

ANNEX I

SCHEDULE OF VIET NAM

INTRODUCTORY NOTES

1. **Description** sets out the non-conforming measure for which the entry is made.
2. In accordance with Article 9.12 (Non-Conforming Measures) and Article 10.7 (Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the non-conforming measures identified in the **Description** element of that entry.
3. Classification numbers, where referenced in the **Sub-Sector** element, refers to the activity covered by the non-conforming measure according to the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991).

Sector: Professional Services

Sub-Sector: Legal Services (CPC 861)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Level of Government: Central

Measures: *Law No 20/2012/QH13* amending the *Law on Lawyers No. 65/2006/QH11* dated 29 June 2006

Description: Investment and Cross-Border Trade in Services

Foreign lawyers organisations¹ and foreign lawyers may provide legal services in Viet Nam, through the following forms:

- (a) branches of foreign lawyers organisations;
- (b) wholly foreign limited liability law firm;
- (c) joint venture limited liability law firm; and
- (d) partnerships between foreign lawyer
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These entities are not allowed to:

- (i) participate in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Viet Nam; and
- (ii) participate in legal documentation and certification services² of the laws of Viet Nam.

¹ Cl obfdk i bop l od kfp ql k fp k l od kfp ql k l c m o q f k d i bop b p j i f p e b a f k k l j j b o f i
corporate form in a foreign country (including firms, companies, corporations, etc.) by one or more foreign lawyers or law firms.

² Cl o d o b q o b o q f k q) i b d i a l r j b k q q l k k a b o q f c f q l k p b o s f b p f k i r a b k l q o p b o s f b p k a l o p b o
services as provided in Vietnamese law, but do not include commercial contracts and business charters. Drafting on such matters as commercial contracts and business charters may be conducted by Vietnamese lawyers working in foreign lawyer organisations.

Foreign lawyers practising law in Viet Nam are not permitted to advise on Vietnamese law unless they have graduated from a Vietnamese law college and satisfy requirements applied to like Vietnamese lawyers. They are not allowed to defend or represent clients before the courts of Viet Nam.

Sector:	Professional Services
Sub-Sector:	Auditing services (CPC 862)
Obligations Concerned:	Local Presence (Article 10.6)
Level of Government:	Central
Measures:	<i>Decree No. 17/2012/ND-CP</i> dated 13 March 2012
Description:	<p><u>Cross-Border Trade in Services</u></p> <p>Foreign services suppliers are not permitted to supply auditing services unless they meet the requirements of local presence in Viet Nam.</p>

Sector: Professional Services

Sub-Sector: Veterinary services (CPC 932)

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Administrative measures

Description: Investment

Foreign investment to supply veterinary services may not be permitted in Viet Nam unless such services are supplied by natural persons in the form of private professional practice.

Sector: Distribution services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: *Decree No. 23/2007/ND-CP* dated 12 February 2007
Circular No. 09/2007/TT-BTM dated 17 July 2007
Circular No. 05/2008/TT-BCT dated 14 April 2008
Decision No. 10/2007/QĐ-BTM dated 21 May 2007

Description: Investment

The establishment of outlets for retail services (beyond the first one) shall be allowed on the basis of an Economic Needs Test (ENT).

Applications to establish more than one outlet shall be subject to pre-established publicly available procedures, and approval shall be based on objective criteria. The main criteria of the ENT include the number of existing service suppliers in a particular geographic area, the stability of market and geographic scale.

The establishment of outlets for retail services with area of less than 500 square metres in areas that are planned for commercial use shall be allowed on the basis of an Economic Needs Test (ENT) on which the construction of infrastructure has been finished, is not subject to the ENT requirement.

Five years after the date of entry into force of this Agreement for Viet Nam, the ENT shall be removed and this entry shall no longer have effect.

Sector:	Other Business Services
Sub-Sector:	Technical testing and analysis services (CPC 8676)
Obligations Concerned:	National Treatment (Article 9.4)
Level of Government:	Central
Measures:	<i>Decree No. 140/2007/ND-CP</i> dated 5 September 2007
Description:	<p><u>Investment</u></p> <p>Where Viet Nam allows private suppliers of technical testing and analysis services access to a sector previously closed to private sector competition on the grounds that these services had been supplied in the exercise of governmental authority, such services shall be allowed without limitation on foreign ownership five years after such access to private sector competition is allowed.</p>

Sector:	Other Business Services
Sub-Sector:	Services incidental to agriculture, hunting and forestry (CPC 881)
Obligations Concerned:	National Treatment (Article 9.4)
Level of Government:	Central
Measures:	Administrative measures
Description:	<p><u>Investment</u></p> <p>Foreign investment to supply services incidental to agriculture, hunting and forestry may not be supplied except through a business cooperation contract, a joint venture or the purchase of shares in a Vietnamese</p>

