Education Law No. 08/2012/QH13 (as amended); and the Education Law No. 43/2019/QH14 which recently came into effect from 1 July 2020 (**Education Law**), which provide general principles on foreign investment in the education sector and foreign-invested universities in Vietnam.

Decree 86 was introduced in 2018 to attract increased foreign investment in the private education sector and replaced Decree No. 73/2012/ND-CP (**Decree 73**).

Foreign companies may invest up to 100% of the capital in an educational business, and may either incorporate a foreign-owned education institution or a foreign-owned company to set up and operate the education institution.

Foreign-owned schools are subject to a number of regulatory requirements. The Ministry of Planning and Investment (**MPI**) and Ministry of Education and Training (**MOET**) report that, while foreign investment in the education sector has increased in recent years, foreign investment in this sector remains comparatively low due to the strict regulatory requirements regarding capital, personnel, facilities and complicated licensing procedures. Although several legal requirements and restrictions applicable to foreign-owned education institutions under Decree 73 have been significantly relaxed or removed, and the regulatory procedures for approving the investment have also been clarified and simplified under Decree 86, these remain challenging for foreign businesses when considering investment in this sector. We have set out some of the key regulatory requirements in the table on the next page.



	Pre-school	Primary & Secondary School	Branch Campus of a Foreign University	University
Total min. capital in VND ¹ (excluding land use expenses)	30 million per student	50 million per student, but not less than VND 50 billion	250 billion	1,000 billion (increased from 300 million)
Min. land area per student	N/A	N/A	25m ²	25m ²
Min. GFA per student	8m ² (urban area) 12m ² (rural area)	6m ² (urban area) 10m ² (rural area)	9m ²	9m ²
Max. no. of students per class	i. 3 months - 36 months: 15-25 ii. Age 3 to 6: 25-35	i. Primary: 30 ii. Secondary: 35	N/A	N/A
Min. qualification of teaching staff	College degrees in pre-school pedagogy or equivalent	Bachelor's degree	Master's degrees or higher and the proportion of lecturers holding PhD degrees shall not be less than 50% of the total number of lecturers	Master's degrees or higher and the proportion of lecturers holding PhD degrees shall not be less than 50% of the total number of lecturers
Ratio of students to teacher	5 -12 - students per teacher	i. Primary: 1.5 teachers per class ii. Lower secondary: 1.95 teachers per class iii. Upper secondary: 2.25 teachers per class	i. Art stream: 10 students per teacher ii. Technology and science streams: 15 students per teacher iii. Social science, humanities, and business administration streams: 25 students per teacher	i. Art stream: 10 students per teacher ii. Technology and science streams: 15 students per teacher iii. Social science, humanities, and business administration streams: 25 students per teacher

¹ This is equivalent to approximately US\$1,280 per student for pre-school; US\$2,140 per student for primary and secondary school; US\$10.5 million for branch of a foreign-invested university; and US\$42.5 million for a university.

In addition to satisfying these regulatory requirements, foreign investors who wish to establish a green field education project must also obtain certain approvals, certificates, and licences from the relevant government authority. Decree 86 allows foreign-owned pre-schools and K1-12 schools to satisfy the regulatory requirements within two years from the effective date of the establishment license in order to apply for the operation licence, whereas universities have four years.

If a foreign investor instead intends to acquire an existing education establishment, the provincial Department of Planning and Investment (**DPI**) must pre-approve the purchase of the operating company that owns the education establishment. The DPI will also consult with the relevant MOET or provincial Department of Education and Training before issuing such approval.





Thailand

Thailand is a fairly restrictive market for foreign investors, with the government limiting foreign ownership in order to encourage greater participation by local investors in the education sector. Generally, the activities that foreigners can and cannot undertake in Thailand is governed and regulated by the Foreign Business Act B.E. 2542 (1999) (**FBA**). As education (whether at the school level or higher education level) is considered as a service business under the FBA, all foreigners are restricted from engaging in businesses in the education sector unless they have obtained a foreign business licence (**FBL**) or a foreign business certificate (**FBC**) from the Director-General of the Department of Business Development, Ministry of Commerce. Granting of a FBL is at the absolute discretion of the Ministry of Commerce and each application is judged on a case-by-case basis. In contrast, a FBC is issued to foreigners who have first obtained permission to operate the restricted businesses, which usually means privileges granted to US-owned entities or US nationals pursuant to the Thai-US Treaty of Amity, or privileges granted from the Board of Investment of Thailand (**BOI**).

