



Monograph: July 2012

## **Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010**

*A Bill to regulate entry and operation of foreign educational institutions imparting or intending to impart higher education (including technical education and medical education and award of degree, diploma and equivalent qualifications by such institutions) and for matters connected therewith or incidental thereto.*

The Bill was approved by the union Cabinet in March in 2010 and was introduced in the Lok Sabha on May 3, 2010. It has been referred to the Standing Committee on Human Resource Development, which was scheduled to submit its report within two months but is delayed in its response.

This month's Monograph is a summary of the Bill and an attempt to analyze it from the perspective of various stakeholders.

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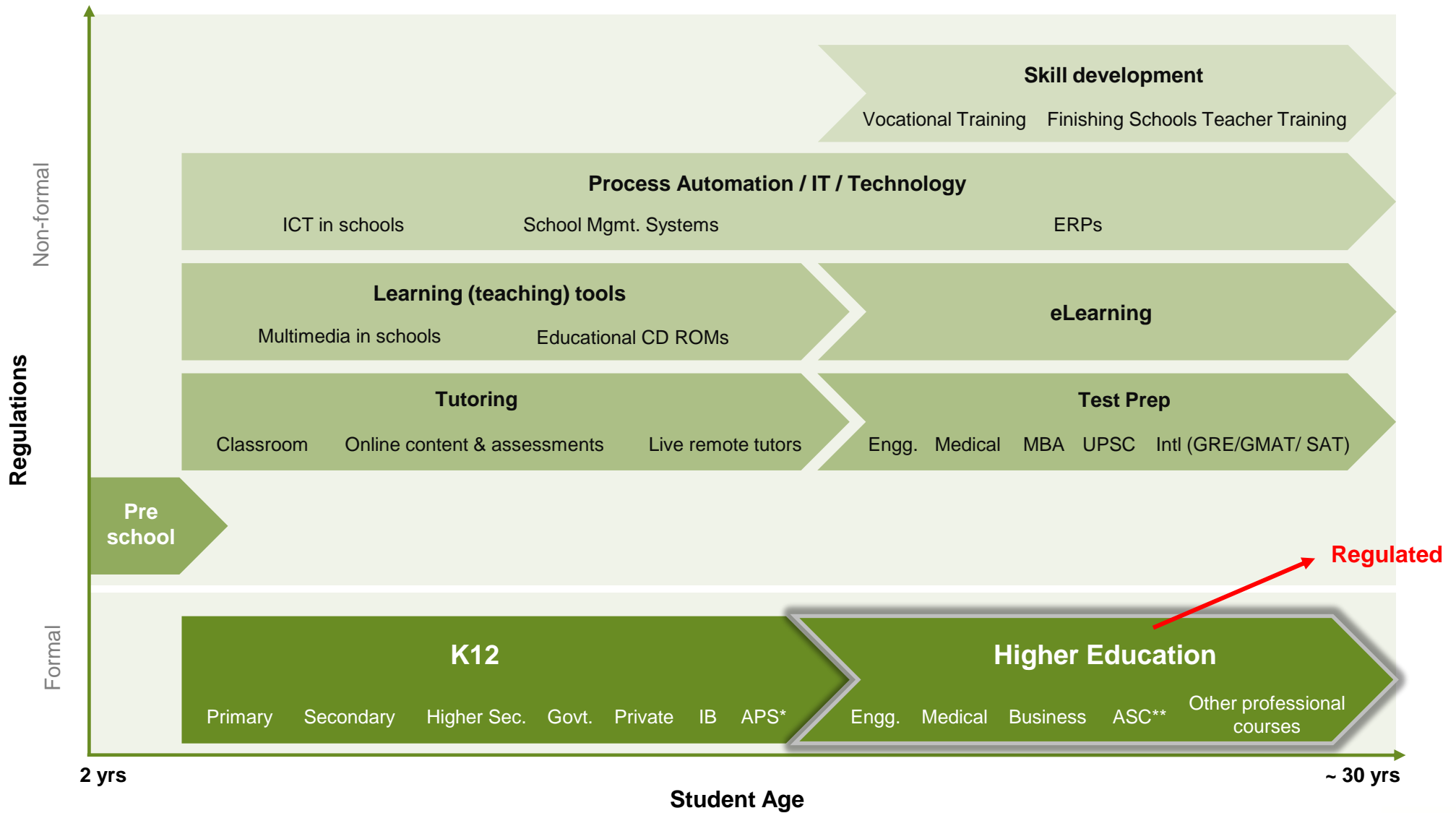
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# Overview of Indian Higher Education

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## *Size, Structure and Regulatory Framework*

# Indian Education Stack™ : Formal = Regulated



\* APS: Affordable Private Schools

\*\* ASC: Arts, Science & Commerce

# Indian Higher Education – Scale and Opportunities

Segments	Revenues (\$M, 2008E)	% share	Revenues (\$M, 2012E)	CAGR (%)
<b>Formal IES</b>	<b>40,000</b>	<b>80</b>	<b>62,650</b>	<b>13</b>
K12	20,000	40	33,779	14
Higher Education	20,000	40	31,470	12
<b>Non-formal IES</b>	<b>10,110</b>	<b>20</b>	<b>19,608</b>	<b>18</b>
<b>Total IES</b>	<b>50,110</b>		<b>84,858</b>	<b>14</b>

▪ The size, structure and growth of the Indian higher education system are riddled with many contradictions. It is both large and small. In terms of absolute enrolment (about 12.8m students), it is the 3<sup>rd</sup> largest education system in the world, but in terms of gross enrolment ratio, it is small – just around 11%.

▪ Universities and colleges together, there are more than 20,000 institutions. This is more than the rest of the world taken together. Yet., the number of degree granting institutions is just about 400. The number of institutions is large, with very small average enrolment, resulting in a higher education landscape dotted with a large number of tiny non-viable institutions.

▪ The government plans to expand enrolment to reach 15% GER by 2012. This would require additional capacity for 7.5m students. For this growth momentum to sustain, private investment in higher education seems like the only option.