Sector: Telecommunications Services

Sub-Sector: Basic services
Value-added services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Level of Government: Central

Measures: Administrative measures

Description: Cross-Border Trade in Services

Satellite-based services: Foreign service suppliers are not allowed to supply satellite-based services unless the services are offered through commercial arrangements with Vietnamese international satellite service suppliers duly licensed in Viet Nam, except satellite-based services offered to off-shore/on sea based business customers, government institutions, facilities-based service suppliers, radio and television broadcasters, official international lod kfp qfl kp representative offices, diplomatic representatives and consulates, high tech and software development parks and multinational companies³ that are licensed to use satellite-earth stations.

Investment

(a) *Non facilities-based services:*⁴

Basic and valued added services: foreign investment to supply non facilities-based services may not be permitted except through a joint venture or the purchase of shares in a Vietnamese

³ For the purposes of this entry, a multinational is a corporation which: (a) has a commercial presence in Viet Nam; (b) operates in at least one other Party; (c) has been in operation for at least five years; and (d) is licensed to use satellite services in at least one other Party.

⁴ Cl o q b nr onl p bpl c q fp bk q) kl k-c fifqfbp pba p b o s f b p r mifbo j b kp p b o s f b p r mifbo ef e al bp not own transmission capacity but contracts for such capacity including submarine cable capacity, including on a long-term basis, from a facilities-based supplier. A non facilities-based supplier is not otherwise excluded from owning telecommunications equipment within their premises and permitted public service provision points (POP).

enterprise, with foreign equity not exceeding 65 per cent, or 70 per cent in the case of virtual private networks. No later than five years after the date of entry into force of this Agreement, Viet Nam shall eliminate any foreign equity limitation or joint venture requirement.

(b) *Facilities-based services:*

- (i) *Basic services:* foreign investment to provide facilities-based services may not be permitted except through a joint venture or the purchase of shares in a Vietnamese

Sector: Audio-visual Services

Sub-Sector: Motion picture production (CPC 96112)
Motion picture distribution (CPC 96113)

Sector: Audio-visual Services

Sub-Sector:

Obligations Concerned:

Sector:	Educational Services
Sub-Sector:	Higher education services (CPC 923) Adult education (CPC 924) Other education services (CPC 929 including foreign language training)
Obligations Concerned:	National Treatment (Article 9.4)
Level of Government:	Central
Measures:	Administrative measures
Description:	<u>Investment</u> Foreign investment to supply educational services in the following fields of study is not permitted: national security, defence, political science, religion, Vietnamese culture and other fields of study necessary to protect Vietnamese public morals. This limitation shall not prevent the supply of educational services in fields of study where Viet Nam is bound under any other trade agreement.

Sector:	Tourism and travel related services
Sub-Sector:	Travel agencies and tour operator services (CPC 7471)
Obligations Concerned:	National Treatment (Article 9.4)
Level of Government:	Central
Measures:	Administrative measures
Description:	<p><u>Investment</u></p> <p>Only foreign investment to supply inbound services and domestic travel for inbound tourists as an integral part of inbound services is permitted.</p>

Sector: Recreational, Cultural and Sporting Services

Sub-Sector: Entertainment services (including theatre, live bands and circus services) (CPC 9619)

Obligations Concerned: ~~FA~~

Sector:	Recreational, Cultural and Sporting Services
Sub-Sector:	Electronic games business
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3)
Level of Government:	Central
Measures:	Administrative measures
Description:	<u>Investment and Cross-Border Trade in Services</u>

Foreign investment to supply electronic games services may not be supplied except through a business cooperation contract or a joint venture with Vietnamese partner authorised to supply such services or the purchase of shares in a Vietnamese enterprise authorised to supply such services. In case of a joint venture or the purchase of shares in an enterprise, foreign equity shall not exceed 49 per cent.

No later than two years after the date of entry into force of this Agreement, Viet Nam shall permit 51 per cent foreign investment in electronic game services offered over the Internet. Five years after the date of entry into force of this Agreement, Viet Nam shall impose no limitations on foreign equity.

For greater certainty, the absence of an entry against the cross-border services obligations does not preclude Viet Nam from ensuring that the cross-border supply of electronic games services complies with Viet Nam's applicable registration and licensing requirements.