Schools

To operate a private school offering formal education (e.g., an international school), an investor is also required to obtain a formal school establishment licence from the Office of the Private Education Commission (**OPEC**) and to observe the requirements under the Private School Act, B.E. 2550 (2007) (**PSA**) and other relevant Ministerial Regulations. The applicant must attach a school charter (which includes, but is not limited to, details regarding name, type, level, locations, funds and assets, etc., of the school being established) as well as details relating to the education business (e.g., project and operating plan, curriculum and educational method, employment plan, etc.) together with its application.

Foreign investors, however, are not be able to hold a licence in their own name as the PSA specifically prescribes that the applicant must either be: (i) a Thai national, or (ii) an entity or a partnership where (a) at least half of the total shares are owned by local Thai shareholders or partners, and (b) at least half of the total number of shareholders or partners are Thai nationals. In addition, in the event that the applicant is an entity or a partnership, the representative or the manager of such entity or partnership (as the case may be) is required to have the qualifications prescribed by the PSA and one of the said qualifications requires that such person be a Thai national. Upon obtaining a licence, the applicant (the licensee) must give the OPEC not less than 30 days of notice in advance before the formal school commences its operation. However, the OPEC may refuse to acknowledge such notice if the applicant fails to comply with certain administrative obligations under the PSA (e.g., failure to set up an executive committee to oversee the operation of the school) in which case the school may be ordered to postpone its commencement date.

Pursuant to the PSA, once the licence is granted, the formal school becomes a juristic person and is deemed separate from the licensee. Furthermore, there are a number of obligations which the licensee is required to comply with under the PSA (including compliance with various relevant Ministerial Regulations). Amongst such obligations, the licensee is required to assign the ownership/possessory right of land and immovable property to the school within 120 days from the date of first receiving the license.

With regard to the acquisition of an existing private school, the license to operate a private school is transferable, subject to approval from the OPEC (including the authorized local OPEC's office).

Higher Education

For higher education (e.g., a private university, institution, college), the Private Institution of Higher Education Act, B.E. 2546 (2003) (**PIHEA**) provides that the establishment and operation of a private institution of higher education must be licensed by the Ministry of Higher Education, Science, Research and Innovation (**MHESI**) (having taken the advice of the Higher Education Commission). In applying for such licence, the applicant is required to submit an establishment project and other relevant information (e.g., fields of study to be taught, location and layout of the campus and building(s), details of the land on which the campus will be located, funds from the applicant for licence and project expense, etc.) to the Office of the Permanent Secretary (**OPS**), MHESI.

The applicant for a license to operate a private institution for higher education could be either an individual person or a juristic person (e.g. Thai corporate entity). Unlike the PSA, the PIHEA does not specify the minimum share capital required to be held by shareholders of Thai nationality. However, pursuant to the PIHEA, there must be a Council of Institution (**COI**) that oversees, formulates policies and supervises the general operation of the higher education institution. The President of the COI must be appointed by the MHESI and at least half of the members of the COI must be Thai nationals. Therefore, technically speaking, local Thai nationals (through the COI) remain highly influential in the operation of the private institution of higher education. Additionally the relevant requirements under the FBA remain applicable in respect of an institution of higher education.

Similar to schools, a private institution of higher education becomes a juristic person from the date the licence has been issued by MHESI. There are a number of obligations which the licensee is required to follow under the PIHEA as well as under the relevant Ministerial Regulations. Such obligations include an obligation on the licensee to assign ownership and/or long-term lease of the land (depending on the rights which the licensee has in respect of the land at the time of filing of the application) as well as assign money and other properties to the private institution of higher education within the timeframe prescribed by law.

With regard to the acquisition of an existing private institution of higher education, the license to operate a private institution of higher education is transferable subject to the transfer having obtained approval from the COI (as well as internal approval, if the licensee is a juristic person). The transfer of the license ultimately requires approval from the MHESI (acting under the advice of the Higher Education Commission).

In addition to the PIHEA, private institutions of higher education are also subject to the Higher Education Act B.E. 2562 (2019) (**HEA**). In overview, HEA contains policies which will support and enhance the standards of higher education in Thailand, as well as lead to efficiency in management of the institution of higher education, academic independence, research and innovation, power of the institution of higher education as well as set out the relationship between MHESI and the institution of higher education.