IES – The Largest
<p><b>Largest Capitalized space</b></p> <ul style="list-style-type: none"> <li>▪ Public spend of \$30bn (3.7% of GDP)</li> <li>▪ Private spend of \$50bn (14% CAGR over FY08-12E)</li> </ul>
<p><b>Largest Supply</b></p> <ul style="list-style-type: none"> <li>▪ 18,000 Higher Education Institutions (HEIs); largest globally</li> </ul>
<p><b>Largest Demand</b></p> <ul style="list-style-type: none"> <li>▪ Globally the largest population of 572m within the 0-24 years age group</li> </ul>



Opportunities
<p><b>'Insufficient' funds</b></p> <ul style="list-style-type: none"> <li>▪ Free product (govt. funded) losing market share – 40% of the student base enrolled in private schools</li> </ul>
<p><b>'Inefficient' supply</b></p> <ul style="list-style-type: none"> <li>▪ Only 0.85% of USD 30bn spent on capital expenditure</li> </ul>
<p><b>Lowest enrolments, highest dropouts</b></p> <ul style="list-style-type: none"> <li>▪ Lowest GER globally at 9.97 (at higher education level)</li> </ul>

# Institutional Structure

## Types of Institutions

<i>By</i>	<i>Types</i>
<b>Degree-granting powers</b>	University - unitary, or affiliating; college
<b>Legislative origin</b>	Central; state or deemed-to-be university
<b>Funding</b>	Public (government/aided) institutions; private (unaided) institutions <i>not-for-profit (or de factor for-profit)</i>

## Typology of public and private institutions

		Ownership	
		Public	Private
Financing	Public	Government institutions	Government dependent private (or private aided) institutions
	Private	Government independent institutions	Private institutions

- Universities award their own degrees; the colleges award their degree through the university to which they are affiliated

- Colleges conduct teaching and learning under the academic supervision of the university to which they are affiliated

- All universities are not of the affiliating type; a majority of them are unitary bodies, having a single campus, while some even have multiple campuses

- The Parliament or state legislatures can establish universities. Those established by an act of Parliament are the central universities, and the ones set up the state legislatures are state universities

- Though there is no clear demarcation, the colleges usually focus on undergraduate education while the universities impart post-graduate education and conduct research.

- In addition, there are many institutions like the Indian Institutes of Management (IIMs) that award diplomas. These diplomas are considered equal to degrees granted by the universities.

- Most universities and colleges offer multidisciplinary programs. There are also some universities that are discipline-specific, such as agriculture, law, technology, language, medicine and so on.

# Universities and Colleges

- Universities, including deemed universities, and institutions of national importance are all degree-awarding institutions (DAIs)

- Out of nearly 18,500 institutions, only 381 are universities and the remaining are colleges. Out of these colleges, about four-fifth (~14,000 colleges) – mostly arts, commerce and science (ACS) colleges – are under the purview of the UGC.

- Overall, the number of institutions in India is large, with the obvious result that the average enrolment is very small; just about 500 students per institution.

- As a result, the higher education landscape is dotted with a large number of tiny non-viable institutions. Though this ensures a good geographical spread, the colleges, particularly in rural areas, are of poor quality, small size and are non-viable in nature. Thus, the system is highly fragmented and organized sub-optimally.

- With the changing landscape of HE in India, other than the traditional universities and colleges, two other types of providers, namely, private universities and colleges, and distance education providers have emerged in India.

- Growth of financially independent private institutions has been the most significant development over the past 2 decades. Until the 1990s, the main mode of growth of private institutions was through establishing colleges affiliated to the existing universities or new universities carved out from the existing ones. By the late 1990s, many institutions took the deemed university route to get degree-granting powers, a few private promoters were able to persuade the state governments to enact separate laws to set up private universities. Private institutions now contribute as much as 80% enrolments in professional programs.

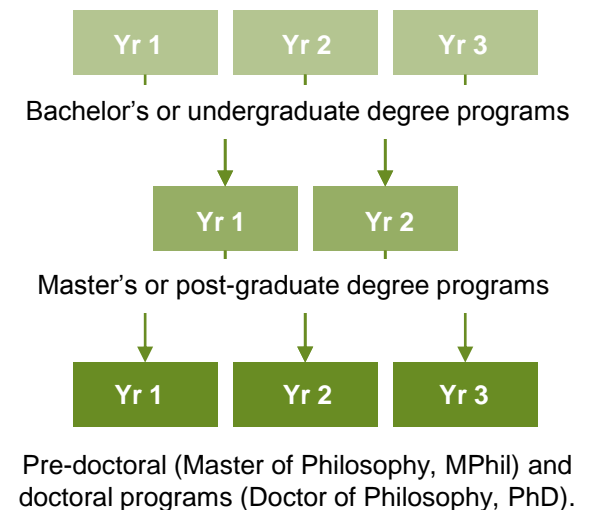
## Number of DAIs

<i>University level institutions</i>	<i>As on 31.3.2002</i>	<i>As on 31.3.2006</i>	<i>As on 31.3.2007</i>
State Universities	178	217	232
Deemed Universities	52	102	114
Central Universities	18	20	24
Private Universities	0	10	11
<b>Subtotal</b>	<b>248</b>	<b>349</b>	<b>381</b>
Institutes of National Importance	12	13	13
Institutions set up by State Legislature	5	5	5
<b>Subtotal</b>	<b>17</b>	<b>18</b>	<b>18</b>
<b>TOTAL</b>	<b>265</b>	<b>367</b>	<b>399</b>

# Academic Structure

- Higher education (HE) in India covers all post-secondary education beyond class 12 in different subject areas, including professional streams such as engineering and technology, medicine, agriculture and so in.
- HE in India comprises three levels of qualifications – bachelor's or undergraduate degree programs, master's or post-graduate degree programs and the pre-doctoral (Master of Philosophy, MPhil) and doctoral programs (Doctor of Philosophy, PhD).
- Normally, a bachelor's program requires 3 years of education after 12 years of school education. In some places, honors and special courses are also available. These are not necessarily longer in duration but indicate a greater depth of study.
- The bachelor's degree in professional fields of study, such as agriculture, dentistry, engineering, pharmacy, technology and veterinary medicine generally takes 4 yrs, while for architecture and medicine, a bachelor's degree takes 5 and 5½ yrs respectively.
- Bachelor's degree in education, journalism and librarianship are treated as second degrees. A bachelor's degree in law can either be taken as a part of an integrated degree program lasting 5 yrs or a 3 yr program as a second degree.
- The master's degree is normally of 2 yr duration. It could be based on course work without a thesis, or on research with a thesis.
- The MPhil degree is a pre-doctoral program taken after the completion of the master's degree. This can be either completely research based or can include course work.
- A PhD degree is awarded 2 yrs after the MPhil degree, or 3 yrs after the Master's degree. The students are expected to write a substantial thesis based on original research for the award of a PhD degree.