Sector:	Maritime Transport Services
Sub-Sector:	Passenger transportation (CPC 7211) Freight transportation (CPC 7212)
Obligations Concerned:	National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)
Level of Government:	Central
Measures:	Administrative measures
Description:	<u>Investment</u> Foreign investment to supply maritime passenger and freight transportation services under the national flag of Viet Nam may not be supplied except through a joint venture or the purchase of shares in a Vietnamese enterprise, with foreign equity not

Sector:	Services auxiliary to all modes of transport
Sub-Sector:	Container handling services, except services provided at airports (CPC 7411)
Obligations Concerned:	National Treatment (Article 9.4)
Level of Government:	Central
Measures:	<i>Decree No. 140/2007/ND-CP</i> dated 5 September 2007 Administrative measures
Description:	<u>Investment</u> Foreign investment to supply container handling services may not be supplied except through a joint venture or the purchase of shares in a Vietnamese enterprise, with foreign equity not exceeding 50 per cent.

Sector: Maritime Auxiliary Services

Sub-Sector: Shipping agency services

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: *Decree No. 115/ND-CP* dated 5 July 2007
Administrative measures

Description: Investment

Foreign investment to supply shipping agency services may not be supplied except through a joint venture or the purchase of shares in a Vietnamese enterprise, with foreign equity not exceeding 49 per cent.

Sector:	Internal Waterways Transport
Sub-Sector:	Passenger transport (CPC 7221) Freight transport (CPC 7222)
Obligations Concerned:	National Treatment (Article 9.4)
Level of Government:	Central
Measures:	<i>Decree No. 140/2007/ND-CP</i> dated 5 September 2007 Administrative measures
Description:	<u>Investment</u> Foreign investment to supply internal waterway transport services may not be supplied except through a joint venture with a Vietnamese partner or the purchase of shares in a Vietnamese enterprise, with foreign equity not exceeding 49 per cent.

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Sector:	Rail Transport Services
Sub-Sector:	Passenger transportation (CPC 7111) Freight transportation (CPC 7112)
Obligations Concerned:	National Treatment (Article 9.4)
Level of Government:	Central
Measures:	<i>Decree No. 140/2007/ND-CP</i> dated 5 September 2007 Administrative measures

Sector:	Road Transport Services
Sub-Sector:	Passenger transportation (CPC 7121 and 7122) Freight transportation (CPC 7123)
Obligations Concerned:	National Treatment (Article 9.4)
Level of Government:	Central
Measures:	<i>Decree No. 140/2007/ND-CP</i> dated 5 September 2007 Administrative measures
Description:	<p><u>Investment</u></p> <p>Foreign investment to supply road passenger and freight transport services may not be supplied except through a business cooperation contract, a joint-venture or the purchase of shares in a Vietnamese enterprise, with foreign equity not exceeding 49 per cent.</p> <p>In the case of road freight transport services, subject to the needs of the market⁵, the foreign equity limitation may be raised to but shall not exceed 51 per cent.</p> <p>100 per cent of joint venture drivers shall be Vietnamese citizens.</p>

⁵ The criteria taken into account are, among others: creation of new jobs; positive foreign currency balance; introduction of advanced technology, including management skill; reduced industrial pollution; professional training for Vietnamese workers; etc.

Sector:	Manufacturing
Sub-Sector:	Aircraft manufacture industry Manufacture of railway rolling stock, spare parts, wagon and coach
Obligations Concerned:	National Treatment (Article 9.4)
Level of Government:	Central
Measures:	Administrative measures
Description:	<u>Investment</u> Foreign investment in the manufacture of aircraft, railway rolling stock, spare parts, wagon and coach may not be permitted except through a joint venture or the purchase of shares in Vietnamese enterprise, with foreign equity not exceeding 49 per cent.

Sector:	All
Sub-sector:	
Obligations concerned:	National Treatment (Article 9.4)
Level of Government:	Central
Measures:	<i>Law No. 45/2013/QH13 on Land</i> dated 29 November 2013 and the relevant regulations
Description:	<p><u>Investment</u></p> <p>Foreign organisations, individuals and foreign invested enterprises may only acquire and use land-use rights in Viet Nam in accordance with the <i>Law on Land</i>.</p>

Sector: Power Development

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Administrative measures

Description: Investment

Foreign investment to own or operate power transmission facilities in Viet Nam may not be permitted.

Viet Nam Electricity Corporation (EVN) is currently the sole authorised owner and operator of power transmission facilities in Viet Nam.

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Administrative measures

Description: Investment

Foreign investment to establish a commercial presence in the form of a branch may not be permitted, except for the following sectors and sub-sectors:

- (a) Legal services (CPC 861);
- (b) Computer and Related Services (CPC 841-845, CPC 849);
- (c) Management consultant services (CPC 865);
- (d) Services related to management consulting (CPC 866);
- (e) Construction and related engineering services (CPC 51); and
- (f) Franchising services (CPC 8929).