Myanmar

The issuance of Notification 7/2018 (the **Notification**) in April 2018 has seen Myanmar taking an important step forward in encouraging more foreign investment in the private education sector. The Notification has expressly made it possible for foreign investors to fully own and operate the following types of private education institutions and services:

1. Basic education school;
2. Technical, vocational and training school;
3. Higher education school;
4. Subject-based school; and
5. School designed by the Ministry of Education.

Four months after the release of the Notification, the Director of Investment and Company Administration published a set of standard criteria for education services in August 2018. Among other requirements, investors (whether local or foreign) are required to:

1. Have an adequate school compound, buildings and approved document to apply;
2. Commit to having a sufficient number of teachers and administrative staff;
3. Obtain recommendation from the relevant ministry, depending on the type of private school;
4. Obtain a signed agreement of “no objection” to the establishment of the private school from at least 10 persons who live around the compound of the private school;
5. Have a sound environment for education (e.g., maintaining security and fire fighting systems);
6. Commit to comply with National Education Law and all other relevant education laws including the laws that will be enacted in the future;
7. Commit not to take any narcotic drugs and alcohol within the compound of the school, and not to have sexual harassment upon the students and teachers.

Based on inquiries with the Myanmar Investment Commission (**MIC**), investors intending to establish a private education institution in Myanmar must also obtain a MIC Permit. Private schools are under the promoted sector as per MIC notification 13/2017, hence, an income tax holiday of 3, 5 or 7 years will be granted upon obtaining a MIC Permit depending on the location of the school.



Singapore

The private education market in Singapore is relatively mature compared to its counterparts in the region, considering that foreign investors are allowed to hold up to 100% equity in the legal entity which owns and operates an educational establishment.

Foreign investors setting up a Private Education Institution (**PEI**) (including a primary or secondary school and university) are obliged to submit an application to the Committee for Private Education (**CPE**) for registration. It is therefore important for foreign investors to observe closely the relevant registration requirements under the Private Education Act and the Private Education Regulations 2009, and consider whether they are capable of satisfying various legal requirements prior to applying for registration. The requirements include but are not limited to the following:

1. **Corporate Status** – A PEI must be either be a company registered with the Accounting and Corporate Regulatory Authority (**ACRA**) or a society registered under the Societies Act;
2. **Name** – A PEI's name must be the same as its registered company or society name. The name must also denote a place of learning. However, PEIs are restricted from using certain words (such as, University, National or Singapore) in their names;
3. **Premises** – The premises of each PEI must be suitable for the provision of private education by the relevant authorities including CPE. CPE's permission must be sought before a PEI operates in and makes changes to its premises;



4. **Courses** – A PEI must offer at least one course that is permitted by the CPE;
5. **Academic Board and Examination Board** – Each PEI must establish and maintain an Academic Board and an Examination Board with no fewer than three members on each Board; and
6. **Teachers** – Teachers engaged by a PEI must be fit and proper and possess minimum qualifications and experience as specified by the relevant law.

While Singapore has a relatively liberal policy for foreign investors to venture into the private education sector, there are certain policies that may restrict investment in this sector. First, the enrolment of local students in international schools (known as “Foreign System Schools” in Singapore) remains generally prohibited, unless approved by the Ministry of Education (**MOE**) on a case-by-case basis (a process that typically takes two to four weeks). Secondly, in October 2016, the CPE introduced further measures with a view to strengthening the protection of students in the private education sector. These enhanced measures imposed further requirements on PEIs, including a minimum paid-up capital of SG\$100,000 and a credit rating of at least band 3. Further, the course fees paid by students are protected through fee protection schemes, which protects the unconsumed course fees paid by students, and fee collection caps, which limits the amount of course fees a PEI may collect at any given time. Third, the CEI introduced the EduTrust Certificate Scheme (**EduTrust**). This is a quality assurance scheme for PEIs in Singapore and provides the opportunity for PEIs to differentiate themselves on the basis of higher standards of management and provision of educational services.



Malaysia

The Malaysian Government has a vision to make the country a global education hub and has encouraged foreign investors to participate in the development of academic and institutional excellence by allowing up to 100% foreign capital investment in the education sector.

