

India's UGC seeks to allow foreign universities to set up Indian campuses

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Recently, the University Grants Commission (the “**UGC**”) has published the Draft University Grants Commission (Setting up and Operation of Campuses of Foreign Higher Educational Institutions in India) Regulations, 2023 (the “**Draft Regulations**”) proposing the establishment and operation of international branch campuses (“**IBCs**”) of foreign higher educational institutions (“**FHEIs**”) offering undergraduate and higher level programmes in India. The Draft Regulations prescribe the procedure for setting up IBCs, as well as the conditions of their operation.

This development follows the precedents of several other countries in the Middle East and South-East Asia (such as China and UAE) where certain FHEIs (notably, New York University) have established IBCs. Earlier in 2022, the UGC notified the University Grants Commission (Academic Collaboration between Indian and Foreign Higher Educational Institutions to offer Twinning, Joint Degree and Dual Degree Programmes) Regulations, 2022 (the “**Collaboration Regulations**”) which permitted FHEIs and Indian higher educational institutions (“**IHEIs**”) to award joint, dual, or twinning degrees (more on this below).

Brief overview of the Draft Regulations

Eligibility criteria for FHEIs

Two categories of FHEIs are eligible to set up IBCs in India. They are: (i) foreign universities that have secured a position within the top 500 of overall or subject-wise global rankings determined by the UGC; and (ii) foreign educational institutions that are “reputed institutions” in their home jurisdiction.

Application and Renewal Process

FHEIs will require the prior approval of the UGC for setting up an IBC in India. Applications from FHEIs will have to be submitted to a standing committee to be constituted by the UGC for this purpose (the “**Standing Committee**”). The Standing Committee will consider factors such as the credibility of the educational institution, the programmes to be offered, their potential to strengthen educational opportunities in India, and the proposed academic infrastructure to be created in India, and make recommendations to the UGC, within forty-five (45) days of receipt of an application. Thereafter, the UGC will have an additional forty-five (45) days to assess the application and provide its in-principle approval, which shall be done by issuing a letter of intent to the applicant FHEI for setting up the IBC. The FHEI will have to establish the IBC within a period of two (2) years from the date of the UGC's in-principle approval. The UGC will have the power to provide extensions on a case-to-case basis. A similar process is to be followed once an FHEI sets up an IBC and notifies its readiness to commence academic operations. First the Standing Committee will assess the readiness, and make recommendations to the UGC, and the UGC will then decide whether a permission

should be granted for commencement of operations. A permission for commencement of operations will have an initial validity of ten (10) years, following which the FHEI can apply for renewals for subsequent 10-year terms. FHEIs will be required to pay annual fees as mandated by UGC.

Operation of FHEIs

FHEIs will have the autonomy to evolve their admission process and criteria to admit domestic and foreign students, and decide on the fee structure, which, however, should be "transparent and reasonable." The FHEI may recruit faculty and staff from India and abroad and prescribe their conditions of service. However, the qualifications of the faculty must be on par with those of the faculty on the home campus. Further, any foreign faculty member appointed must stay on the campus in India for a reasonable period of time. The qualifications awarded to the students on the Indian campus must also be recognized and treated as equivalent to the corresponding qualifications awarded by the FHEI at home.

Protective Provisions

In order to safeguard the interests of the students studying at such institutions, the FHEIs are not permitted to discontinue any course or programme or close the campus without prior approval from the UGC. In case a course or programme is disrupted or discontinued, the parent entity will be responsible for providing an alternative to the affected students.

FHEIs are also not permitted to offer any programme or course which jeopardizes the national interest of India or the standards of higher education in India. Their operation must not be contrary to the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency, or morality.

Funding

While the Draft Regulations do not provide for any separate provisions with respect to funding, they state that cross-border movement of funds and maintenance of foreign currency accounts, modes of payments, remittances, repatriations, etc., must be in compliance with extant Indian foreign exchange laws.

Existing regulatory framework

At present, foreign academic collaborations are governed by the Collaboration Regulations which allow IHEIs and FHEIs to offer in collaboration with each other twinning, joint, and dual degree programmes. IHEIs and FHEIs that meet the eligibility criteria as specified by the UGC can enter a Memorandum of Understanding ("**MoU**") specifying the purpose of collaboration, and provisions relating to student obligations, tuition fees, attendance patterns and other specified details. There is no requirement for an approval from the UGC.

Prominent Indian institutions such as the Indian Institute of Science (IISc), Bengaluru and the Tata Institute of Social Sciences (TISS) have entered into MoUs with prominent FHEIs such as

the University of Melbourne, Monash University (Melbourne), and Queen Mary University of London. In addition, several other IHEIs actively pursuing collaborations with FHEIs pursuant to the Collaboration Regulations.

Key difference between the Collaboration Regulations and the Draft Regulations

The Collaboration Regulations do not allow FHEIs to operate in India independently. Further, under the Collaboration Regulations, degrees can be awarded either by IHEIs only, or jointly by an IHEI and its partner FHEI. The Draft Regulations aim to take a step forward to allow FHEIs to: (a) operate campuses; and (b) award degrees, in India, independently. Therefore, the most important change proposed by the Draft Regulations is to do away with the need to partner with an IHEI.

Conclusion

The Draft Regulations take a soft touch approach and propose a large degree of flexibility to FHEIs for operating IBCs in India. However, the Draft Regulations do not provide clarity on certain aspects:

- **Exhaustive Criteria:** The Draft Regulations do not set out any exhaustive criteria based on which applications from FHEIs will be finally assessed by UGC for issuance of in-principle approval. FHEIs considering setting up IBCs would expect clarity on this aspect.
- **Role of Professional Bodies:** The Draft Regulations do not clarify the role of national level professional bodies (e.g., All India Council for Technical Education, National Medical Commission, Bar Council of India, etc.) with respect to professional degrees (e.g., engineering, medicine, and law).
- **Fee Regulation:** There is no certainty as to whether there will be any regulation of fees for facilitating access to economically weaker section of students.
- **Grant of Final Approval:** An in-principle approval has to be followed up with a permission for commencement of operations from the UGC after all the infrastructure has been put up by the FHIE in India. If a final approval is not received for any reason, an FHIE will be in a very tricky situation, potentially with large amounts of sunk costs. It is very important that well-defined and objective criteria be laid out for issuance or denial of a final approval. Any uncertainty in this regard will discourage FHIEs from investing in the infrastructure for IBCs.

It is to be seen whether some of the aforementioned aspects will be addressed in the final set of the regulations once the UGC receives comments and suggestions from all stakeholders. Moreover, it is unclear whether reputed FHIEs will set up campuses in India, especially considering that the fee standard in India is lower than that in the West. FHIEs are likely to be concerned about diluting their brands and earning reduced fees when foreign students may be willing to pay a premium to attend classes in the FHIE in its home country.