



UGC's Restrictions On Foreign Education Providers In India

India's higher education regulator, the University Grants Commission (**UGC**) issued a public notice (**Notice**) on 12 December 2023 to bring attention to two practices by foreign higher educational institutions (**Foreign HEIs**) in India:

a

Unrecognised collaborations with Indian higher educational institutions (**Indian HEIs**).

b

Franchise arrangements with ed-tech companies to offer degree and diploma programmes in online mode.

As per the Notice such practices are not permitted under the UGC (Academic Collaboration between Indian and Foreign Higher Education Institutions to offer Twinning Programme, Joint Degree, Dual Degree Programmes) Regulations, 2022 (**Academic Collaboration Regulations**)¹ and the UGC (Setting up and Operation of Campuses of Foreign Higher Educational Institutions in India) Regulations, 2023 (**Foreign HEI Campus Regulations**)². Both aspects have been discussed in this update.

Unrecognised Collaborations

The Notice highlights that it has come to UGC's attention that many Indian HEIs enter into unrecognised collaborations with Foreign HEIs to "facilitate" issuance of degrees to students from such Foreign HEIs. The UGC notes that such collaborations and the degrees offered pursuant to them are not recognised by it. It also cautions students against enrolling into such programmes.

This is consistent with UGC's stand on collaborations between Indian and Foreign HEIs but the reference to "facilitating" complicates things. Reality is that despite liberalisation of the regime on academic collaborations in 2022, non-regulated models such as articulation, pathways and other forms of facilitation enjoy the lion's share of the market. There are certainly ways to structure these arrangements so that there are no regulatory crosswires but whether UGC will agree with such views is an open question, which comes back in focus now.

The Academic Collaboration Regulations (as applicable today, after years of adopting an approval-based approach) allow autonomy to eligible HEIs to enter into foreign collaborations without UGC approval. The focus of the regulations is on who is granting the degree – when its twinning, the degree should be awarded by the Indian HEI solely, when it's a joint degree, both Indian and Foreign HEIs should be granting the degree, and when its dual degree, separate but simultaneous degrees should be granted by the Indian and Foreign HEIs.

Nowhere in UGC's contemplation does an Indian HEI become the front for grant of a foreign degree by a Foreign HEI to Indian students and this is exactly what they are trying to catch. Therefore, any articulation, pathways or other such arrangements that go beyond the permitted forms of collaboration contemplated in the Academic Collaboration Regulations will likely come under the regulatory scanner now.

¹The Academic Collaboration Regulations permit twinning, joint degree and dual degree arrangements between eligible Indian HEIs and Foreign HEIs without prior UGC approval.

²The Foreign HEI Campus Regulations allow eligible Foreign HEIs to set up campus in India with prior UGC approval and sets out the mechanism for the same.

In so far as such arrangements entail students completing the Indian HEI's course requirements and result in grant of degree by the Indian HEI, where the Foreign HEI's offering is only a top-up, they should be protected. However, as a measure of caution, all such arrangements (i.e. ones which do not squarely fall within the Academic Collaboration Regulations) that are continuing, likely to be renewed or being explored, should be carefully analysed and stress-tested.

It's difficult to predict how UGC will enforce action pursuant to the Notice. However, if the past is an indicator, it could result in de-recognition of the degree (as also stated in the Notice) and blacklisting of specific programs or even the concerned HEIs by putting out a notice on the regulator's website. Monetary penalties or closure of programs have not been common so far.

Franchise Arrangements

The Notice states that franchise arrangements between Foreign HEIs and ed-tech companies are not permitted. Specifically, UGC has taken issue with ed-tech companies making advertisements in *"newspapers, social media, television etc. offering degree and diploma programmes in Online modes in association with some foreign universities/institutions"* and declared that such franchise arrangements are not permitted and such degrees unrecognised.

Interestingly, in January 2022, UGC had issued a similar notice calling out ed-tech companies making advertisements in *"newspaper / social media / television etc. that they are offering degree and diploma programmes in ODL/Online modes"* in association with Indian HEIs. With the 2024 notice the UGC seems to be building on its previous one and going international in its remit.

This can be interpreted in two ways: One, that the intent is to catch and stop franchising³ and two that all online programs (regardless of whether it involves franchising) offered by Foreign HEIs "in association with" ed-tech companies are not permitted and will not be recognised.

The first view is supported by principles of legal interpretation. Existing regulations prohibit franchising but not online programs offered by Foreign HEIs, and to legislate on this through a notice would amount to circumventing the legal process. Further, the stated purpose of the notice is to reinforce the position that franchising is not allowed which is a long-standing principle of Indian education law and so any association between a Foreign HEI and an ed-tech company which does not amount to franchising should not be affected by this Notice.

On the other hand, the second view appears plausible on the basis that UGC has always been a little circumspect about online programs and eager to regulate the space. Consider the fact that even through the pandemic and times of lockdown when online programs were the only available mode of education for Indian students admitted to Foreign HEIs, the Association of Indian Universities which grants equivalence to foreign degrees never relaxed its stance on online programs.⁴ Reprieve from this position was granted only on a case-by-case basis. In addition, the recent Foreign HEI Campus

³ The current law on franchising as captured in the various relevant regulations is as follows: (a) franchising is prohibited for Indian HEIs for in-person as well as online modes of learning; (b) it is prohibited for any collaborations between Indian HEIs and Foreign HEIs under the Academic Collaboration Regulations; and (c) the Foreign HEI Campus Regulations prohibit Foreign HEIs which are establishing an Indian campus from engaging in franchising.

⁴ In India, equivalence to foreign degrees is granted by the Association of Indian Universities (AIU) upon fulfilment of certain prescribed criteria. Pursuant to AIU's guidelines, foreign degrees obtained for studies undertaken through online / virtual mode are not granted equivalence.

Regulations which allow Foreign HEIs to set up campus in India, although liberal and progressive on other fronts, prohibit course offerings in online only mode. These examples point to the regulator's discomfort on online programs.

Which of these views will prevail remains to be seen. It must be acknowledged though that the government has taken big and far-reaching steps towards achieving the National Education Policy's goals of internationalising Indian education and it will be unfortunate if this Notice were to undo some of that progress.

Meanwhile, the key takeaway from this Notice is that Foreign HEIs which are active in or looking at the Indian market should take a close look at these rapidly evolving developments to assess how their Indian offerings sit within the Indian regulatory framework and recalibrate as necessary.



Rajat Mukherjee
Partner
rajat.mukherjee@khaitanco.com



Monika Srivastava
Partner
monika.srivastava@khaitanco.com



If you wish to discuss this update or share your thoughts, please do write to us at education@khaitanco.com

Disclaimer: This document has been created for informational purposes only. Neither Khaitan & Co nor any of its partners, associates or allied professionals shall be liable for any interpretation or accuracy of the information contained herein, including any errors or incompleteness. This document is intended for non-commercial use and for the general consumption of the reader, and should not be considered as legal advice or legal opinion of any form and may not be relied upon by any person for such purpose. It may not be quoted or referred to in any public document, or shown to, or filed with any government authority, agency or other official body.