To establish a Private Higher Educational Institution (**PHEI**) (such as that of a private university or a university college or a foreign branch campus), foreign investors must observe the relevant registration requirements under the Private Higher Educational Institutions Act 1996. The key licensing and registration requirements include but are not limited to the following:

1. **Establishment of PHEI** – In order to establish a PHEI, an applicant must acquire the prior approval of the Minister of Higher Education (**MOHE**) by submitting an application to the Registrar General of Private Higher Educational Institutions (**PHEI Registrar General**). Among other things, the applicant must set out and submit to the MOHE, a comprehensive plan for the establishment and maintenance of the proposed PHEI, which shall include the proposed courses of study and a copy of the draft constitution of the proposed PHEI. The PHEI Registrar General may make recommendations to MOHE on whether the approval should be granted and the conditions, if any, to be imposed by the MOHE. The MOHE has the discretion to grant or refuse to grant the approval upon considering the PHEI Registrar General's recommendations.
2. **Incorporation of Company** – The applicant must set up a company under the Companies Act 2016 with issued and paid-up capital, equity participation and composition of the board of directors as determined by the MOHE. If it is not a locally incorporated company at the time of the grant of approval to establish a PHEI, the applicant must incorporate a company locally within one year from being notified of the approval.
3. **Registration** – The applicant must submit a formal application for registration to the PHEI Registrar General within three years from the date of approval for the establishment of the PHEI. A certificate of registration will be granted to the applicant if the PHEI Registrar General is satisfied with the application.
4. **Approval on Course of Study** – The MOHE is responsible for ensuring that the quality of the course of study conducted by the PHEI complies with the standards and criteria set by the Malaysian Qualifications Agency. Hence, prior approval of the PHEI Registrar General must be obtained before a PHEI may conduct a course of study or training programme.
5. **Permit to Teach** – All local and foreign teaching staff should possess a permit-to-teach issued by PHEI Registrar General.

As a result of the recent COVID-19 pandemic, a moratorium had been placed on the establishment of PHEI during the Movement Control Order implemented by the Malaysian Government in 2020, whereby the MOHE had imposed a restriction on the establishment of any PHEI in Malaysia, subject to the discretion of the Malaysian Government. The moratorium period shall last until 30 December 2020.



Indonesia

Introduction

In November 2020, the Indonesian government passed the Law No. 11 of 2020 on Job Creation (informally known as the **Omnibus Law**). This regulation revises 76 laws and revokes two laws with the aim to create an easier business and investment climate for business actors, including foreign investors.

Before the enactment of the Omnibus Law, the Indonesian government had published a draft of Omnibus Law with some notable proposed amendments to several laws in the education sectors, including the proposal to allow foreign educational institutions to operate in Indonesia without any cooperation. Other key points that could be taken from the draft were that profit-based legal entities will be allowed to engage in the formal and non-formal education business, and that the foreign universities will be able to operate in Indonesia without having to enter any cooperation with the local education institutions.

Note, however, none of those proposals were approved by the legislator, and the final version of the Omnibus Law was issued without changing the main laws and regulations on the education sector.

Non-profit Principle in Education Sector in Indonesia

In Indonesia, the education sector must be carried out on a non-profit basis, and therefore, is closed for investment. This rule of thumb on the education sector is also reiterated by the Omnibus Law which, in essence, stipulates that the education sector must be non-profit in



nature (as opposed to business activities generating income), and therefore should not be treated the same as normal business activities.

Consequently, the Omnibus Law exempts several business licensing requirements that may be applied for the usual profit-oriented business activities. Note that, under the Omnibus Law, most of the profit-oriented business activities will be subject to the newly enacted business licensing requirement, called the “risk-based business licensing”. This risk-based licensing requirement, however, would not be applicable for education sector. The licensing requirements and restrictions in the education sector shall only refer to the relevant laws and regulations on the education sector.

Foreign Participation in Education Sector in Indonesia

Despite the non-profit nature of the education sector, the law still opens the opportunity for the foreign institutions to take part in the education sector in Indonesia.

The participation cannot be made by way of foreign direct investment, but rather through a cooperation with a local education institution that employs Indonesian lecturers and managers. Foreign education institutions may cooperate in the early childhood education, basic education, and mid-level education sectors, as well as in the higher (tertiary) education sector.

Note, however, that such cooperation is only made possible by law if those foreign education institutions have been properly accredited and recognized by the relevant authority in the relevant home countries.