*The academic structure of Indian HE system is broadly based on the pattern of 3-2-3 year cycle of academic qualifications adopted by Europe under the Bologna process. However, a majority of institutions do not have a credit system. There is a fixed curriculum and limited options available in each area of study. Recent efforts to introduce choice-based credit system have met with limited success.*



# GER – Transition to Mass Higher Education

Country	Enrolment (in million)		% Increase	GER 2005 (%)
	2005	1990	1990-2005	
<b>High Income (Average GER - 67%)</b>				
USA	17.27	13.71	26	83
Japan	4.04	2.9	39	55
Korea	3.21	1.85	73	91
UK	2.29	1.26	81	60
France	2.19	1.7	29	56
Italy	2.01	1.45	38	66
Canada	1.33	0.84	58	56
Australia	1.01	0.49	106	72
<b>Upper-middle Income (Average GER - 43%)</b>				
Russia	9.02	5.1	77	71
Malaysia	0.73	0.12	508	32
<b>Lower-middle Income (Average GER - 22%)</b>				
China	21.34	3.82	459	20
Brazil	4.28	1.54	178	24
Indonesia	3.64	1.59	129	17
Phillipines	2.4	1.71	40	28
<b>Lower Income (Average GER - 9%)</b>				
India	11.78	4.95	138	11

Enrolment and GER 2005 based on data from UNESCO; Classification of economies and average GER for them based on World Development Indicators 2007

- Gross Enrolment Ratio (GER) measures the level of access, by taking the ratio of persons of all ages enrolled in higher education with respect to the total population in the eligible age group, that is 18-23 years for higher education

- In India, despite a steady enrolment growth, barely 11% of the 18-23 yrs age group is currently enrolled in higher education. The government has set a target of 15% by the year 2011, the terminal year of the Eleventh Five Year Plan.

- The structure of the Indian economy, with a large population in the unorganized and agricultural sectors that do not require higher education qualifications at this stage, pushes down the enrolment ratio to this low level. There is a wide variation between rural and urban areas and across the states. Whereas in urban metropolitan areas, enrolment mirrors that in the advanced developing nations, in the rural hinterland, enrolment continues to be very low.

- In absolute terms the enrolment numbers in India are 3<sup>rd</sup> largest in the world. Access to higher education is no more restricted to the elite, but expansion over the years has democratized higher education and this massive expansion has been chaotic and unplanned leading to sudden and dramatic increase in number of institutions without a proportionate increase in material and intellectual resources.

- Several problems that the system faces include: inadequate infrastructure and facilities, large vacancies in faculty positions and poor faculty, outmoded teaching methods, declining research standards, unmotivated students, overcrowded classrooms and widespread geographic, income, gender, and ethnic imbalances.



# Public-Private Distinction

- Difference between a public and a private institution is usually seen along two dimensions – ownership and financing.
- In terms of financing, it is essential to distinguish between the initial capital cost for setting up an institution and the obligation to meet the recurrent costs. Since, promoters – public or private – make the initial investment; therefore distinction in terms of financing is essentially about the source of recurrent expenses.
- There are private institutions in India that get operating funds from the government. Such institutions are referred to as private aided institutions. The unaided private institutions are known as private institutions. These are financially independent institutions, and are also referred to as self-financing institutions. Many government institutions (e.g., IIM – A, B and C) are able to generate their operating expenses internally and can be referred to as government unaided institutions.
- Funding of the central universities, a few deemed universities and some colleges is done through the UGC. The UGC also provides development grants to state institutions. The IITs, the IIMs, the NITs and some technical institutions are funded directly by the central government. Remaining universities and colleges are either funded by the respective state governments or do not receive any public funds at all.
- Another distinction made on whether or not an institution is for-profit or not-for-profit. Though all institutions in the formal system of higher education are not-for-profit by law, yet many, particularly private institutions, exhibit characteristics of for-profit entities.

## Typology of public and private institutions

		Ownership	
		Public	Private
Financing	Public	Government institutions	Government dependent private (or private aided) institutions
	Private	Government independent institutions	Private institutions

## Ownership and Financing of institutions

Type of institution	Ownership	Financing	Control	
			Academic	Administrative
University	Public	Public	Weak	Strong
Private University	Private	Private	Weak	Weak
Govt. Deemed University	Public	Public	Weak	Moderate
Private Deemed University	Private	Private	Weak	Weak
Government College	Public	Public	Strong	Strong
Private Aided College	Private	Public	Strong	Moderate
Private College	Private	Private	Strong	Weak
Foreign Institutions	Private	Private	No	No

# Private Colleges and Deemed Universities

- With economic prosperity, more and more people are willing to pay higher fees for professional courses where the capacity is limited. This led to the emergence of private unaided colleges in the early 1980s. The first few private colleges for professional education came up in Karnataka as a result of liberal policies. Maharashtra, Andhra Pradesh and Tamil Nadu quickly followed suit.
- Many states started encouraging self-financing institutions with the Supreme Court granting legitimacy in 1993. The northern states were slow in allowing self-financing institutions. They did so only after they realized that many of their students were going to other states for professional education, often after paying high fees.
- However, private interests are largely confined to subject areas that are market friendly with low entry barriers, low initial investment (as courses in IT/computer science) and a liberal regulatory regime. A large number of private colleges are in engineering, management, hotel management, computer applications, pharmacy, medicine and other professional disciplines. To facilitate the setting up of such private professional colleges, many states have established affiliating universities exclusively for technical and/or medical disciplines.
- All private colleges are affiliated to universities that are directly under the government, in most cases the state governments. Therefore, the state governments are able to regulate fees and admissions.
- As the private sector expanded, the private promoters found the regulatory control of the affiliating university and state governments cumbersome. In the name of granting them autonomy – essentially to get out of the control of state governments and affiliating universities – they sought university status. Thus, several private deemed universities and private universities were established.
- A university that awards an academic degree in India can only be setup by an Act of Parliament or State Legislature. However, the central government, on the recommendation of the UGC can grant status 'deemed-to-be-university' to higher education institutions by an executive order. Earlier this provision was used sparingly, usually to declare premier institutions offering programs at advanced level in a particular field or specialization as a deemed university (e.g., Indian Institute of Science, Bangalore and the Indian Agricultural Research Institute at Delhi).
- To give boost to educational opportunities in emerging areas, the provision to grant deemed university status to new institutions was introduced in 1998. Monitored on a year-to-year basis, such institutions were granted full recognition only at the end of five years on achieving satisfactory progress. Over the past few years, many private institutions running programs in traditional disciplines like engineering, medicine and management managed to get deemed university status without a wait period of five years using the *de novo* provision.
- By early 2008, there were as many as 114 deemed universities and granting of deemed university status liberally has raised many issues. The process of grant of deemed university status remains somewhat non-transparent and arbitrary. Of the 60 institutions declared deemed universities after 2000, the number of government / aided institutions is insignificant. With a large proportion of deemed universities in TN and Maharashtra, the geographical spread is uneven and driven political patronage to private universities in these states.

## Growth of Professional Education

Professional education, falling under the regulatory control of the AICTE and referred to as technical education has grown rapidly over the past 6-7 years across a range of disciplines. In case of engineering, pharmacy, dentistry and physiotherapy, growth has been high and private share is as much as 90% in terms of number of institutions. Few programs like computer applications, management and teacher education grew in the public as well as the private sector. In disciplines like architecture and hotel management, growth has been moderate. In medicine and dentistry, where entry barriers are high in terms of large investment requirements and the need for an attached hospital, growth has been rather slow and private share is 50-60%.

