

Opportunities for entry of Foreign Universities in India and GIFT IFSC: A Comparative Analysis

Introduction

Not only does India have one of the youngest populations in the world, it is also the fifth largest economy, implying that there are significant opportunities for higher educational institutions to support the country's growth story and help fulfil its ambition of becoming the knowledge hub of the world. This has led to policy initiatives to enable foreign higher educational institutions ("FHEI")¹ and Indian higher educational institutions ("IHEI")² to participate and benefit from such opportunities. One of the most notable initiatives by the government of India ("GOI") was the introduction of the National Education Policy ("NEP") in 2020, introducing flexible curriculum and universalisation of education. NEP provides for a legislative framework facilitating the entry of top 100 foreign universities into India and permitting transferability of credits. Given that India's higher education sector is a highly regulated one, with a multi-layered regulatory framework, NEP also proposed the constitution of a single overarching umbrella body, namely the Higher Education Commission of India ("HECI"), simplifying the governance of the sector (excluding professional education). Pursuant to the NEP, one of the key steps for FHEIs to open higher education institutions in India was the introduction of the UGC (Academic Collaboration between Indian and Foreign



Higher Educational Institutions to offer Twinning, Joint Degree and Dual Degree Programmes) Regulations, 2022 ("UGC Foreign Universities Collaboration Regulations"), on May 2, 2022, to provide a regulatory framework, governing collaboration between Indian and foreign universities and higher education institutions.

In tandem, the Hon'ble Finance Minister of India, during the 2022-23 Union Budget announcement, proposed to allow foreign universities and institutions to offer

¹ Foreign higher education institution under the UGC Foreign Universities Collaboration Regulations is defined to mean a Higher Educational Institution duly established or incorporated or recognised in a foreign country and offering academic and research programmes at the undergraduate and/or higher levels.

² Indian higher education institution under the UGC Foreign Universities Collaboration Regulations is defined to mean a university within the meaning of Section 2(f) or an institution deemed to be university under Section 3 of the UGC Act, 1956.

courses in financial management, fintech, science, technology, engineering, and mathematics, in the Gujarat International Financial Tech-City – International Financial Services Centres (“**GIFT IFSC**”). These foreign universities were proposed to be governed by a single regulator, the International Financial Services Centres Authority (“**IFSCA**”). This announcement was intended to provide a pathway for foreign education institutions³ and foreign universities⁴ (also referred to as “**FHEI**” for the purposes of this note) to set-up a physical operational presence in the GIFT IFSC, which will be outside the purview of the domestic regulations and regulators governing higher education in India. Pursuant to this announcement, IFSCA notified the International Financial Services Centres Authority (Setting up and Operation of International Branch Campuses and Offshore Education Centres) Regulations, 2022 (“**IFSC Foreign Universities Regulations**”) on October 11, 2022.

These developments have created multiple opportunities for FHEIs looking to tap the large Indian student base to offer their programmes in India.

Domestic collaboration vs GIFT IFSC campus – A comparison based on the regulatory framework

The UGC Foreign Universities Collaboration Regulations intend to boost academic collaboration between Indian and foreign universities by way of permitting arrangements such as twinning programmes, joint degrees, and dual degree programmes, with no restrictions on the type of courses. Twinning programmes permit a collaborative arrangement, whereby students enrolled with IHEI may undertake their programs of study partly in India, complying

with the Indian regulations, and partly in FHEI, and will be awarded a degree from the IHEI; joint degree programmes permit collaborative arrangements whereby students can have the opportunity to receive a single degree certificate from both the institutions (FHEI and IHEI); and dual degree programmes permit IHEI and FHEI to offer programmes in the same discipline/ subject and confer degrees of the respective universities simultaneously.

With the enactment of the IFSC Foreign Universities Regulations, an additional door has opened for foreign universities to enter the Indian higher education sector, free from domestic Indian regulations. The IFSC Foreign Universities Regulations allows duly accredited foreign universities and authorised foreign educational institutions to set up a branch in GIFT IFSC, in the form of International Branch Campuses or Offshore Educational Centres, with the option of establishing their presence as a branch on a standalone basis or such other manner as permitted. The key objective is to facilitate the availability of skilled human capital for financial services and technology and for financial institutions to participate in the emerging global financial hub being developed by India at GIFT City.

