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INDIA OPENS DOORS TO FOREIGN UNIVERSITIES: A LEGAL UPDATE ON THE NEW FOREIGN UNIVERSITY CAMPUS IN INDIA REGULATIONS

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Last few years have seen a shift in regulatory ideology in the education sector from protectionism to internationalisation. With a view to promoting India as an attractive destination for foreign universities and as a global study destination providing premium education, the National Education Policy, 2020 envisaged laying down a legislative framework to facilitate the entry of top foreign universities and higher educational institutions (Foreign HEI) into the country.

This was followed by a wave of new regulations directed towards: (a) easing up academic collaborations between Indian universities and Foreign HEIs, (b) allowing Foreign HEIs to set up campus in the Gujarat International Finance Tec-City (GIFT City), and (c) establishing the Office for International Affairs and Alumni Connect Cells in Indian higher educational institutions for better engagement with foreign students.

The new University Grants Commission (Setting Up and Operation of Campuses of Foreign Higher Educational Institutions in India) Regulations, 2023 (Foreign HEI Campus Regulations) take a step further in this direction. Modelled along the same lines as the IFSCA (Setting up and Operation of International Branch Campuses and Offshore Education Centres) Regulations, 2022 (GIFT City Regulations), they allow eligible Foreign HEIs to establish campuses in India with prior approval from the University Grants Commission (UGC).

Although this idea has been in the works for over a decade now, no steps were taken until earlier this year when the draft of the Foreign HEI Campus Regulations was released for public consultation. After much debate, the regulations were finally notified on 7 November 2023, substantially in the same form as the draft version, but with a few crucial and potentially game-changing revisions.

We have discussed the key highlights of the Foreign HEI Campus Regulations below:

- **Eligibility Criteria:** In a deviation from the draft form of the regulations, 'eligible' Foreign HEIs include higher educational institutions which have secured a position within the top 500 of overall or subject-wise global rankings (Ranked HEIs), or which possess outstanding expertise in a particular area as determined by the UGC from time to time (Special HEIs). This will allow entry of premier international institutions, particularly in niche fields such as design and hospitality, which do not necessarily fall within the ambit of Ranked HEIs, into India. The element of discretion does create some ambiguity, but overall, the intention appears to be to attract quality Foreign HEIs, while avoiding undue weightage being given to rankings. Notably, it is

permissible for two Foreign HEIs to team up for establishing a campus in India as long as both meet the eligibility criteria.

