

Education Sector Hotline

March 29, 2010

FOREIGN EDUCATION BILL RECEIVES CABINET NOD

INTRODUCTION

Pending for over 4-years and eagerly awaited, the central government has given its nod to Foreign Educational Institutions Regulation of Entry and Operations, (Maintenance of Quality and Prevention of Commercialization) Bill 2010 ("Bill"). The bill seeks to regulate entry, operation and restriction of foreign universities in India. Though the Bill would require passage by both houses of Parliament prior to being instituted as law, there seems to be constitutional disablements which could prohibit its passage. Enabling entry of Foreign Educational Institution ("FEI") in India would provide opportunity not only to foreign universities to set up campus in India and therefore expand operations where students are, but would also greatly benefit Indian students to save on large foreign exchange outgo.

Under the Bill, a FEI may apply for affiliation with the Universities Grants Commission ("UGC"), a statutory body formed to make provisions for the co-ordination and determination of standards in universities in India. Subject to necessary approvals by the UGC, an FEI could be registered as a 'deemed university' under the relevant provisions of University Grants Commission Act, 1956.

EXISTING PROVISIONS

At present, the entry and operation of foreign universities/institutions imparting technical education in India is regulated by the All India Council for Technical Education Regulations for Entry and Operations of Foreign Universities in India Imparting Technical Education, 2005 ("Foreign Universities Regulations"). These regulations apply to foreign universities/institutions interested in imparting technical education in India leading to the award of diplomas, degrees, etc. and to facilitate collaborations and partnerships between Indian and foreign universities/institutions. A foreign university seeking to establish an educational institution in India can do so by way of a registered Trust or a Society; franchises from foreign universities are not permitted. Also, foreign university is obligated to comply with a number of pre-conditions which includes the submission of an undertaking declaring that the degrees/diplomas awarded to the students in India shall be recognized in the parent country of the foreign university/institution. Fees and intake in each course offered by a foreign university/institution is, after giving the said institution an opportunity to be heard, prescribed by the All India Council of Technical Education. All in all, these Foreign Universities Regulations have seen a fair share of controversies and have acted as a deterrent to many foreign universities and educational institutions from setting up in India.

OUR ANALYSIS

Foreign universities and foreign investors' growing interest in India's education sector is apparent and makes for abundant academic and economic sense. While the passage of the Bill would be much awaited and when passed, a welcome step, several key issues still need to be keenly addressed. One can only hope for greater wisdom on part of the central government to allow for setting up an independent governing body, devoid of traditional government dogmas, for prescribing and guiding standards for FEI. The National Knowledge Commission (high-level advisory body for Prime Minister of India) ("NKC") in its report for higher education has recommended setting up of an independent governing body for supervising education, The Independent Regulatory Authority for Higher Education (IRAH). Adopting the NKC's recommendation would not only instill confidence in foreign stakeholders such as FEI, but also in investors whose general apprehension against investing in India's education sector appears to be lack of regulatory clarity.

Several looming questions continue to remain, such as those with respect to taxation, local registration requirements and closure or winding up. While the actual Bill would only be publicly available after being presented in the Parliament, our current note is based on the most recent version of the Bill publicly available.

- Kabeer Shrivastava & Vivek Kathpalia

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