

Education Sector Hotline

June 09, 2023

MINISTRY OF FINANCE EXCLUDES APPLICATION OF EXISTING HIGHER EDUCATION LAWS TO FOREIGN UNIVERSITY'S CAMPUSES AND CENTRES IN THE GIFT CITY

INTRODUCTION

The Ministry of Finance, Department of Economic Affairs ("DEA") has by a notification¹ ("Notification") directed that the University Grants Commission ("UGC") Act, 1956 ("UGC Act") and the All India Council For Technical Education ("AICTE") Act, 1987 ("AICTE Act") will not be applicable to courses offered in Financial Management, FinTech, Science, Technology, Engineering, and Mathematics ("Specified Courses") by foreign universities or institutions in the GIFT City.

The Notification also clarifies the scope of the powers of the International Financial Services Centres Authority ("IFSCA") with regard to regulation of Foreign Universities² ("FU") and Foreign Education Institutions³ ("FEI"). It provides that matters concerning curriculum, faculty, admission criteria or process, academic collaborations etc. will be governed by the regulatory framework of the respective home country of that FU or FEI. Further, the Notification also provides that the recognition of courses offered by FUs and FEIs in GIFT City will be subject to the requirements of Association of Indian Universities ("AIU") or other agencies vested with the responsibility of according academic equivalence to the qualifications awarded by such FUs or FEIs.

BACKGROUND

The purpose of setting up the GIFT City is to develop a world class smart city that becomes a global financial hub with the development of an International Financial Services Centre. Section 31 of the IFSCA Act, 2019 empowers the Central Government to direct, through a notification, that any of the provisions of any other central statute or rules or regulations made under that statute (i) shall not apply to financial products, financial services or financial institutions, as the case may be, in GIFT City; or (ii) shall only apply with specific exceptions, modifications or adaptations, as may be specified in the notification.⁴ For e.g., the IFSCA modified the application of certain provisions of the Companies Act, 2013 to companies incorporated in an IFSC through a notification in November 2022.⁵ Till such time there is no exclusion, Indian laws continue to be applicable to entities operating in GIFT City.

In 2022, the IFSCA had issued regulations permitting the establishment and operation of International Branch Campuses⁶ ("IBC") and Offshore Educational Centres⁷ ("OEC") by foreign higher educational institutions in the GIFT City International Financial Services Centres ("IFSC") in 2022 ("Regulations").⁸ These Regulations were the first of their kind to expressly permit foreign institutions to establish presence in India.

Notably, the UGC Act is the primary statute which governs higher education in India. Additionally, for specific disciplines, there are other statutes which apply, of which the AICTE Act is of special importance given that it governs "technical education"⁹ in general. Questions have been raised in the past on whether existing higher education laws would be applicable to IBCs and OECs set up by foreign higher educational institutions in the Gift City. This has now been clarified by way of the Notification.

By virtue of the Notification, the UGC Act and AICTE Act will not apply to courses offered by FUs and FEIs through their IBCs/OECs in GIFT IFSC. Importantly, given that the various regulations and guidelines issued by UGC and AICTE have been issued in exercise of their powers under their respective statutes, these regulations and guidelines should also not be applicable to IBCs and OECs.

Other Clarifications provided under the Notification

In addition to excluding the applicability of the UGC Act and AICTE Act to Specified Courses offered by FUs and FEIs through their IBCs/OECs, the Notification has clarified the following:

1. Powers of IFSCA

The powers of the IFSCA vis-a-vis regulation of FUs and FEIs will be limited to their terms and conditions of establishment which includes reporting requirements and administrative functioning. All academic matters such as curriculum, faculty, admission criteria or process, academic collaborations etc. will be governed by the regulatory framework of the respective home country of that FU or FEI.

Hence, the Notification provides more autonomy to FUs and FEIs in academic matters which is a huge positive since this should help maintain the same quality of education as it provides in its home country. This will ensure that FUs and FEIs are not forced to familiarize themselves and comply with higher education standards in India, which would be a considerable challenge for institutions which are looking to establish presence in India.

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The Notification provides that the recognition of courses offered by FUs and FEIs in IFSCs will be subject to the requirements of AIU or other agencies vested with the responsibility of according academic equivalence to the qualifications awarded by such FUs or FEIs. This provision, in effect, means that degrees obtained through IBCs and OECs in GIFT IFSCs will be treated as “foreign degrees” and will not be treated at par with other Indian degrees unless equivalence is obtained from AIU.

