

## Foreign Collaboration in India's Education Sector

The development of human capital has assumed great importance in knowledge based economies like India. Currently, India permits FDI upto 100% in the Education Sector in India under the Automatic route [\[1\]](#). Further, the Foreign Educational Institution (Regulation of Entry and Operation) Bill, 2010 the Ministry of Human Resources Development ("MHRD") of India had sought to permit foreign universities to set up campuses in India. However, the Bill has yet to achieve political and legislative consensus which has been awaiting Parliamentary sanction since.

In a move that appears to bypass the stagnant Bill MHRD decided to permit the entry of foreign institutions under the University Grants Commission Act, 1956 ("**UGC Act**"). Vide Notification dated 21 September 2013, the University Grants Commission ("**UGC**") promulgated the University Grants Commission (Promotion and Maintenance of Standards of Academic Collaboration between Indian and Foreign Educational Institutions) Regulations, 2012 ("**Regulations**") thereby, permitting the entry of Foreign Institutions in India in the regulated Indian Education Sector through collaborative arrangements governed by the laws of India.

### 1. Application

The Regulations apply to collaborations between Foreign Educational Institutions ("**FEI**") and Indian Educational Institutions ("**IEI**") already operating or intending to operate together with respect to degree/post-graduate diploma programmes. Existing collaborative agreements are required to bring their operations in compliance with the Regulations within six months.

Indian Technical Institutions<sup>[\[2\]](#)</sup> have been expressly excluded from IEI's to which these Regulations apply.

"Collaboration" is defined under Regulation 2(d) which covers arrangements between an IEI and FEI that meet the following requirements:

- It requires to be a collaborative/partnership/twinning arrangement<sup>[\[3\]](#)</sup> embodied in a written agreement;
- To offer degree/post-graduate diploma programmes.

### 2. FEI and IEI

FEI's have been defined under Regulation 2(g) of the Regulations in broad terms to cover existing institutions providing services in the graduate/higher levels in foreign countries and which intends to provide conventional educational services. Distance-learning has been expressly excluded from the applicability of the Regulations.

IEI's have also defined in wide terms under Regulation 2(h) to include established colleges, universities and institutions, both public and private, excepting Technical Institutions imparting education at the undergraduate, postgraduate or higher levels.

### 3. Eligibility Criteria

- FEI's
  - Highest accreditation by a local Accrediting Agency to enter into twinning arrangements;
  - Operative arrangements through IEI's by way of collaboration;
  - Compliance with statutory norms/standards as applicable and governmental/statutory conditions, as applicable.
- IEI's
  - Grade not less than Grade B of the National Assessment and Accreditation Council or its International equivalent. The Regulations do not specify the consequences of default in maintaining the minimum grade. However, the same would be treated as a violation constituting a ground for revocation/termination of UGC approval;
  - At least five years experience in degree/post-graduate diploma programmes.
  - The requirements of accreditation/minimum experience do not apply to IEI's maintained by the Government/UGC;
  - IEI's must obtain the prior approval of affiliated universities and must ensure compliance of statutory requirements with respect to academic infrastructure, facilities, laboratories, workshops, libraries etc;
  - IEI's are responsible for all legal matters relating to the collaboration and grievance redressal of students;
- Prohibitory Criteria
  - Franchise/License arrangements are prohibited. This is a positive measure to ensure quality control thereby, preventing arrangements merely attaching brand value to essentially local services;
  - No arrangement shall be permitted without the prior approval / permission of the UGC or which is against the national security and/or territorial integrity of India.
  - IEI's and FEI's are required to abide by RBI rules and regulations with respect to foreign exchange, as applicable;

### 4. Collaborative process: (Regulations 4 & 5)

- **Application for Approval**

Prior approval of the UGC is required to be obtained to the draft Memorandum of Understanding ("**MOU**") intended to be entered into by the Institutions. The draft MOU is to be forwarded by the FEI to the UGC alongwith an application with operational, infrastructural, curricula, facilities, funding and other relevant details.<sup>[4]</sup>

- **Letter of Approval / Rejection**

The UGC shall within a period of six months, either issue a letter of approval or a letter of rejection, based on factors such as merit, fees to be charged, quality of education, infrastructure etc. [5]

Unless specified otherwise, the letter of approval shall be valid for a period of 5 years and shall be subject to a periodic review carried out by the UGC. The UGC has also been given the power to extend/withdraw the approval and/or modify the conditions thereof. The UGC has been empowered to withdraw the letter of approval to an MOU in the event of any malpractices.