<i>Name of the course</i>	<i>1999-2000</i>	<i>Jul 2007 &amp; (2006-07)</i>	<i>% increase</i>	<i>Private Share (%)</i>
Engineering	669	1,617	142	91
Pharmacy	204	736	261	95
Hotel Management	41	80	95	94
Architecture	78	116	49	67
Computer Applications (MCA)	780	999	28	62
Management (MBA/PGDM)	682	1,150	69	64
Teacher Education (B.Ed.)	1,050	(5,190)	395	68
Medicine (MBBS)	174	(233)	32	50
Dentistry (BDS)	45	(189)	420	59
Physiotherapy	52	(205)	294	92
<b>TOTAL</b>	<b>3,775</b>	<b>10,515</b>	<b>178</b>	<b>80</b>

- While growth has been across a range of disciplines, it has been the fastest in engineering, that too in IT and related disciplines. Rapid exponential growth of private engineering colleges is to be contrasted with stagnating number of government/aided engineering colleges.
- While private engineering colleges continue to grow, in some states which saw an early expansion, saturation seems to be setting in. Several thousands of seats remain unfilled in private engineering colleges in many of these states. As a result viability of several engineering colleges is at stake and many of them are on sale.

## Current Status and Growth Prospects

<i>Type of institution</i>	<i>Ownership</i>	<i>Financing</i>	<i>Number of Institutions</i>	<i>Students enrolled</i>	<i>Growth trends</i>
Govt. Universities	Public	Public	250	1,100,000	Not growing
Govt. Colleges	Public	Public	4,250	2,800,000	Not growing
Private aided Colleges	Private	Public	5,800	3,550,000	Not growing
Private aided Universities	Private	Private	10	60,000	Emerging on the scene
Govt. Deemed Universities	Public	Public	38	40,000	Growing rapidly
Private Universities	Private	Private	63	60,000	Growing rapidly
Private Deemed Universities	Private	Private	72	250,000	Growing rapidly
Private Colleges	Private	Private	7,860	3,350,000	Growing rapidly
Foreign Institutions	Private	Private	150	12,000	Emerging on the scene
<b>TOTAL</b>			<b>18,493</b>	<b>11,222,000</b>	

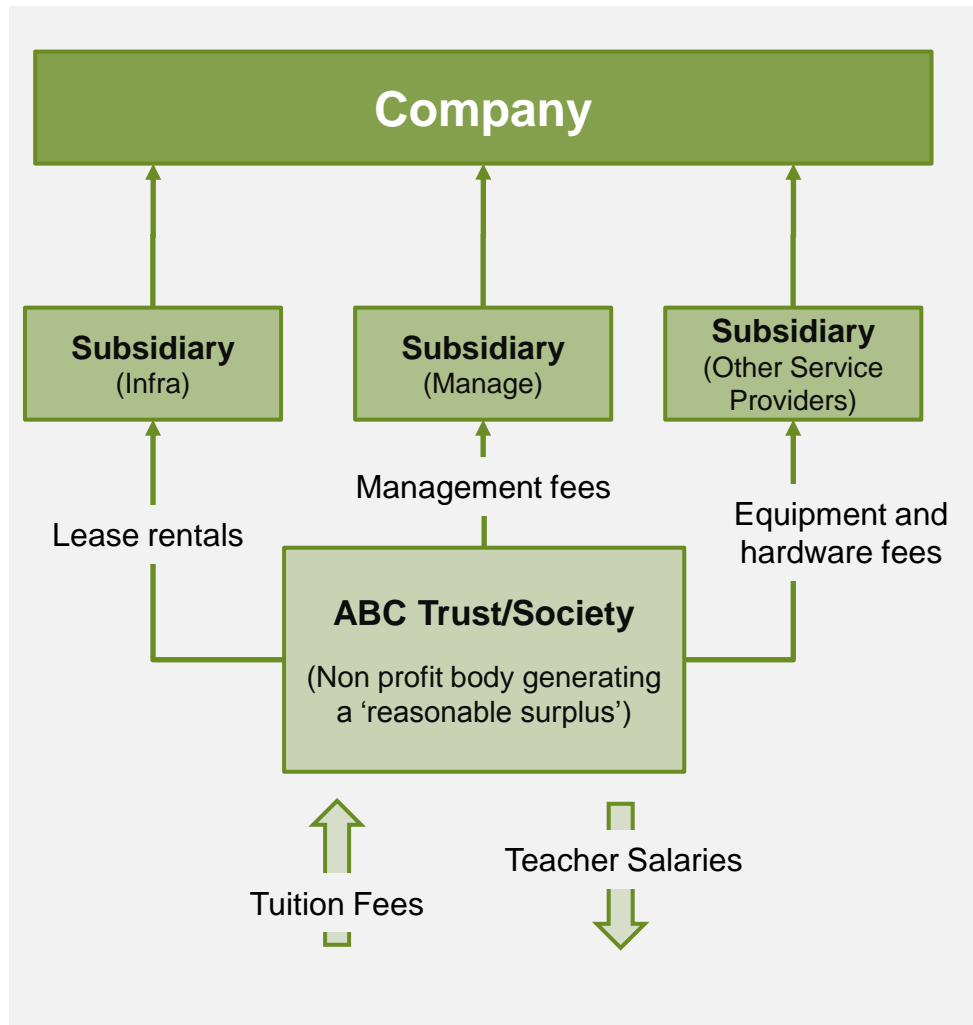
- The demand for higher education has grown far more rapidly than what public institutions can accommodate, and the government is not able to provide finances to meet the growing demand. Thus, the future of Indian higher education would largely depend upon the growing private sector. Primarily 'demand absorbing' due to supply constraints – both overall and job-oriented – but also in part a result of general dissatisfaction due to deteriorating standards, private institutions have grown rapidly over the past two decades and is destined to growth with equally or more.
- Private education has flourished in low-risk high profit segments of higher education. Most private institutions are commercially-oriented (though they claim to be otherwise) and prepare graduates for job markets. This private boom in India has been in secular institutions that absorb the demand that the public sector could not or would not accommodate. Trends over the past two and a half decades show that while public higher education will move with a glacial speed to create capacities, private higher education will grow rapidly. In most professional fields, higher education would be dominated by private providers.