Currently, the AIU accords equivalence to only those foreign degrees which: (a) are awarded by FU’s which are approved/recognized/accredited in their own country; (b) are pursued by a student as a full time regular student on the campus of the university of its Origin; (c) the minimum prescribed duration of the programme is at least the same as applicable in case of Indian universities; and (d) the minimum eligibility requirements for admission in the programme of studies is at least the same as applicable in case of Indian Universities.¹⁰ As per the website of AIU, once a student obtains a “foreign degree”, in order to obtain equivalence for such degree, they are required to file an application to the AIU along with the requisite documents which is also required to be authenticated by the Indian mission in the foreign jurisdiction. Subsequently, the AIU evaluates the application and provides its decision on equivalence.

The approach to recognize degrees obtained through IBCs and OECs in GIFT IFSCs will be treated as “foreign degrees” is contrary to the approach taken by the UGC in the last version of draft regulations issued on establishment and operation of campuses by foreign institutions in India (“Draft UGC Regulations”).¹¹ The Draft UGC Regulations recognize degrees acquired at the Indian campuses of FUs or FEIs at par with degrees awarded by Indian higher educational institutions, and they expressly state that “there shall be no further requirement of seeking equivalence from any authority.” On the contrary, under the Notification, learners who complete these programmes would need to individually apply to the AIU in order for the degree / diploma to be recognized in India. However, the degree / diploma will be recognized in the parent jurisdiction of the FEI / FU.

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You can direct your queries or comments to the authors

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¹The notification dated May 24, 2023 is available at <https://egazette.nic.in/WriteReadData/2023/246030.pdf> (last visited on June 6, 2023).

²Regulation 3(1)(iv) defines Foreign University as “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.”

³“Foreign Educational Institution” 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.

⁴The Specified Courses were categorized as “financial services” through a notification of the DEA dated May 24, 2022.

⁵The notification dated November 4, 2022 is available at: <https://egazette.nic.in/WriteReadData/2022/240045.pdf> (last visited on June 6, 2023).

⁶Regulation 3(1)(v) defines International Branch Campus as “a campus set up as a branch by a Foreign University on stand-alone basis, or in such other form as may be permitted by the Authority in the GIFT IFSC for the purpose of delivering courses including research programmes in the permissible subject areas, that are duly accredited under the relevant framework in their respective home jurisdiction, and is registered with the Authority.”

⁷Regulation 3(1)(vi) defines Offshore Education Centre as “a centre set up as a branch by a Foreign Educational Institution (other than a Foreign University) in the GIFT IFSC on stand-alone basis or in such other form as may be permitted by the Authority for the purpose of delivering courses including research programmes in the permissible subject areas, that are duly accredited under the relevant framework in their respective home jurisdiction, and is registered with the Authority.”

⁸International Financial Services Centres Authority (Setting up and Operation of International Branch Campuses and Offshore Education Centres) Regulations[1] (“IFSCA Regulations”) available at <https://ifsc.gov.in/Viewer/Index/352> (last visited on June 02, 2023). Our analysis of the regulations is available in the addendum to ‘Higher Education: Opportunities for Foreign Educational Institutions in India’ available at: https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Higher-Education-Web.pdf.

⁹Section 2(g) of the AICTE Act defines “Technical Education” as “programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare.”

¹⁰Association of Indian Universities, ‘Policies & Procedure for Equivalence of Qualification/Degrees’ (Updated as on 30th June, 2015) available at: <https://www.aiu.ac.in/documents/evaluation/AIU%20Equivalence%20Information%20Brochure%2013.07.2015.pdf> (last visited on June 6, 2023).

¹¹See Regulation 7.5 of the Draft UGC Regulations, available at: https://www.ugc.gov.in/pdfnews/9214094_Draft-

Setting-up-an d-Operation-of -Campuses-of-F oreign-Higher- Educational-In stitutions-in- India-Regulati ons-2023.pdf (last visited on June 6, 2023). Our analysis of the regulations is available in the addendum to 'Higher Education: Opportunities for Foreign Educational Institutions in India' on Pg. 38 available at: https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Higher-Education-Web.pdf.

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