From Collectively-Run to Private Schools
A Small Shirt for a Big Body

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1. Transition from collectively-run to private schools

a. Two scenarios and the new statute

Transition from the collectively-run school to the private one is a right thing to do because the former is a poor model that couldn't last long. However, there are two bad scenarios for the transition:

- Scenario 1: The transition is meeting with difficulties. If it takes a very long time to deal with them, these schools will keep existing and serious violation may occur.

- Scenario 2: The transition takes place smoothly and newly formed private schools operate according to the new statute (Statute of Organization and Operation of Private Universities). In comparison with the old statute of the collectively-run schools, the new one contains more progressive and reasonable points. But there still exist many defects, like a new and too short shirt. Some of them are as follows:

+ The Statute recognizes private school as a joint stock company. This is not sufficient because one person may be the sole owner of a private school. It's worth noting that the Companies Law accepts existence of various kinds of companies and it has reasons to do so. The Statute could have done the same to allow all kinds of school to come into being.

+ There is a lack of affirmation of the role of the meeting of shareholders in the organization of the private school (Article 14). The meeting of shareholders is denied its rights during the first term of the board of directors (Article 16). This rule allows the founder to make decision in favor of himself or herself.

+ The Statute lack rules that control acts by related parties with a view to limiting violations and abuse of power. This loophole leads to opportunities for wrongdoers to get away with their bad deeds.

+ Many terms are not defined clearly (such as 'shareholder' or 'ordinary share') or are defined incorrectly ('legal capital' for example). There is a confussion between 'statute' and 'articles' of organization and operation of private schools (Articles 3 and 11). The Article 18 requires a Supervision Board, which is not reasonable (Companies Law requires joint stock or limited companies with 11 members or more to form supervision boards) because a private school may have only three members. Article 27 allows "officials, permanent and contract employees... to enjoy benefits or interests according to shares they hold," which is not correct because these interests are only available for shareholders.

Apparently, the above examples show that the Statute is devised carelessly with a very limited knowledge of the problem. Is such an incomplete and imperfect statute able to create favorable conditions for development of private schools?

b. What will we do with the two scenarios?

- If everything takes place according to the Scenario 1, it's necessary to add more rules and regulations to the statute of collectively-run schools in order to prevent violations and wrongdoings that may keep happening in collectively-run schools before their transition to private ones.

- Whatever scenarios everything follows it's necessary to review the Statute because it is so essential to existence and development of private schools as the Companies Law is to companies. I think the best way is to apply articles of the Companies Law that are appropriate to private schools to the Statute although many people may be of opinion that schools are not companies. It's worth remembering that, however, articles of the Companies Law aim at ensuring equality and mutual control, and preventing abuse of power for personal interests. It is rules of the game for organizations based on equity capital. Without fair rules and regulation, bad deeds certainly take place in such organization. We shouldn't think applying the Companies Law if commercializing the education service. It is not necessary and wise to avoid this practice because the more we avoid it, the more opportunities are open to wrongdoers and the less chance to develop is open to local private schools in comparison with foreign ones.

Of course, schools have their own characteristics, therefore the Statute should introduce specific rules and regulations appropriate to them besides the ones borrowed from the Companies Law. For example, the Companies Law has no rule about the

education level of the chairperson of the board of directors and directos but this is a must to the statute of private schools. Similarly, many other issues that never happen in companies but are common in schools must be included in the statute with a view to ensuring that all wrongdoings and violations will be protested and controlled and prevented by other parties. The problem is: what statute will regulate the transition from collectively-run schools to private ones and whether the statute can handle properly things arising from the transition and operation of the private schools.

2. Changing into the new shirt

I call it 'changing into the new shirt' because everything only changes their appearance, or outerwear, while operations of non-public schools witness no changes.

a. Unreasonable rules

In the "Rules of transition from collectively-run universities to private ones" (the draft attached to the Official Letter 7/57 BGDĐT – TCCB dated Aug. 11, 2006), there are two unreasonable points.

- This document gives too much power to the board of directors and shareholders are brushed aside.

This document doesn't mention the act of asking opinions of shareholders and gives all rights to the board of directors and persons whose names are stated in license. What if the board abuses this right? One of the easiest way to make some money is to apply the Article 7 (section 2b) about "giving free shares to important persons whoe contribute to the formation and development of the school," thereby sharing assets of the school legally. Giving shares as bonuses should have been decided by those who put money in the school, instead of by the board alone.

- The document shows a lack of principle and equality when identifying cases of contributing money to get shares before the transition to the private school. The Article 4 (section 2) reads, "founders and members of the board of director have right to contribute their money to become shareholders." Questions arising from this rule are, "What principle does the money is contributed according to?" and "Why is this right only available for these persons and not for others who also put money in the school?"

This rule is not fair because some founders and members of the board might be reluctant to put much money in the school at its first stage of development for fear of risks and losses. When the school operates well and the degree of risk lowers, they are the first to enjoy the right to hold shares without any restraints or limits. Moreover, these persons are not necessarily worth having this right, because the board of directors of the first term (the board hasn't been elected again for the new term) that was usually established by the board of founders, often includes founders' relatives who don't have ability or any considerable contribution to the school. In the meanwhile, those who put money in the school in the first place but didn't become members of the board are dinied this privilege although they have risked their money in the school from the beginning. In my opinion, capital and merit must be made clear: merits will receive rewards and the right to secure shares must be handled according to fair principles.