For greater certainty, and consistent with Article 9.12.1(c) (Non-Conforming Measures), the removal of a branching restriction in a sector or sub-sector does not require the removal of a branching restriction in all sectors.

Sector: Import/Export Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Administrative measures

Description: Investment

Foreign investment in state-trading enterprises of Viet Nam that import certain tobacco products, oil products, publications, recorded media, aircraft and aircraft parts, as specified in Table 8(c) of the Report of the Working Party on the Accession of Viet Nam in the WTO may not be permitted.

For greater certainty, and consistent with Article 9.12.1(c) (Non-Conforming Measures), the liberalisation of a state-trading enterprise does not require the liberalisation of all state-trading enterprises.

Sector: Geodesy and Cartography

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: *Decree No. 12/2002/ND-CP* dated January 22, 2002

Description: Investment

Foreign organisations and individuals carrying out, directly or in cooperation with domestic organisations, geodesic and cartographic activities in Viet Nam must have their geodesic and cartographic projects approved by competent State bodies and be granted permits for geodesic and cartographic activities.

After completing the geodesic and cartographic projects, the project investors must submit one copy of the results to the State management agency in charge of geodesy and cartography.

Sector: Recreational, cultural and sporting services

Sub-Sector: Amusement parks

Obligations Concerned: National Treatment (Article 9.4)
Most-Favoured-Nation Treatment (Article 9.5)
Performance Requirements (Article 9.10)
Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures:

Sector: Financial services provided by non-financial institutions, excluding the provision and transfer of financial information and advisory financial services

Sub-Sector:

Obligations concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: All existing non-conforming measures

Description: Investment

All existing non-conforming measures at the central level of government.

Sector: Manufacture of tobacco products, including cigars and cigarettes

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: *Decree No. 67/2013/ND-CP* dated June 26, 2013

Description: Investment

Foreign investment in manufacturing of tobacco products, including cigars and cigarettes, is not allowed, except through a joint venture or the purchase of shares in a Vietnamese enterprise with foreign equity not exceeding 49 per cent.

Sector: Services incidental to energy distribution (CPC 887)

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Level of Government: Central

Measures: Administrative measures

Description: Investment and Cross-Border Trade in Services

Foreign services suppliers are not allowed to supply services incidental to energy distribution. Foreign investment in these services is not permitted.

Sector: Mining

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)
Most-Favoured-Nation Treatment (Article 9.5)
Performance Requirements (Article 9.10)
Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Administrative measures

Description: Investment

Foreign investment in exploitation of minerals shall not be accepted unless the Vietnamese competent authorities advise the applicant that the investment is likely to be of net benefit to Viet Nam. In making this determination, the competent authority may consider the following factors:⁶

- (a) the effect of the investment on the level and nature of economic activity in Viet Nam, including the effect on employment, on the use of parts, components and services produced in Viet Nam and on exports from Viet Nam;
- (b) the degree and significance of participation by Vietnamese in the investment;
- (c) the effect of the investment on productivity, industrial efficiency, technological development and product innovation in Viet Nam;
- (d) the effect of the investment on competition within an industry or industries in Viet Nam;
- (e) the compatibility of the investment with national industrial, economic and cultural policies, taking into consideration industrial, economic and

⁶ Foreign investors do not have to comply with all the criteria to obtain the mining licence.

cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment;
and

- (f) the contribution of the investment to Viet Nam's ability to compete in world markets.

Sector:	Oil and Gas
Sub-Sector:	Oil and gas exploration, prospecting and exploitation
Obligations Concerned:	National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Performance Requirements (Article 9.10)
Level of Government:	Central
Measures:	<i>The Petroleum Law 1993</i> <i>The 2000 Law No.19/2000/QH10 Amending and Supplementing a Number of Articles of the Petroleum Law 1993</i> <i>The 2008 Law No.10/2008/QH12 Amending and Supplementing a Number of Articles of the Petroleum Law 1993, which was amended and supplemented under Law 19/2000/QH10 Amending and Supplementing a Number of Articles of the Petroleum Law</i>
Description:	<u>Investment</u> Viet Nam Oil and Gas Group (PETROVIETNAM) is the sole authorised company with respect to oil and gas exploration, prospecting and exploitation. A contract with PETROVIETNAM is required for oil and gas activities in Viet Nam. Sub-contracts may be awarded to foreign contractors, but priority may be given to Vietnamese organisations and individuals. The execution of oil and gas contracts and their transfer to another entity must be approved by the Prime Minister. In special cases ⁷ , the following matters are also subject to the law: (i) the extension of the prospecting period or the term of an oil and gas contract; and (ii) the suspension time limit, not to exceed three years, in cases where the parties to an oil and gas contract negotiate to suspend the

⁷ For special cases, the Government shall prescribe conditions for suspending the execution of a number of rights and obligations under an oil and gas contract, and conditions and procedures for extending exploration and prospecting period or the term of an oil and gas contract.

execution of a number of rights and obligations under an oil and gas contract when circumstances do not allow for prompt execution of the contract.

