

## Foreign Universities in India – Regulatory Update

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Last Autumn, we explained how in November 2023, India's top higher education regulator, the University Grants Commission (UGC), released its much awaited regulations allowing foreign higher educational institutions (Foreign HEIs) to set up campuses in India. That previous article is available here: [India opens up to collaborations and campuses with international universities | Shakespeare Martineau \(shma.co.uk\)](#)

We promised to follow up with a more thorough review by colleagues at Khaitan & Co in India, which we have set out in this article.

Referred to as the Foreign HEI Campus Regulations for the purpose of this article, the new regulations mark the culmination of efforts made in the last few years to attract premier foreign educational institutions into the Indian market.

### Eligibility

The regulations allow eligible Foreign HEIs to establish Indian campuses and offer certificate, diploma, degree, research and other programmes at all levels of higher education (i.e., undergraduate, postgraduate, doctoral and post-doctoral) at such campuses, with prior approval from the UGC. There is no restriction on the number of Indian campuses which can be established, provided that each campus obtains a separate approval from the UGC.

Foreign HEI is defined broadly to mean a university or any other recognised higher educational institution in a foreign country which is (a) established as a society, trust, company or any other legal form in its country or origin, and (b) is authorised to offer academic and research programmes both within and outside its jurisdiction of incorporation. To be eligible to set up an Indian campus, a Foreign HEI should have secured a position within the top 500 of overall or subject-wise global rankings or possess outstanding expertise in a particular area (Specified HEIs). No specific ranking directory has been prescribed, and what qualifies as 'outstanding experience' is also left undefined, with UGC having discretion to decide both from time to time.

### Form of Presence in India

The regulations are silent on the form of legal entity which can be established by the Foreign HEI in India, leaving an unprecedented amount of flexibility. Indian operations of the Foreign HEI do, however, need to comply with the Foreign Exchange Management Act 1999 (FEMA) and Foreign Contribution (Regulation) Act 2010 (FCRA).

This means that a Foreign HEI has the flexibility to opt for either of the following modes for establishing its India presence:

1. A Foreign HEI can incorporate a local Indian entity which can be a wholly owned subsidiary or a joint venture with an Indian partner. This can also be a non-profit entity in India, i.e., a registered society, public charitable trust or a company formed under Section 8 of the (Indian) Companies Act 2013 (Section 8 Company); however, this will result in FCRA being applicable and therefore complicate the structure, as discussed in this article.<sup>3</sup>
2. Alternatively, a Foreign HEI can opt for a business presence in the form of a branch office or project office. FEMA permits a foreign party to set up a liaison office or a representative office in India, to act as a liaison or a channel of communication between the principal place of business or head office of the foreign party and other Indian entities (but not for undertaking any commercial, trading or industrial activities). The Foreign HEI Campus Regulations, however, specifically prohibit the Indian campus from acting as a representative office of a Foreign HEI to undertake promotional activities for programmes offered by the Foreign HEI in any jurisdiction.



### Permitted Partnerships

In case of collaborations between two or more foreign HEIs, each foreign HEI should meet the eligibility criteria independently. Collaborations or joint ventures between a Foreign HEI and an Indian party will be subject to the following restrictions / requirements: (a) the collaboration should be compliant with FEMA; (b) the application should be made and qualification awarded by the Foreign HEI and not the Indian party; (c) the Foreign HEI should be the majority holder of ownership or equity interest in the joint venture; and (d) the Foreign HEI should have its independent campus in India with the necessary infrastructure and facilities required to conduct its operations. This stems from the fact that franchising is strictly prohibited under Indian education law, and a degree must be awarded by an educational institution in its own name. No other person is permitted to hold themselves out as being eligible to award degrees in the name of an educational institution. This was also reiterated by UGC in a public notice dated 12 December 2023.

## Sources of Funding

The Foreign HEI Regulations are silent as to the sources and manner of raising funds for establishing and operating Indian campuses. As such, Foreign HEIs are free to explore either domestic or foreign funding sources for this purpose, provided that any infusion of capital is compliant with both FEMA and FCRA (if applicable). This means that the following structures will be possible:

1. As education falls under the permitted or automatic route for foreign direct investment under FEMA, equity investments can be availed by the Foreign HEI in its local Indian subsidiary or joint venture without any restrictions or caps, and subject to compliance with pricing and reporting guidelines prescribed under FEMA. Debt funding from offshore parents and certain limited other foreign sources is also possible, as long as the Indian entity is owned and controlled by the Foreign HEI.
2. In addition to a local Indian subsidiary or joint venture, the Foreign HEI is free to set up an offshore holding entity (including an SPV) and raise funds at that level which may ultimately be infused in the Indian entity.
3. If the local entity is established as a society, trust or Section 8 Company, then any foreign funding such as donations, grants, settlements, or even equity investments (in case of a Section 8 Company) will be subject to and require prior approval under the FCRA. Note that this is a time-consuming process and brings in onerous ongoing compliances, checks and requirements for the Indian recipient.
4. If the Foreign HEI has set up a branch office or project office in India, then any funding will require compliance with specific requirements prescribed by the Reserve Bank of India in this regard. Key point to note here is that branch or project offices are permitted a very narrow and limited set of operations – a project office can be set up in respect of specific projects of the foreign party in India, and a branch office can only undertake activities such as export / import, providing consultancy services, undertaking research in which the parent is also engaged, etc. Such forms may, therefore, not be the most efficient from an operational as well as fund-raising perspective.