Restrictions

To participate in the education sector in Indonesia, foreign institutions must comply with the requirements set out in the relevant law, including but not limited to Law No. 20 of 2003 on the National Education System (for investment in early childhood education, basic education and mid-level education sectors), Law No. 12 of 2012 on Higher Education (**Law 12/2012**) (for investment in the higher (tertiary) education sector) and their respective implementing regulations.

For early childhood education, basic education, and mid-level education, foreign institutions are required to form an academic cooperation with an Indonesian basic or mid-level education institution in order to carry out activities in the education sector. Pursuant to the Regulation of Minister of Education and Cultural Affairs No. 31 of 2014 on Cooperation in the Provision and Management of Education with Foreign Educational Institutions, the academic cooperation must fulfill the following requirements:

1. Be approved by the Ministry of Education and Cultural Affairs;
2. Use the national curriculum (even though this can be enriched with a foreign curriculum if approved by the relevant Ministry);
3. Be accredited by the Indonesian National Accreditation Body;
4. Employ at least 30% of Indonesian nationals for its teaching positions (and at least 80% of its total employees must be Indonesian nationals);
5. Have a cooperation agreement between the Foreign Educational Institution and the Indonesian Educational Institution;
6. Have a master plan for the development of cooperative education units;
7. Enroll its Indonesian students in national examinations (for basic and mid-level education); and
8. Teach Indonesian language and cultural studies to its foreign students.

As for universities, Law 12/2012 recognizes two forms of higher education institutions, namely, (i) state college (*perguruan tinggi negeri* or **PTN**), and (ii) private college (*perguruan tinggi swasta* or **PTS**). The Government Regulation No. 4 of 2014 regarding the Organization of Higher Education and Management of Colleges (**GR 4/2014**) provides that a PTN can only be established by Indonesian government, while a PTS can only be established by communities in the form of a non-profit implementing agency, i.e., foundations, associations, or other non-profit legal entities in accordance with applicable laws and regulations in Indonesia.

Under the Minister of Research and Higher Education (**MRHE**) Regulation No. 53 of 2018 regarding Foreign Higher Education (MRHE Regulation 53/2018), foreign institutions may establish a foreign university in Indonesia by way of cooperation with a foundation, association or other non-profit entity in Indonesia that operates a university. Apart from the cooperation requirement, the foreign university:

- a. Can only be established in a special economic zone;
- b. Must be accredited and/or recognized in its home country;
- c. Must be a non-profit entity; and
- d. Must be ranked in the top 200 universities globally.

Apart from the above requirements, such establishment must also satisfy the requirements under the Regulation of the Minister of Education and Culture No. 7 of 2020 on the Establishment, Changes, Dissolution of the State Higher Education, and the Establishment,

Changes, Revocation of Private Higher Education License, among others:

1. The foreign university must be organized by an organizing body which is specifically established to organize the private university, or by an Indonesian organizing body in collaboration with foreign parties;
2. The foreign university must be on a non-profit basis;
3. The foreign university has been accredited and/or recognized in its home country;
4. At least 60% (sixty percent) of the lecturers and education personnel must be Indonesian citizens;
5. Courses on religion, Pancasila, citizenship, and Indonesian language must be provided by Indonesian citizen lecturers;
6. The head of the private university must be an Indonesian citizen;
7. The name of the private university must have distinguishing characteristics from the name of the cooperated foreign university;
8. Shall first obtain recommendations from:
 - a. Embassy of the Republic of Indonesia in the country of domicile of foreign universities that will cooperate; and
 - b. Embassy from the country of domicile of the foreign university.

Procedure

The procedure for establishing an education cooperation in early childhood education, basic education, and mid-level education includes the following steps:

- a. Submission of application for recommendation to the district/city and/or provincial government regarding the plan to establish an education cooperation by the initiator;
- b. Providing recommendations from the district/city and/or provincial governments regarding the plan to establish an education cooperation;
- c. Submission of the proposed education cooperation establishment plan by the initiator to the relevant minister with attention to the relevant director general equipped with recommendations from the district/city and/or provincial governments;
- d. Relevant director general provides a consideration to the relevant minister;
- e. Issuance of permit for the establishment of an education cooperation by the relevant minister or an appointed official, which will be valid for a period of 6 (six) years.