The Article 5 (section 1) reads, "Civic organizations or companies that have secured license to establish the school now have right to pay money, not from public fund, to become shareholders of the private school."

Like what analyzed above, this rule lacks a principle. In fact, moreover, most collectively-run schools didn't really need an organization behind them but they should do so because of requirements posed by the Ministry of Education and Training. However, the role of that organization is necessary and its interest should be taken into account, but it can only receive some rewards for its merits instead of the right to become a shareholder.

The Article 4 (section 4) reads, "The board of directors of the collectively-run school is allowed to raise money to establish the private school." This rule once again gave an overpowering right to the board. In principle, mobilizing more capital to form the legal capital should be determined by those who had put money in the school. The board has only right to raise a sum of money to ensure the legal capital and fair contribution from all members. All changes in the legal capital must be determined by the capital-contributing group. When mobilizing more capital, members should have the right to contribute added capital according to their shares in the legal capital. If some preferential treatment is needed, this must be determined by the capital –contributing group in the first place based on strict provisions in the Articles of Association of the school. This practice can prevent the board from abusing its power. But this Article allows the board to act at will.

- The draft also introduces a method of assessing the value of capital contributed in the Article 7 (section 1a): "Assets or capital contributed to the school before its establishement and during its operation, are estimated at their original value at the time they

were contributed to the school." This practice causes more losses for senior, or initial, members. They had to accept more risks in the first stage of development of the school, see their investment dwindled because of high inflation rate, and now see their shares are treated equally as contributions of newcomers. In other word, this practice is not fair.

b. Problems to solve during the transition period

- Basic principle: The transition must ensure equality and consensus for all memebers, and stable development for the school based on fair economic relations.

The question is: Why do schools with small initial capital survive competition and develop well? In my opinion, it is because they enjoy some monopolistic advantages. In the market for education service, the demand always surpasses the supply. And as a result, any school can attract a lot of students after securing the license (a license to open a university is much harder to get than the one to start a company). The sooner it comes into being, the bigger its monopolistic advantages.

Under such a condition, the State had better impose a charge like anti-monopoly tax. After paying this charge, the assets of the school belong to those who pooled their money to open the school. It is unreasonable to force them to own only the sum of money they paid to the school. On the other hand, it is not correct to allow them to own all assets of the school after it becomes a private one, because part – sometimes a very big one - of the assets comes from the monopolistic advantages. As for schools with no pooled capital, the anti-monopolistic charge should be 100% of the assets, that is, all of its assets belong to the society. The right to put more money in the school should not given solely to the board of directors or present leadership because this means that a small group can own a very big part of the assets coming from monopolistic advantages.

- There must be special treatment for schools based on donations. When becoming a private school, nobody is allowed to put money in it to take control of its assets. The fairest way is to privatize it as a state-owned company. Those who have contributed their energy or time to the school may receive some bonuses that can be turned into shares in an objective and fair manner.

- It's necessary to deal with differences in dividends between schools. In fact, some school can only distribute small profits because they have to pay debts used for building the school in the beginning while others enjoy high dividends because they didn't make big investment.

- In privatizing the school, its value must be evaluated exactly. If not, the capital pooled must be revaluated before its transition. In revaluating the initial capital or assets, full attention must be paid to the following aspects:

+ Depreciation of the currency and opportunity cost of the initial capital.

+ Degree of risks when making investment at different times.

- Violations relating to the contribution of capital by the board of directors must be handled properly. Some boards might decide unilaterally to increase their pooled capital or invite their relatives to invest in the schools without consulting the capital- contributing group. Some boards even decide their bonuses and then turn the bonuses into shares without consulting capital-contributors. These violations must be handled before the transition in order to ensure equality for all.

- Giving bonuses to persons who have helped develop the school should be made public. They merit shouldn't be turned into shares. The bonuses must be determined by the capital contributing group instead of by the board of directors.

- Changes in the legal capital, or total capital pooled, before transition, if any, and whether bonuses can be turned into shares, should be decided at the meeting of capital contributing group instead of being determined solely by the board of directors. In other words, the role of the investing community should be enhanced to prevent the abuse of power by the board – a reality that could be seen as a common shortcoming in the statute of collectively-run schools.

In short, there must be a healthy legal infrastructure for the development of private universities in Vietnam. This is meaningful not only to the education service but also to the economic growth in the long run. Other countries can export their education service and use it as a means of marketing their culture and goods while the education service in Vietnam have been busy dealing with legal obstacles to its development for decades. When this service is open to foreign competition in 2009, students may enjoy more option but local universities have to face worrying challenges. Both the central authorities and universities should aim at creating favorable conditions for universities, and the whole education service as well, to reach international, or regional at least, standards within the shortest period of time. Otherwise, we will lose at our home playing field just as local companies that have lost their market shares to foreign rivals in the first stage of the economic reform, and left many sad experiences for us to learn.■