## Higher Education in India: Regulated but Opening Up

- Higher education regulatory structure in India is multi-layered and complex – partly as a result of the federal structure of Indian state and partly a legacy of country's colonial past. There are multiple agencies and a complex web of rules and regulations that govern the higher education system with the UGC at the helm. The state governments, the 13 professional councils at the national level and 5 professional councils at the state level, the state councils and affiliating universities are the key stakeholders in the regulatory system.
- The UGC has the national jurisdiction for the determination and coordination of standards in the entire university education in all disciplines. The UGC exercises this role directly over the universities, while the universities exercise this role with respect to the affiliated colleges. However, no formal recognition or approval of the UGC is required a by a university in the country. A university is merely required to be incorporated in and established by virtue of a Central Act, a Provincial Act or a State Act.
- Unlike the central government that discharges its responsibility towards higher education through the UGC and the other professional councils, the state governments carry out most of the functions by themselves through the concerned government department or directorate in the states.
- The AICTE regulates a bulk of the professional programs at both undergraduate and post-graduate levels and therefore is the most prominent of the professional councils. As noted in the table in the previous page, there is an overlap in the functions of the UGC, other professional councils and even those of the universities. In case of MCI, PCI, AICTE, INC and BCI, there are also the state councils with significant overlap.
- Some professions, particularly those that have public health and safety concerns, require individual practitioners to register themselves to practice the profession e.g., Nursing, Medicine, Dentistry, Law, Architecture etc.. In such cases, approval of the professional council becomes necessary. While, where such requirements do not exists, some institutions opt not to seek professional council's approval. For instance, the Indian School of Business (ISB), which offers one of the best management programs in the country, chose not to apply for AICTE approval.
- There are several institutions that run programs that are not approved by the professional council concerned. In March 2007, AICTE identified 272 institutions that were running professional programs in management, engineering, hospitality and fashion technology. Of them, 104 were running such programs with foreign collaboration, and the others had no AICTE approval at all. In response to a notice issued by the AICTE, only 32 institutes applied for AICTE approval; the rest did not bother to do so. While the AICTE has approached the state governments to shut down these institutions, its inadequately empowered to enforce compliance.
- Though 100% Foreign Direct Investment (FDI) is allowed through the automatic route since 2000, the degrees awarded by foreign universities are not recognized by the UGC or AICTE. However, the Union Government has moved very fast on the Foreign Education Providers Regulation Bill in the last 1 year.

# Legal Construct Followed by Private Players

Private players in the formal education space are using a two-level structure to circumvent the 'not-for-profit' diktat. The company creates a Trust or a Society (a not-for-profit body) that runs the educational institute at one level. It further creates a subsidiary that supplies land, services and infrastructure to the Trust in lieu of rental/ fees. In this way, the entity manages to unlock the 'surplus'. However, it is recommended that the trust and the managing company is not run by the same management and common directors and that the transactions are done at an arm's length (the transactions have to be done at a fair market value, as if the two parties were unrelated).



**Tier 3**

In this way, the entity (company) manages to unlock the 'surplus' and distribute it as dividends or use it to fund other ventures.



**Tier 2**

It further creates a subsidiary that supplies land, services and infrastructure to the trust in lieu of rental/ fees.



**Tier 1**  
(not for profit)

The company creates a trust that runs the educational institute at one level.

# Regulatory and Statutory Bodies for Higher Education

<b>Name</b>	<b>Main role</b>	<b>Overlaps with the role of</b>
University Grants Commission (UGC)	Funding, recognition of institutions and degree titles, maintaining overall standards	Other professional councils and the Distance Education Council (DEC)
Distance Education Council (DEC) under the IGNOU Act	Funding, maintaining standards of open education	Other professional councils and UGC
All India Council for Technical Education (AICTE)	Approval for technical institutions and limited funding role for quality improvement	UGC, DEC, PCI, CoA and the state councils for Technical Education
Council of Architects (CoA)	Registration of Architects and recognition of institutions for education in architecture and town planning	AICTE
Medical Council of India (MCI)	Registration of medical practitioners and recognition of medical institutions and qualifications	State medical councils and the state governments; UGC and DEC to a limited extent
Pharmacy Council of India (PCI)	Registration of pharmacists and approval of pharmacy institutions	AICTE and state pharmacy councils
Indian Nursing Council (INC)	Accepts qualifications awarded by universities within and outside India	22 state nursing councils with different Acts have registering powers
Dental Council of India (DCI)	Recommend to the central government for approval of dental colleges.	Ministry of Health
Central Council of Homeopathy (CCH)	Maintain central of register of homeopaths	State councils
Central Council of Indian Medicine (CCIM)	Maintain central of register	State councils
Rehabilitation Council of India (RCI)	Recognition of institutions for physiotherapy and related fields	State governments
National Council for Teacher Education (NCTE)	Recognition of teacher education institutions	DEC
Indian Council for Agricultural Research (ICAR)	Not a statutory body; Coordinate and fund agriculture education	UGC
Bar Council of India (BCI)	Listing of members of bar	State bar councils

# Important Legislations (1)

Some of the important Central legislations having a bearing on Higher Education in India are:

1. The Copyright Act, 1957
2. Apprentices Act, 1961
3. The University Grants Commission Act, 1956
4. The All India Council for Technical Education Act, 1987
5. The National Council for Minority Educational Institutions Act, 2004

## **The Apprentices Act , 1961**

- Initially the Act envisaged training of trade apprentices. The Act was amended in 1973 and then in 1986 to include training of graduate and diploma engineers and vocational stream after higher secondary Education.
- Directorate General of Employment & Training in the Union Ministry of Labour is responsible overall for the implementation of the act. Partial responsibility lies with State Apprenticeship Advisers and Department of Education in Ministry of HRD.
- The act regulates the training of apprentices in the country as laid down by the Central Apprenticeship Council. The aim of such training is to meet the requirement of skilled manpower in the country.

## **The Copyright Act , 1957**

- Indian Copyright law is governed by the Indian Copyright Act of 1957
- One of the goals in the action plan of Education ministry in 2009 was to amend the Copyright Act, 1957 to address the concerns relating to copyrights and related rights of the various stake holders.
- Union Ministry in 2010 approved the proposal to amend the Copyright Act ,1957. Amendments related to bring the Act in conformity with WCT and WPPT.
- Amendments have been proposed to protect the interests of researchers, students and educational institutions so as to ensure that Technological Measures do not act as a barrier for further development of the technology.



## Important Legislations (2)

### The University Grants Commission Act, 1956

- The Salient features of the UGC Act are:
  - ✓ Stipulating the powers and functions of the UGC
  - ✓ Provision for the definition of universities and deemed universities
  - ✓ Conferment of certain important rights upon universities.
  
- UGC Act defines a university as that which is established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the university concerned, be recognized by the UGC in accordance with the regulations made in this behalf ,under the UGC Act.
  
- A university is not established under the UGC Act but is only required to adhere to the provisions of the same. Universities are set up mostly under State Acts.
  
- In light of the phenomenon of setting up of private universities through State Acts, UGC has introduced regulations with regard to the establishment of the same under the **UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003**. Accordingly, a private university has to be established by a separate State Act and has to conform to the relevant provisions of the UGC Act.
  
- Section 22 of the UGC Act brings forth importance of the designation university. According to this section. the right of conferring or granting degrees specified by the UGC can be exercised only by a university or an institution deemed to be a university under Section 3 of the UGC Act or an institution specially empowered by an Act of Parliament to confer or grant degrees.
  
- Section 23 of the UGC Act provides that no institution, whether a corporate body or not, other than a university established or incorporated by or under a Central Act, a Provincial Act or a State Act shall be entitled to have the word “University” associated with its name in any manner whatsoever.
  