As for establishing a foreign university with cooperation with local non-profit legal entity, the procedure comprises the following:

- a. The foreign university is required to fulfil any commitments required by the Online Single Submission System (**OSS System**);
- b. Obtain a Business Identification Number (*Nomor Induk Berusaha* or "NIB") from the OSS System;
- c. The foreign university is required to upload all required documents to a website stipulated by the relevant ministry;
- d. The relevant ministry will conduct a verification of the submitted documents within 30 (thirty) business days;
- e. Upon the verification of the documents, the relevant ministry will determine to approve or reject the application.

Cambodia

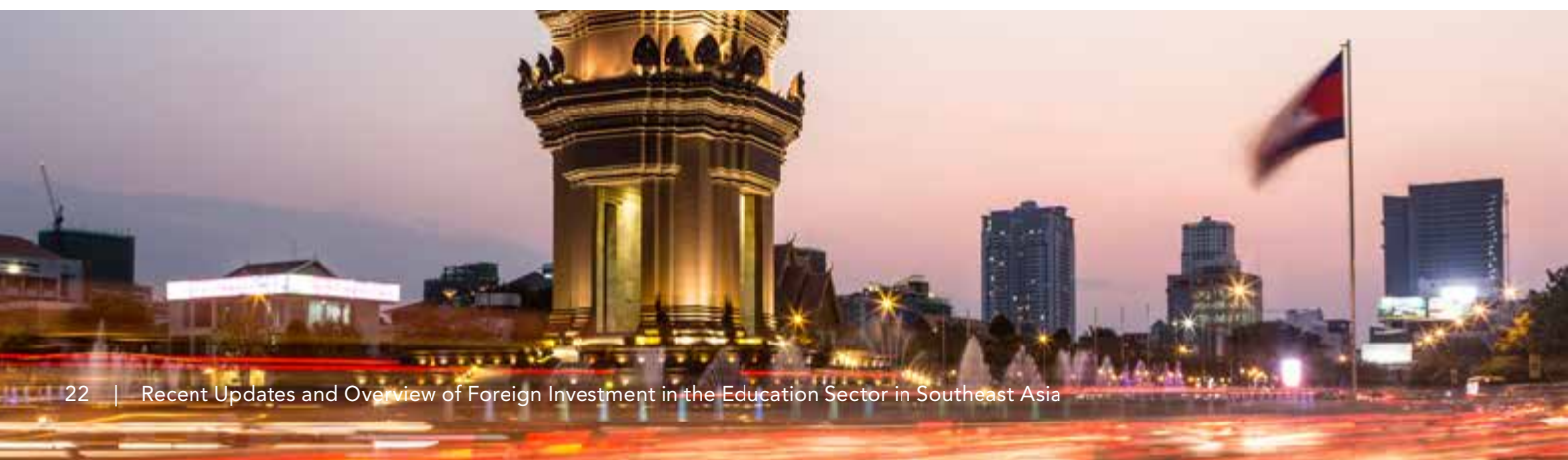
Cambodia is completely open to foreign investment in the education sector and schools may be 100% invested by foreign nationals or foreign registered business entities.