Foreign HEIs will, need to consider these options and devise appropriate group structures based on what is most suitable to their operational requirements. Another key driver for this decision would be Indian tax considerations where legal advice should be sought to ensure tax efficiency.

## Land and Infrastructure Requirements

The regulations do not prescribe land and infrastructure requirements, other than to state that the Foreign HEI should have such physical, academic and research infrastructure and facilities as required to conduct its academic and research programmes. This will be factored in by UGC while assessing applications under these regulations. In other words, Foreign HEIs are not tied to any minimum requirements and can make these decisions based on commercial needs.

FEMA also prescribes restrictions on the acquisition of real estate where foreign parties are concerned. Specifically, foreign investment in development or construction of educational institutions is permitted, as is earning of rental income. However, foreign investment in pure-play real estate business which is defined as dealing in land and immovable property with a view to earning profit (but excluding certain activities such as those discussed above) is prohibited. Such restrictions will need to be kept in mind by when implementing any land-holding structure for the Indian campus.

## Application Process and Criteria for Review

The application can be filed through an e-portal together with requisite supporting documents, which include a copy of the approval by the governing board of the Foreign HEI to set up campus in India, details of the proposed location, infrastructure and financial resources of the Foreign HEI and undertakings to the effect that the quality of education at the Indian campus will be similar to and of the same quality as that imparted at the main campus of the Foreign HEI.

the Foreign HEI, research capabilities, professional recognition and institutional history, prestige and influence.

If UGC is satisfied on these aspects, it will grant in-principle approval for setting up an Indian campus which will be valid for 2 years, followed by a final and perpetual approval for commencing operations. Once final approval has been received, the Foreign HEI can initiate the process for admission of students to its campus.

## Course Requirements

Foreign HEIs have full autonomy in respect of courses to be offered at their Indian campuses, provided that (a) the quality of education offered at the Indian campus is at par with the quality of education at the main campus of the Foreign HEI; and (b) education is imparted in a manner which is similar to that of the main campus in terms of curricula, pedagogy, assessment and other aspects. In addition, the programmes offered in the Indian campus should not be contrary to standards of higher education in India.

## Fee Structures

Foreign HEIs also have autonomy to decide a suitable fee structure for their Indian campuses, as well as offer scholarships from their funds (including endowment funds, alumni donations, tuition revenues etc.) or other fee concessions. Such fee structures should be reasonable and transparent and be set out in the prospectus of the Foreign HEI. Fees charged by the Foreign HEI can include both tuition fees and other developmental charges, by whatever name called.

## Faculty

Faculty for the Indian campus may be recruited either from India or abroad in line with recruitment norms of the Foreign HEI, provided that qualifications of such faculty are at par with the faculty at the main campus of the Foreign HEI and the Foreign HEI ensures that any international faculty appointed at Indian campus stay in India for at least one semester.

Apart from the above, the regulations do not prescribe any conditions on service terms of such faculty, including salary structures, tenure etc.

## Online Offerings

Programmes in online or distance learning mode are prohibited at the Indian campus. However, up to 10% of programme requirements can be met through delivery of online lectures.

## Remittance of Funds from India and Income Extraction

Any cross-border movement of funds, including payments, remittance, repatriation of sale proceeds etc will require compliance with FEMA and Indian tax law and will depend on the form of legal entity which has been established in India. For example, if the Foreign HEI incorporates a for-profit company in India, then income can be extracted in the form of dividends (which will be taxable in India at the hands of the foreign shareholder). Similarly, in case of a branch office, profits earned by the branch office can be remitted to the Foreign HEI (net of applicable taxes in India) on provision of certain documents to the relevant authorised dealer bank by the branch office. Payments to the Foreign HEI under service and / or license arrangements between the Indian entity and the Foreign HEI, as consultancy fees etc., are also permitted subject to the monetary thresholds prescribed under FEMA and can be explored as forms of revenue extraction. Note that tax implications of such arrangements (including from a goods and services tax perspective) will need to be considered by the Foreign HEI well in advance of implementing such structures.

## Grant of Degrees and Equivalence

As discussed above, the regulations allow a Foreign HEI to grant degrees, diplomas or certifications at its Indian campus. Such qualifications should be recognized in the country of origin of the Foreign HEI and should be equivalent to corresponding qualifications awarded by the Foreign HEI in its main campus.

The regulations recognise that qualifications awarded at the Indian campus will be considered equivalent to any corresponding degree awarded by an Indian HEI for all purposes (including higher education and employment) and be entitled to all rights, benefits and privileges which are attached to an Indian degree.

with this, UGC may well have set this sector on a promising new course.

However, as foreign universities explore opportunities to establish campuses in India, it's essential to acknowledge the fledging stage of the legal and practical frameworks governing such ventures. The regulatory environment surrounding foreign universities operating in India is relatively new and evolving. There remains a need for more clarity and detailed information, particularly from within India, to navigate the complexities and uncertainties associated with this development. Stakeholders, including policymakers, educational institutions, and industry experts, need to collaborate to address these challenges and foster an environment conducive to international educational collaborations.

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## Get In Touch

Mark is a Partner in our sector leading education team, advising on education collaborations and governance. Mark is recognised by Legal 500 and has spent all of his legal career advising in the education sector.