- Under Section 3 of the UGC Act, the Central Government may, on the advice of the UGC, declare that any institution for higher education, other than a university, be deemed to be a university for the purposes of the UGC Act. On such a declaration being made, all the provisions of the said Act shall apply to such institution.

## Important Legislations (3)

### The All India Council for Technical Education Act, 1987

- AICTE was set up by the AICTE Act to ensure:
  - ✓ Proper planning and coordinated development of the Technical Education system throughout the country
  - ✓ Qualitative improvement of such education in relation to planned quantitative growth
  - ✓ The regulation and proper maintenance of norms and standards in the Technical Education system
- The act defines Technical Education as programs of education, research and training in Engineering & Technology, Architecture, Town Planning, Management, Hotel Management & Catering Technology, Pharmacy and Applied Arts and Crafts.
- By virtue of sections 10 and 23 of the AICTE Act:
  - No new 'Technical Institution' of Government, Government Aided or Private (self financing) institution, whether affiliated or not affiliated to any university, can be started and no new courses or programs can be introduced without obtaining prior approval of the AICTE.
  - No new or existing 'Technical Institution' of Government, Government Aided or Private (self financing) institution, whether affiliated or not affiliated to any university, can conduct any e technical course or program without obtaining the approval of the AICTE.
  - No admission authority/body/institution shall permit admission of students to a course or program of a 'Technical Institution' not approved by the AICTE.
- 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).

### The National Council for Minority Educational Institutions Act, 2004

- Act which enabled minority education establishments to seek university affiliations if they passed the required norms.
- It provides for the right of minority educational institutions to seek affiliation to any university of their choice, provided the relevant law under which such universities are created allow such affiliation.
- Article 30(1) of the Constitution, which gives minorities the right to establish and administer educational institution of their choice, would be effectively implemented through the NCMEI Act.
- National Commission for Minority Educational Institutions was constituted to perform the functions under this act. Commission will provide direct affiliation for minority professional institutions to Central Universities



Monograph: July 2012

## Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010

### Eduvisors' Analysis

#### About Eduvisors:

Eduvisors is a leading business research and consulting firm focused on Education sector in India.

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# Government Initiatives in Higher Education – *Recent Initiatives*

## Other Recent Policy Initiatives

- National Development Council increased the allocation of funds to UGC by four times in the eleventh plan as compared to tenth plan.
- New IITs and IIMs have been started across states in India.
- The Government has shown increased willingness to invite private participation in higher education in the speeches made by Prime Minister and Education Minister.
- Government has permitted many deemed universities to set up campuses both in other states and abroad.
- Private Sector was permitted to establish a world class institution in management (ISB – Hyderabad) with linkages to global institutions.

## REFORMS ON THE ANVIL

<i>Bill</i>	<i>Aimed at</i>	<i>Likely Resistance</i>
NCHER Bill	Evolving Norms for assessment and benchmarking	From unfounded apprehensions of a single standard authority
The Accreditation Bill	Streamlining accreditation processes	From institutions running sub-standard programs
The Malpractices Bill	Enforcing Penalties for flouting rules and regulations	From institutions charging capitation fees and making false claims
The Tribunals Bill	Speedy disposal of disputes	Less likely to face resistance

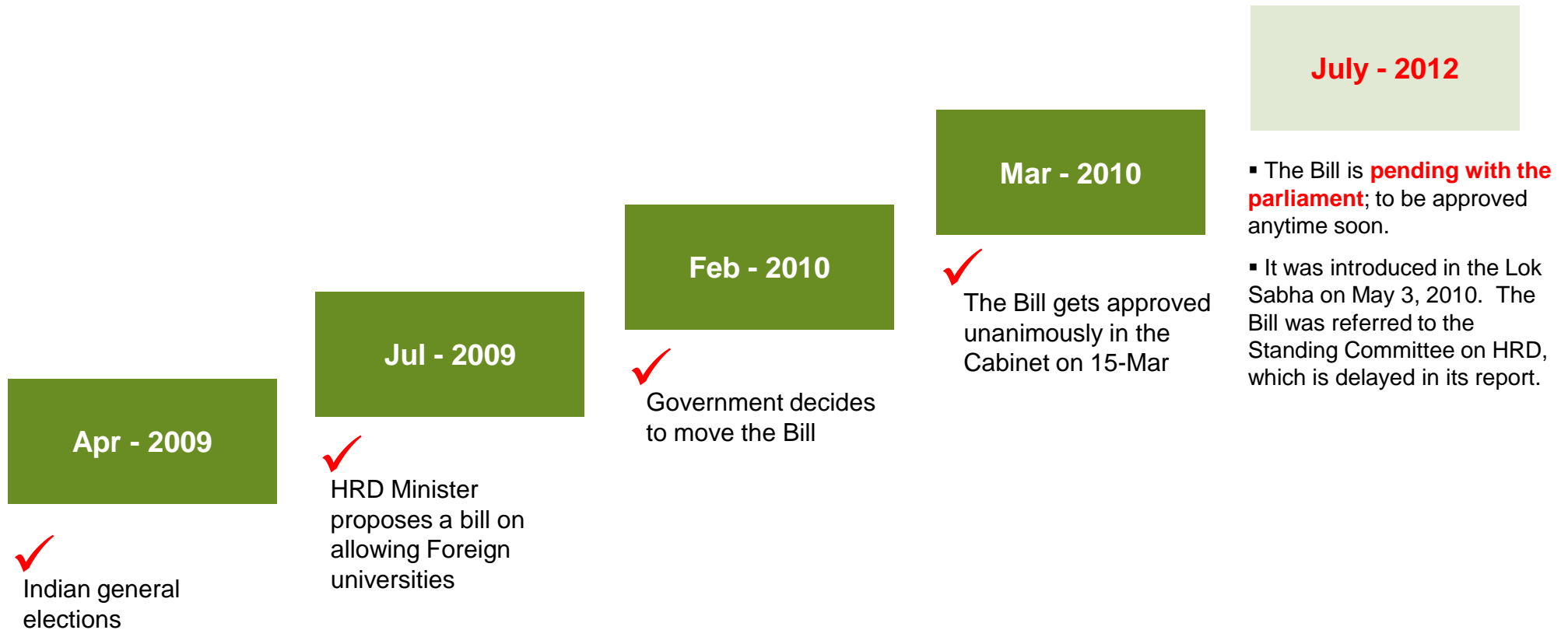
## Higher Education: Regulated *but* Opening Up

- Higher Education in India comprising graduate, diploma and professional courses come under the purview of **Ministry of Human Resource Development (HRD)** and is governed by a single body, **University Grants Commission (UGC)**
- Technical education is regulated under various **professional councils**.

