

# FOREIGN COLLABORATION & INVESTMENT

HIGHER EDUCATION SECTOR

INDIA



Legal and business sector analysis

by

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## INTRODUCTION

It is little more than half a century ever since the Government initiated a planned development of higher education in the country particularly with the establishment of University Grants Commission in 1953. Thus early 1950's is an important reference points from which one could look back at India's progress in higher education sector.

A bill "Foreign Education Provider (Regulation) Bill 2010" has been introduced to facilitate operations of foreign educational institutions in India. The proposed legislation would regulate the entry of foreign education providers as per India's priorities.

Though 100 percent Foreign Direct Investment through automatic route is permitted in the education sector since 2000, but the present legal structure in India does not allow granting of degrees by foreign educational institutions in India.

The need for global collaboration in higher education is the best solution to face the challenges of requirement of skilled manpower in 21<sup>st</sup> century. The proposed Foreign Education Providers Bill would facilitate globally renowned institutes and universities to participate in India's higher education sector. It will also bring in foreign education providers for vocational education and training.

Investment in higher education sector in India by foreign institutions would not only benefit Indian students but also help other countries in getting skilled human resource for their economy.

## EXPANSION OF HIGHER EDUCATION INSTITUTIONS

Since the early 1950's higher education sector has diversified and extended its reach and coverage quite significantly. At the time of independence, 1947, the size of higher education system in terms of number of educational institutions, and teachers was meagre but since that time there has been an exponential increase in three indicators of higher education, namely the number of educational institutions, teachers and students. The number of universities has increased from 20 in 1947 to about 528 in 2010.

With the growth in the educational infrastructure in terms of institutions, there will be improvement in the level of higher education in terms of aggregate access, access to disadvantage groups and the quality of higher education. The question is about the quality of outcome in terms of academic standard of student, quality of research, innovativeness and creativity, in which foreign universities can play major role.

It is difficult for the Government alone to finance the educational needs of the country. As the allocation of Rs.85,000 crores for education in the 11<sup>th</sup> Five-Year Plan itself is not enough, the private sector has to come forward to collaborate in higher education sector. Thus there will be a requirement of regulating such private sector participation in without any political interference.



## REFORMS IN HIGHER EDUCATION SECTOR

After the clearance of proposed legislation, which permits foreign universities to set up campuses in India by Union Cabinet recently, it is expected that a huge revolution is awaited in the education sector.

In principle, the Foreign Education Providers (Regulation) Bill is a logical extension of the economic liberalization policy, adopted by India since 1991. FDI up to 100 percent in educational institutions is already permitted. Foreign institutes are pairing with Indian universities to offer courses, part of which is to be completed abroad. Under the new law, if cleared by Parliament, foreign universities will not only operate from Indian campuses but shall be allowed to legally award valid degrees.

## IMPORTANCE OF FOREIGN UNIVERSITIES IN INDIA

Education is a regulated sector across the world. Most countries do not easily allow foreign universities to operate in their country and if they do allow, it is allowed with lot of regulations.

The Foreign Education Providers (Regulation) Bill seeks to regulate the entry, operation and maintenance of foreign education providers. Presently, there are many foreign universities offering degree courses in India in partnership with local universities. Once the Bill is passed, foreign universities may be able to offer independent degrees, without tie up with any local university.

One of the benefits of this Bill is that it will save millions of dollars of Indian students, as they will be able to study in foreign universities while staying in India. More than 250,000 students from India are studying in various universities outside India.

If foreign universities start operating in India, it will give students a choice and also expand their higher education offerings in India. There is a huge gap in the demand and supply in higher education sector and foreign universities will reduce some gap. It is expected that, some of the foreign universities will also improve the culture of research in India.

Some of the best universities in the world are waiting to set up their base in India. Students in India will get a better choice and competitive pressures will also improve the quality of the present education providers in India.

**A degree from  
Oxford University,  
might soon be  
available in India**



## INTEREST OF FOREIGN UNIVERSITIES IN INDIA

Top-notch foreign universities want to have a presence in India, as India moves to further liberalize and reform the higher education sector. More than 150 foreign education providers already have tie-ups in India. Most of the investment is expected to come from the state and private sector, but there is growing significance being attached to the role of foreign universities as well.

Nearly 50 proposals from foreign universities, including Duke University, Georgia Institute of Technology and Imperial College London, are expected to be waiting for the Government's clearance. The majority desire to enter the Indian education market either in collaboration with domestic institutions or through twinning programmes where part of a course might be taught in India and part in the parent institution.

If the bill is passed by Parliament, the Government may clear proposals within few months from the date of submission of the application.

*Harvard Business School* is keen to find permanent premises for its executive education programmes instead of conducting classes at five-star hotels in prominent Indian cities.

*Columbia University* has announced plans to set up a centre in New Delhi for its United States-based faculty and students to host workshops and undertake research in India.

British universities - *Imperial College London, University of Glasgow, Keele University and University of Surrey* - signed agreements with their Indian counterparts recently to set up institutes in the country.

The Universities of *Yale, Massachusetts Institute of Technology and Boston*, are keen to set up campuses in India or have twinning arrangements with universities here.