PETROVIETNAM has the preemptive right to buy part or all of an oil and gas contract to be transferred.

Foreign investors may only supply flight operation services for oil and gas activities through joint venture contracts with Vietnamese companies.

Sector:	Business Services
Sub-Sector:	Asset appraisal
Obligations Concerned:	National Treatment (Article 9.4)
Level of Government:	Central
Measures:	<i>Decree No. 23 , - H -CP dated August 6, 2013 promulgating the implementation of some articles of the Law on Price on price appraisal</i>
Description:	<p><u>Investment</u></p> <p>Foreign organisations may not supply asset appraisal services except:</p> <ul style="list-style-type: none"> (a) when they are organisations legally established and supplying asset appraisal services in their home country; and (b) in partnership with a Vietnamese asset appraisal enterprise through a limited liability company with two or more members, or a joint stock company. <p>Foreign individuals are not permitted to supply asset appraisal services.</p>

Sector: Real Estate

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: *Law No. 66/2014/QH13* dated November 25, 2014 on Real Estate Business

Description: Investment

With respect to the construction, lease, purchase, lease-purchase and transfer of real estate properties, *the Law on Real Estate Business* provides more limited rights to foreign entities than Vietnamese entities. Foreign invested enterprises may only:

- (a) with respect to residential real estate:
 - (i) construct residential real estate for sale, lease or lease-purchase on land allocated by the State;
 - (ii) construct residential real estate for lease on land leased by the State;
 - (iii) purchase, lease-purchase or rent commercial residential real estate in housing development investment projects;
 - (iv) rent residential real-estate for sub-lease; and
 - (v) obtain the transfer of residential real estate projects, partly or as a whole, to construct residential buildings for sale or for lease;
- (b) with respect to commercial real estate:
 - (i) construct commercial buildings for sale,

lease or lease-purchase on land leased by the State;

- (ii) construct commercial buildings on land which is leased out in industrial parks, industrial complexes, export-processing zones, hi-tech zones or economic zones for trading for their proper land use;
- (iii) purchase or lease-purchase commercial real estate for use according to their proper utility;
- (iv) rent commercial real estate for use or sub-lease; and
- (v) obtain the transfer of commercial real estate projects, partly or as a whole, to construct commercial buildings for sale or for lease.

For greater certainty, foreign invested enterprises may also supply real estate brokerage services, real estate exchange floors, real estate consulting services and real estate management services, with respect to both residential and commercial real estate.

For greater certainty, foreign invested enterprises, foreign individuals and organisations are only allowed to carry out the activities enumerated above.

Sector: Security Systems Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: *Decree No. 52/2008/ND-CP* dated 22 April, 2008 on management of security service business

Sector: Air Transportation, including domestic and international air transportation services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)
Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: *Decree No. 30/2013/ND-CP* dated 8 April 2013

Description: Investment

Aggregate foreign capital contribution or equity is restricted to no more than 30 per cent of chartered capital or shares of a Vietnamese airline. A Vietnamese individual or legal person who is not a foreign invested enterprise must hold the largest percentage of chartered capital or shares in the airline.

At least two-thirds of the total members of the executive board of a foreign invested airline established in Viet Nam must be Vietnamese. The Director General (or Director) and the legal representative of a foreign invested airline established in Viet Nam must be Vietnamese.

Sector:	Education Services
Sub-Sector:	Primary education services Secondary education services
Obligations Concerned:	National Treatment (Article 9.4)
Level of Government:	Central
Measures:	<i>Decree No.73/2012/ND-CP</i> dated 26 September 2012
Description:	<p><u>Investment</u></p> <p>Foreign investment in the above-mentioned services is not permitted except through:</p> <ul style="list-style-type: none"> (a) preschool education institutions using foreign educational programmes for foreign children; and (b) compulsory education institutions using foreign educational programmes, issuing foreign qualifications, for foreign students and some Vietnamese students. <p>The compulsory education institutions may enrol Vietnamese students, but the number of Vietnamese students in primary schools and middle schools shall not exceed 10 per cent of the total number of students, and that in high schools shall not exceed 20 per cent of the total number of students.</p>