For example, AICTE (All India Council for Technical Education) is the regulating authority for engineering and MBA colleges. *However, some industry reputed Higher Education Institutions (HEIs) e.g., Indian School of Business (ISB) have opted to not affiliate to the system.*

- Regulations require Higher Education to be run as a **not-for-profit Trust or a Society**
- Though **100% Foreign Direct Investment (FDI) is allowed** through the automatic route since 2000, the **degrees awarded by foreign universities are not recognized** by the UGC or AICTE.
- The Union Government has **moved very fast on the Foreign Education Providers Regulation Bill in the last 1 year**

# The Bill – Progress in the Last 1 year



The Foreign Educational Institution (Regulation of Entry and Operation) Bill, 2010, once passed, has the potential to create the same impact on India's higher education sector as the economic liberalization & deregulation in the nineties had on India's industrial sector. *However, since the bill was approved only six universities have shown an inclination to enter India - Virginia Tech, Georgia Tech, Schulich School of Business, Boston University, Middlesex University and Duke University.*

# Objectives of the Foreign Educational Institutions Bill

## ▪ Bridge the demand and supply gap in quality higher education in India

- Only 11% of India's 90 million college-aged citizens go to college
- Only 0.37% of India's GDP is spent on higher education (2009)
- 7% increase in budget outlay for higher education in 2010

**Our thoughts:** The number of students that India needs to graduate is so huge that foreign universities just can't deliver these numbers.

## ▪ Need for improvement in overall quality of higher education

- Foreign institutions bring updated curricula and best practices
- Increased competitiveness in the education system
- More than 90% of Indian students seeking admission to the elite IIT's and IIM's are rejected due to capacity constraints

## ▪ Prevent malpractices and maintain standards of Higher education

- Currently no comprehensive and effective policy for regulation on the operations of all the foreign educational institutions in India
- Only the All India Council for Technical Education (AICTE) has notified regulations for entry and operation of foreign universities and institutions imparting technical education in India
- Bill seeks to prevent entry of substandard educational providers and regulate operations of foreign educational institutions operating in India through the FDI route

## ▪ Saving foreign exchange by encouraging students not to go abroad

- Almost 160,000 Indian students go abroad every year for higher education (second largest after China)
- Estimated potential of saving \$7.5 billion

# Bill Summary (1)

## Notification requirements

### Financial requirements

### Quality requirements

### Penalties

### Others

- All Foreign Educational Institutions seeking to impart education and award degrees/diplomas in India need to be recognized and notified as a Foreign Education Provider (FEP) by the Government of India.
- Once notified as a FEP, the provisions of UGC Act, 1956 will apply to that institution as they apply to any other university in India.
- The Central Government reserves the right to withdraw recognition of the FEP on recommendation of the UGC, if it is found violating any regulations.

## Our thoughts:

- Operationally, the FEPs would be under the administrative umbrella of the UGC and so the UGC would eventually regulate the admissions process and fee structures.
- The Bill is not clear whether reservation of seats for OBC and SC/ST students would be an eligibility criterion for the Foreign Educational Institutions to be notified as FEPs.

*The HRD minister Mr. Kapil Sibal, however, has repeatedly mentioned that the FEPs would be treated as Indian Private Universities and allowed to set their own fee and would be exempt from reservations.*

- The Bill contains a provision that empowers the Central Government to issue directions relating to policy matters, including changes in notification norms



## Bill Summary (2)

### Financial requirements

#### Notification requirements

#### Quality requirements

#### Penalties

#### Others

- For recognition as a FEP, the Foreign Educational Institution is required to maintain a corpus fund of not less than Rs Fifty crores (~ USD 11M) or of such sum as may be notified, from time to time, by the Central Government in consultation with the statutory authority.

- A FEP can utilize only a maximum of 75% of the income from the corpus fund for the development of its institution in India and the remaining 25% have to be deposited in the corpus fund.

- No part of the surplus in revenue generated in India by such FEP, after meeting all expenditure in regard to its operations in India, shall be invested for any purpose other than for the growth and development of the educational institutions established by it in India.

### Our thoughts:

- The Bill seeks to keep all the fly-by-night operators at bay by keeping stringent financial pre-conditions.

- The condition that no repatriation of profits is allowed might act as a deterrent for the Foreign Universities to enter India. Without a possibility of taking back its invested capital, a foreign institution might simply choose to not enter the Indian education sector.

*However, with a payback period of over 7 yrs in Higher Education, we at Eduvisors believe that early stage repatriation of funds by FEPs can be considered short-term in its business outlook.*

- The Foreign Educational Institutions will continue to partner with Indian educational institutions at various levels or recruit students for their main campus but not consider having their own campuses in India, which completely defeats the objective of the Bill.

## Bill Summary (3)

### Quality requirements

#### Notification requirements

#### Financial requirements

#### Penalties

#### Others

- A FEP has to ensure that the education offered by it has to be of a standard not less than what is offered to those enrolled in their main campuses abroad and in conformity with the standards laid down by the statutory authority.
- Every FEP has to publish a prospectus clearly mentioning fee details, number of seats, eligibility conditions, admission process and syllabus outlines.
- Details of teachers, and their qualification and salaries are also required to be put in the public domain along with information about the academic and physical infrastructure available.

### Our thoughts:

- We at Eduvisors believe that it takes years to develop multidisciplinary expertise at a new campus and international universities will take 5-10 yrs to replicate similar standards of quality as at their Home Campus.
- Having studied the trend in some other countries which have gone through similar regulatory changes, we at Eduvisors believe that the first few institutions entering India will be from the Tier-2 and Tier-3 categories. As a result, adherence to quality requirements will have to be monitored stringently.

## Bill Summary (4)

### Penalties

Notification requirements

Financial requirements

Quality requirements

Others

- If a FEP is found violating any rules or regulations, the Central Government may rescind its notification and may attach the corpus fund and such other properties of the FEP to pay its employees and make arrangements of appropriate educational facilities for its students.

- If a FEP contravenes any provision of this Bill or any provision of the University Grants Commission Act, 1956, it shall be liable to a penalty of not less than Rs. Ten Lakhs (~ USD 25,000) extendible to Rs. Fifty Lakh (~ USD 110,000) and the forfeiture of the corpus fund in whole or part thereof.

### Our thoughts:

- Objective of these penalties is to ensure that the quality of education is not compromised upon. However, such clauses have the risk of subjective evaluation by regulatory authorities.