- **Memorandum of Understanding**

The MOU provides the terms and conditions of collaboration [6] and the responsibility of obtaining UGC approval to the MOU has been placed on IEI's.

## **5. Consequences of malpractices/violations of the Regulations**

- The Regulations have not defined the terms 'violations' or 'malpractices'. However, the UGC has been conferred the power to revoke the letter of approval or terminate the MOU, in the event of malpractices/violations or where the FEI/IEI is not 'functioning' as per the Regulations. The UGC may do so on an inquiry initiated suo motu or on the complaint of any person.
- No revocation/termination shall affect students already enrolled with such Institutions and they shall be allowed to complete their course and obtain the requisite qualification.
- The UGC can withhold grants made to IEI's and make recommendations to the Central Government to derecognize Deemed Universities. FEI's found to be violating the Regulations can be black-listed and thereby prohibited from entering into future collaborative agreements with IEI's.
- Further, the UGC has also been granted a residuary power, with respect to IEI's, to "take such further action" as it may deem fit proper.

## **6. Evolution of the Regulations**

The Government of India, MHRD had sought to permit the opening of foreign campuses in India through draft UGC (Established and Operation of Campuses of Foreign Educational Institutions) Rules ("old rules").

Under the old rules FEI's would have to operate through organizations registered as 'Non-profit' entities having charitable objects as per Section 25 of the erstwhile Companies Act, 1956 and should have been a non-profit organization for at least twenty years prior to collaboration. Requirements of Non-profit entities, minimum corpus and monetary penalties which were present in the old rules are conspicuously absent in the Regulations and thus have opened the Education market to for-profit entities.

## 7. Pros & Cons

- Pros :
  - India has a huge demand and supply gap which when coupled with low operational costs and quality control regulations could catalyze growth in the sector;
  - Substantial FDI benefits and a consequent boost to foreign exchange.
  - Recently, the MHRD announced its ambitious target of doubling the gross enrolment ratio in higher education from 15% at present to 30% by 2020 to match global norms. However, it is unlikely that the Government will be able to achieve levels by itself due to the immense capital investment and operating costs involved.
  - Increased qualitative standards and healthy competition.
- Cons :
  - FEI's would target an upper-middle class urban demographic thereby excluding a majority of potential students who cannot afford the fees of such institutions;
  - India is ignominious for its significant business/regulatory uncertainty, socio-political, cultural and linguistic differences.
  - It remains to be seen how the UGC punishes Institutions that commit defaults such as failure to maintain the requisite level of accreditation and other eligibility criteria.

## 8. Conclusion:

The Regulations are facilitative and appear purposefully vague to accommodate commercial interests. The Regulations appear laissez faire, undoubtedly welcome to FEI's as the operation and management of collaboration is to be governed by MOU's. The UGC's role is limited only to approval of collaborative arrangements and policing violations of eligibility requirements.

The Regulations will have to be strengthened by long term commitments, reciprocal relationship building, and qualitative development between FEI's and IEI's. Regardless, the success or failure of the Regulations will remain dependent on unquantifiable variables and the volatile socio-cultural, linguistic, eco-political, regulatory and business climate of India. Further, it remains to be seen whether the UGC or MHRD will bolster the skeletal nature of the Regulations or allow the same to be governed by private commercial and business convenience.

Whether FEI's will view the potential profits to be made worthy of its inevitable brand, prestige and exclusivity dilution is a moot point. The success or failure of the Regulations therefore boils down to its commercial merits.

**- By Aziza Khatri (Partner) & Armaan Patkar (Associate)**

**Editor: Trupti Daphtary**

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1. vide Press Note 2 dated 11.2.2000 of the Ministry of Commerce and Industry, Circular No. 137 dated June 28, 2012
2. Definition of Technical Institution is provided in Regulation 2(m) of the Regulations.
3. Twinning Programmes are programmes where students may complete their study partly in India and partly in the main campus of the FEI.
4. The Application must be accompanied with details of funding for the operation of the Institution for a minimum of 3 years
5. A letter of rejection shall be accompanied by a statement of reasons
6. A copy of the same is required to be forwarded to the UGC and uploaded on the website of the Institutions involved.

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