The table below intends to address preliminary queries from the perspective of the UGC Foreign Universities Collaboration Regulations and the IFSC Foreign Universities Regulations that foreign universities and higher education institutions exploring opportunities in India may have, while contemplating either a collaboration with an existing Indian higher educational institute (subject to domestic regulations) or looking to set up a branch campus at the GIFT IFSC (not subject to domestic Indian regulations).

³ Foreign education institution under the IFSC Foreign Universities Regulations is defined to mean an education institution outside India, which is not a university, and is duly authorized to offer courses including research programmes in the permissible subject areas, within and outside its home jurisdiction.

⁴ Foreign university under the IFSC Foreign Universities Regulations is defined to mean a university established outside India which is duly accredited to award degree for courses including research programmes in the permissible subject areas, within and outside its home jurisdiction.

Sr. No	Question	Collaboration in India	Campus in GIFT IFSC
1	Is the FHEI required to comply with the Indian domestic laws enacted by Indian regulators in the higher education sector, such as the University Grants Commission, All India Council for Technical Education, and respective regulatory authorities governing different streams of academic programmes offered?	Yes	No ⁵
2	Is the FHEI required to comply with the applicable laws of its home jurisdiction while offering the permitted courses?	Yes	Yes
3	Is collaboration with an IHEI mandatory?	Yes	No
4	Can a FHEI set up its own campus and operate on a standalone basis?	Not Applicable	Yes
5	Is there a restriction on the nature of permitted courses or programmes that can be offered by a FHEI, except for programmes requiring specific permission of professional body or regulator?	No	Yes
6	Can students avail options pertaining to recognition and transfer of credits for the courses?	Yes	Not Applicable
7	Are there specific capital requirements that FHEIs need to comply with?	No	No
8	Can the revenue be freely repatriated to the home country without any foreign exchange control restrictions?	Yes ⁶	Yes

Depending on the investment model that is most suitable and the strategic plan around the market composition and size that the FHEI intends to cater to, the option or a combination of options that meet the requirements of the relevant FHEI looking to enter the Indian higher education sector can be considered. For instance, a FHEI looking to have a standalone physical presence in India for the niche financial services segment may prefer setting up at the GIFT IFSC, considering the streamlined regulations and a comparatively light-touch and business friendly regulatory oversight for undertaking its operation. On the other hand, FHEI looking to tap the Indian domestic higher education sector may consider entering into collaborative arrangements with an existing Indian university, as a trusted local partner having the experience and track record of offering higher education programmes in India and having an understanding of the domestic legal and regulatory requirements may be preferable. Once the relevant FHEI has identified the option(s) it wishes to explore, given the evolving legal, tax and regulatory regime in the education sector in India, it is recommended that specific legal and tax advice tailored to such FHEI's requirements and circumstances is obtained.

⁵ Subject to necessary amendments expected to be made to the domestic Indian regulations and International Financial Services Centres Act, 2019.

⁶ Subject to compliance with Indian tax and foreign exchange control laws.

Contributors:

Ravi Shah
Partner
ravi.shah@cyrilshroff.com

Ketaki Mehta
Partner
ketaki.mehta@cyrilshroff.com

Bhakti Madan
Associate
bhakti.madan@cyrilshroff.com

Dhwani Shah
Associate
dhwani.shah@cyrilshroff.com

Disclaimer

All information given in this alert has been compiled from credible, reliable sources. Although reasonable care has been taken to ensure that the information contained in this alert is true and accurate, such information is provided 'as is', without any warranty, express or implied as to the accuracy or completeness of any such information.

Cyril Amarchand Mangaldas shall not be liable for any losses incurred by any person from any use of this publication or its contents. This alert does not constitute legal or any other form of advice from Cyril Amarchand Mangaldas.

Should you have any queries in relation to the alert or on other areas of law, please feel free to contact us on cam.publications@cyrilshroff.com

Cyril Amarchand Mangaldas
Advocates & Solicitors

100⁺ years of legacy

1000 Lawyers

Over 160 Partners

Peninsula Chambers, Peninsula Corporate Park, GK Marg, Lower Parel, Mumbai 400 013, India
T +91 22 2496 4455 E cam.mumbai@cyrilshroff.com W www.cyrilshroff.com
Presence also in Delhi-NCR | Bengaluru | Ahmedabad | Hyderabad | Chennai | GIFT City | Singapore