- **Autonomy:** The Foreign HEI Campus Regulations live up to UGC's promise of rolling out a 'light but tight' framework – autonomy has been granted to Foreign HEIs in terms of deciding the curricula, pedagogy, fee structure, scholarships, admission criteria, recruitment process, qualifications and/ standards for faculty at the Indian campus. However, discretion has been left with UGC to impose conditions for operation of such campuses from time to time.
- **Collaborations:** Interestingly, and once again in a deviation from the draft form of the regulations, a Foreign HEI is permitted to enter into a joint venture with an Indian higher educational institution or an Indian company. This is a radical change for two reasons – first, it allows flexibility for creative commercial structuring to achieve desired funding (among other things), and second, it enables non-university and non-regulated private actors to play a part in the formal higher education market.
- **Approval Process:** Approval will be granted in a two-stage process – first, the UGC will grant in-principle approval for setting up an Indian campus for 2 years, followed by a final and perpetual approval for commencement of operations. This is similar to the process for setting up Indian educational institutions in most states. Under the draft form of the regulations, final approval was proposed to be valid for a period of 10 years only. This restriction has been removed from the Foreign HEI Campus Regulations.
- **Equivalence:** The qualification offered by the Foreign HEI in the Indian campus will be recognised as being equivalent to a corresponding 'degree' awarded by an Indian higher educational institution for the purpose of further education and employment, without any requirement to seek equivalence from the Association of Indian Universities or any other authority. The regulations allow Foreign HEIs to offer degree, diploma, certificate, research and other programmes at undergraduate, post-graduate, doctoral and post-doctoral levels from their Indian campus. Given that degrees enjoy a different and superior status to other qualifications in India (namely, diplomas and certificates), it remains to be seen how a diploma or certificate granted by the Foreign HEI will be treated.
- **Remittance of Funds:** Cross-border movement of funds, including payments in India, remittances, and repatriation of sale proceeds is regulated under the Foreign HEI Campus Regulations and should be in accordance with Indian foreign exchange laws and related rules and regulations. The regulations also go on to clarify that the campus should not act as a representative office of the parent entity i.e., undertake promotional activities for programmes in its home jurisdiction or other jurisdictions outside India. Representative offices are defined and regulated under Indian foreign exchange law and are permitted to undertake a limited set of activities in India. Other than the exclusion of a representative office, other entry modes ordinarily available to foreign parties interested in India remain open, i.e., setting up a local entity or branch office. The regulations are silent on whether a local entity (i.e., a company incorporated in India) should be used or can be considered. Presumably, this means that the decision on optimum structure is left to the Foreign HEIs, which will look at both foreign exchange norms and Indian tax implications to determine what works best.
- **Funding:** The regulations do not contain any specific prescriptions on how funding can be generated or accessed for the purpose of establishing a campus in India. UGC's expectation on this aspect is limited to having the opportunity to review adequacy of financial and other resources presented by the Foreign HEI during the approval process. To the extent that the campus in India is expected to be funded directly from donations by any foreign parties, it will trigger approval under the (Indian) Foreign Contribution (Regulation) Act, 2010 (FCRA). FCRA approval can be both time-consuming to obtain and onerous to maintain which means that Foreign

HEIs which are desirous of avoiding these hurdles will need to devise suitable group structures which allow for efficient fund flow and minimal tax leakage.

- **Quality Control:** UGC has tried to ensure that autonomy and flexibility to Foreign HEIs do not come at the cost of quality education. This is demonstrated in the following:
 - Factors to be considered by UGC while granting approval include proposed infrastructure, credibility of the Foreign HEI, programmes to be offered and potential to strengthen educational opportunities in India. In case of Special HEIs, UGC will take into account several relevant factors such as strengths, outstanding contribution, research capacities, institutional history, institutional prestige and influence, and professional recognition within the subject areas, among others.
 - Quality of education, including curricula, pedagogy, assessment at the Indian campus are required to be at par with the quality of education in the main campus of the Foreign HEI. Similarly, qualifications awarded to students in the Indian campus should be recognized and treated as equivalent to corresponding qualifications awarded by the Foreign HEI in its main campus. Failure to comply with this requirement can result in revocation of the approval.
 - Programmes may only be offered in offline or conventional mode and delivery of online lectures is limited to 10% of programme requirements.
 - Foreign HEIs must ensure that: (a) the qualifications of faculty appointed in the Indian campus is at par with its main campus, and (b) international visiting faculty stay at least a semester at the Indian campus.
 - Offering any new programme, discontinuation of an existing programme or closure of the Indian campus will require prior approval from the UGC. Moreover, in case of discontinuation of programme or closure of the Indian campus, the Foreign HEI should safeguard students' interest and make alternate arrangements for students enrolled in such programmes at the Indian campus.
- **Applicability of UGC Norms:** Unlike the GIFT City Regulations which identify the International Financial Services Authority as the sole regulator for institutions established in GIFT City, the position is not as clear for Indian campuses of Foreign HEIs. It, therefore, remains to be seen whether UGC's standards on student safety, infrastructure etc. and regulations relating to academic bank of credits and multiple entry and exit options will apply to such campuses.

Comment

The Foreign HEI Campus Regulations represent what is perhaps the most significant step in Indian higher education. With the door now open for foreign universities, it remains to be seen how this development will shape this sector in the years to come.

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