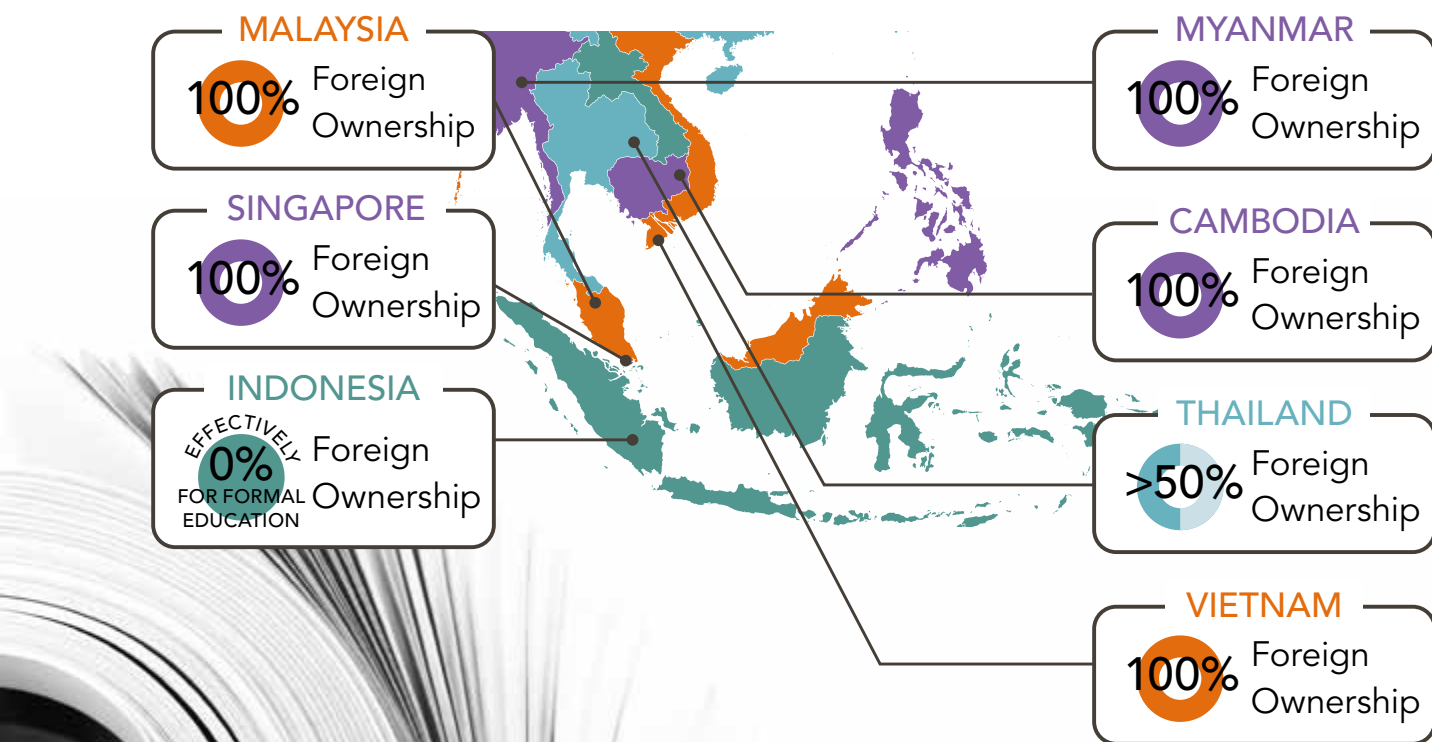
When, in the 1990s, Cambodia began its recovery from civil war and Khmer Rouge social destruction, it was faced with the complete lack of a functioning educational system. With little local capital and a broad need for investment, the nation welcomed the participation of the international community in helping to rebuild its educational foundation and the work continues to today. The population demographics of Cambodia make this an especially important and also challenging task as a high percentage of the total population is of school age (approximately 47% of the total population is under the age of 25).

Regardless of ownership, educational institutions are subject to licensing from the Ministry of Education, Youth and Sports (**MoEYS**). Curriculum, faculty, and facilities must be approved by MoEYS according to varying standards depending on the target student body and the purpose of the school, which may be early childhood education, primary education, general secondary education, higher education or non-formal education. Vocational training is regulated by the Ministry of Labour and Vocational Training (**MoLVT**) and training schools or centers are subject to licensing by MoLVT.

While some schools and vocational training centers are organized on a not-for-profit basis under the auspices of a non-governmental organization, the majority of private schools are operated as corporations under the Law on Commercial Enterprises and, therefore, in addition to the need to follow MoEYS regulations, are subject to the same regulations as any other business.

The Royal Government currently extends some tax incentives to “educational establishments”—public and private educational institutions which solely provide educational services from early childhood to higher education, as well as technical and vocational training centers. The incentives include some withholding exemptions for interest payments and payments for managerial and technical services as well as a withholding exemption for dividends paid to non-resident shareholders. There are also some exemptions and special treatments allowed for the Value Added Tax.





This article is written by partners, David Harrison and Mark Uhrynuk, in conjunction with Axis Legal's co-founder Peter Burke (Thailand), Blackoak LLC's directors Ashok Kumar and Darius Tay (Singapore), David Lai & Tan's partner Dato' Tan Yee Boon (Malaysia), IAO Asia's senior partner Joseph Lovell (Cambodia), Roosdiono & Partners' partner Barryl Rolandi (Indonesia), and VDB Loi's partner Edwin Vanderbruggen and director My Le (Myanmar).

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