## REGULATORY FRAMEWORK FOR FOREIGN EDUCATION & PROVIDERS

Higher Education in India is controlled and regulated by Government of India through Ministry of Human Resource Development. Mainly, following Bills and Acts are expected to form legal framework for foreign education and foreign education providers in India

### BILLS

- The Foreign Educational Institutions (Regulation of Entry and Operations, Maintenance of Quality and Prevention of Commercialization) Bill
- Foreign Education Providers (Regulation) Bill
- Prohibition of unfair Practices in Technical, Mechanical Educational Institutions and universities Bill



- National Education Tribunal Bill
- National Authority for Regulation in Accreditation of Higher Educational Institutions Bill

### ACTS & REGULATIONS

- University Grants Commission Act, 1956
- UGC (Establishment of and Maintenance of Standards in Private universities) Regulations, 2003
- The All India Council for Technical Education Act, 1987
- The Central Educational Institutions (Reservation in Admission) Act, 2006
- State private university Acts,

For Example: The Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyam) Adhiniyam, 2002

The **Foreign Educational Institutions (Regulation of Entry and Operations, Maintenance of Quality and Prevention of Commercialization) Bill** will allow foreign universities to invest at least 51 percent of the total capital expenditure needed to establish the institute in India.

The Bill may aim to regulate the entry, operation and maintenance of quality assurance and prevention of commercialization by foreign educational institutions

The regulating mechanisms in the **Foreign Education Provider (Regulation) Bill** may state as,

1. The University Grants Commission (UGC) may be entrusted with the task of regulating the entry and functioning of foreign universities.
2. FEIS shall be required to register with the body within six months of the bill turning into law.
3. Franchising of educational institutions may not be allowed.
4. Foreign education providers may be expected to follow national laws, including those on reservations.
5. The secretary, UGC, may be the ex-officio registrar of foreign educational providers; FEIS would be subject to all conditions of the UGC Act applicable to deemed universities in India, including fee fixation, admission, teaching standards.
6. Rs.10 crores deposit may be placed as a safety clause to safeguard against fly-by-night operators.



7. Registration can be cancelled if any foreign education provider gives false information or is found to be in contravention of the UGC Act
8. Foreign education institutions and their branches in India would have to provide for reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes (OBCs), in keeping with the 93<sup>rd</sup> Constitutional Amendment Act.
9. Foreign education providers may be given the status of deemed universities in India. This will also permit them to grant admission and award degrees, diplomas or certificates.

### ***Progression on the passing of Foreign Education Provider (Regulation) Bill***

- 16 Mar 2010** The bill unanimously approved by the union cabinet.
- 17 Feb 2010** The Government decided to introduce a bill to allow the entry of foreign universities during the parliament session.
- 11 Nov 2009** Foreign universities knock on India's doors as educational reforms accelerate.
- 16 Sep 2009** The interested universities, mostly from the US, the UK and Australia, approach the ministry of human resource development.
- 7 July 2009** Government announced that it is contemplating a bill on allowing foreign universities, but would move carefully and through consensus.
- 28 June 2009** A panel set up by the Government to draw up a reform road map for the higher education sector recommended that only the top 200 foreign universities be allowed to enter the country.
- 10 Nov 2008** The proposed Bill holds fire after being cleared by the Union cabinet in February 2007.
- 14 May 2007** A much-hyped Bill that would pave the way for foreign universities to enter India was stalled amid disagreement over exceptions made for certain investors and the attention of ministry officials being diverted to the legal battle over broader caste-based reservations.

The establishment of ***National Commission of Higher Education and Research "NCHER"*** is also proposed by the Central Government, which will apply to all higher educational institution except agricultural and medical institution. The Commission shall consist of a chairperson and six other members who will be the persons of eminence standing in the field of academic and research possessing leadership abilities.



The members of Commission will be appointed by the President on the recommendations of selection committee. The Commission may lay down its own procedures for the conduct of its business and exercise of its powers and functions

All foreign education providers will have to get accredited by the proposed *National Accreditation Authority* for quality control. Their entry will bring revolution in terms of quality. It will have enormous impact on research and creation of Intellectual Property.

## **ENTRY OF FOREIGN HIGHER EDUCATION PROVIDERS INTO INDIA**

Subject to laws applicable to higher education sector in India, which are in advanced formation stage, the following information will be helpful while planning the entry into India by foreign education providers.

### **Legal Entity for Private University**

A private university in India can be established as either of the following legal entity

- a) Public Trust
- b) Society registered under the relevant Act of the state in which university is to be established
- c) Section 25 Company, registered under Companies Act, 1956

### **Acquisition of Private University or higher education institute in India**

The laws in India are not clear in this aspect, however as the law on higher education sector is developing, there is a good possibility in future that foreign education providers may be allowed to acquire existing private universities.

It is right time for foreign education providers to enter into India and do their spade work of selecting prospective partner, which may be acquired in future.

### **Collaboration / Tie-ups**

The foreign education providers can set up their business in India through collaborations by way of, joint researches, joint campus, twinning program, skill development and vocational trainings with Indian Institutes etc;



## HOW INDIA JURIS CAN ASSIST

India Juris provides legal, regulatory and business advisory assistance to Indian and foreign education providers. Our services in higher education sector are broadly summarized as under:

1. Suggesting structure and roadmap for entry into India.
2. Setting up Trust / Society / Section 25 Company.
3. Setting up a higher institution or private University
4. Joint Ventures / Collaboration / MoUs / Strategic alliances between education providers
5. Approvals from various statutory bodies as may be required such as University Grants Commission, Medical Council of India, All India Council of education etc.
6. Approvals/NoC from State and Central Government.
7. Liaisoning with different Governmental authorities.
8. Taxation
9. Repatriation and remittance of money from India
10. For other legal services not included here, please contact us.

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