## Bill Summary (5)

### Others

#### Notification requirements

#### Financial requirements

#### Quality requirements

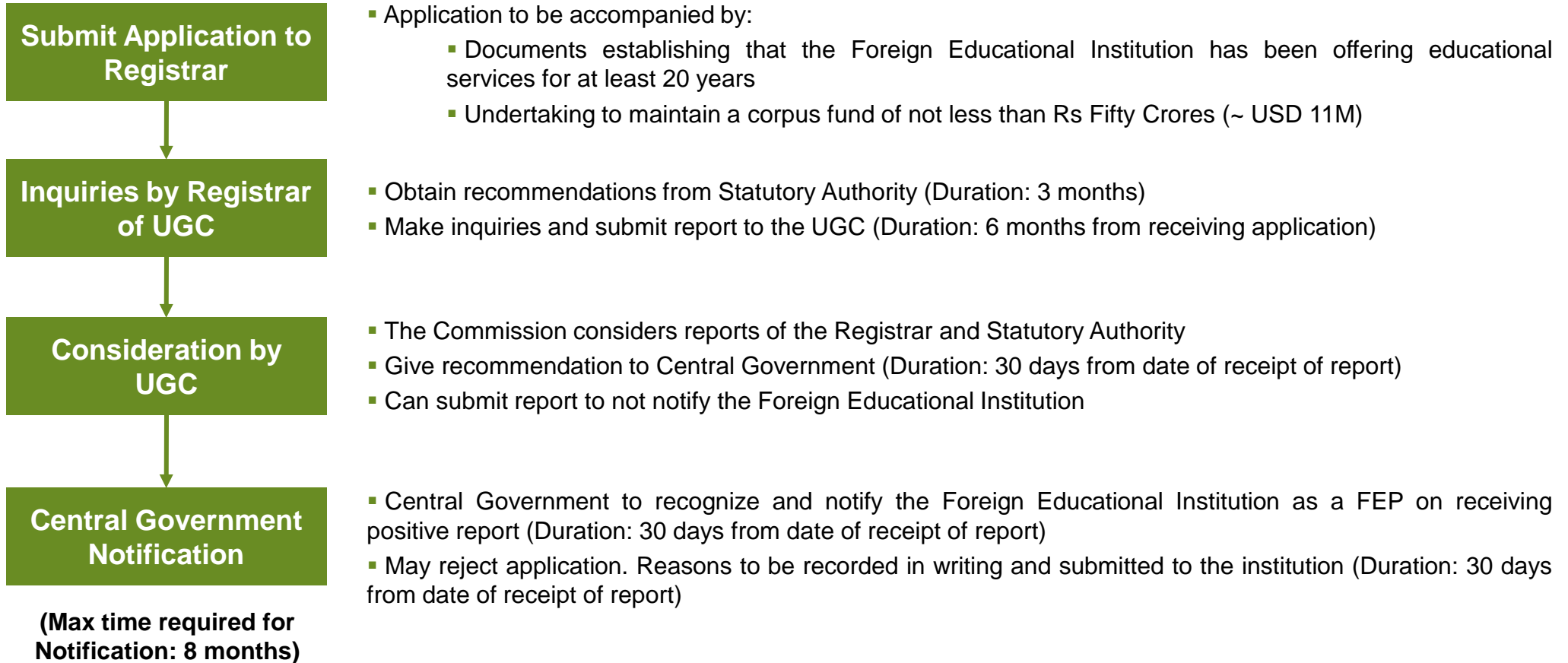
#### Penalties

- The Draft Bill allows the Central Government to exempt a Foreign Educational Institution from some of the provisions and regulations except the one on repatriation of profits after giving regard to the reputation and international standing of the institution.
- The Central Government has the power to issue directions on questions of policy to which would be binding on the UGC
- The Central Government has the authority to make provisions so as to remove any difficulty that might arise in giving effect to the provisions of the Act (once approved)
- A Foreign Educational Institution imparting education leading to award of certificate or any other qualification not being a degree or diploma has to report its activities to the UGC.

### Our thoughts:

- Since the exemptions are based on subjective factors like 'reputation' and 'international standing' of the institution, the Central Government's power to exempt some of the FEPs from regulations by constituting an Advisory Board allows negotiating opportunities to leading international universities planning to enter India.
- A Foreign Educational Institution providing certificate courses need not follow the regulations of this Bill and this provision may be used by many providers to enter the Indian higher education space.

# Procedure for Getting FEP Notification



The government is keen on foreign investment in the education sector and is making all efforts to ensure complete transparency at all stages to ensure that the regulatory framework is not a hurdle in the process.

# Recent Developments

June 1, 2012

“Backdoor” Entry?

- Owing to the Central Government’s doubts of getting the Bill through the Rajya Sabha, HRD evaluates “backdoor” entry of FEIs and notifies UGC to identify possibilities within existing legal framework.
- Two possible ways of achieving the same are allowing the FEIs to enter as:
  - ‘Deemed Universities’ under UGC Act, 1956
  - Private Universities under the State laws
- UGC is drafting regulations on twinning programmes and joint degree programmes between foreign and Indian educational institutions.

June 2, 2012

UGC’s Meeting

**Agenda:**

- Identify possibilities for FEIs for their India entry
- Drafting regulations on twinning and joint degree programmes

- UGC meeting defers the proposal on allowing the FEIs to enter within the existing legal framework as some members stressed the need for wider consultations.
- “In-principle approval” given to regulations on collaborative and joint courses wherein foreign universities partnering with Indian institutions must be among the top 500 as per rankings by Times Higher Education World University Ranking or by Shanghai Jiaotong University.
- Degree will be provided by the Indian institutions.

- Entry of FEIs not possible under The UGC Act, 1956 without amendments.
- Owing to the regulation of technical and management courses by AICTE, only such courses of FEIs are allowed in the country. But a large number of unregulated courses are being provided currently.
- While the official release is still pending, but once there is approval on the proposed regulations on twinning and joint degree programmes, unregulated courses will need to be discontinued.



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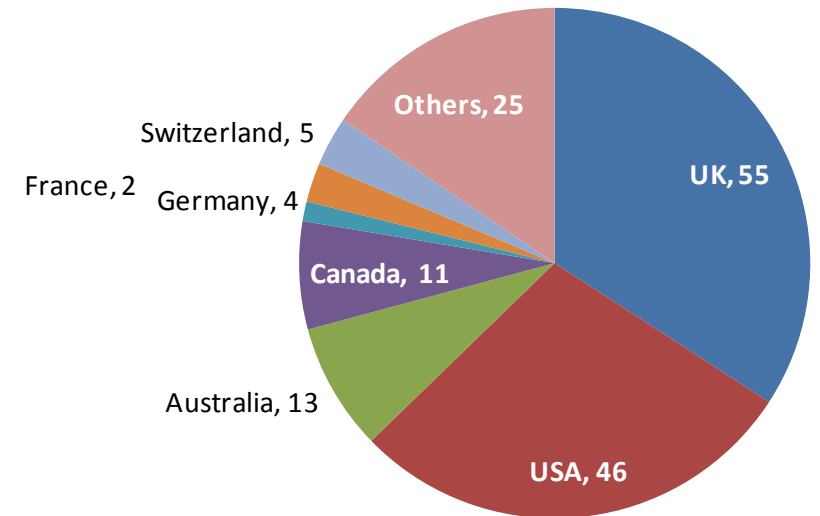
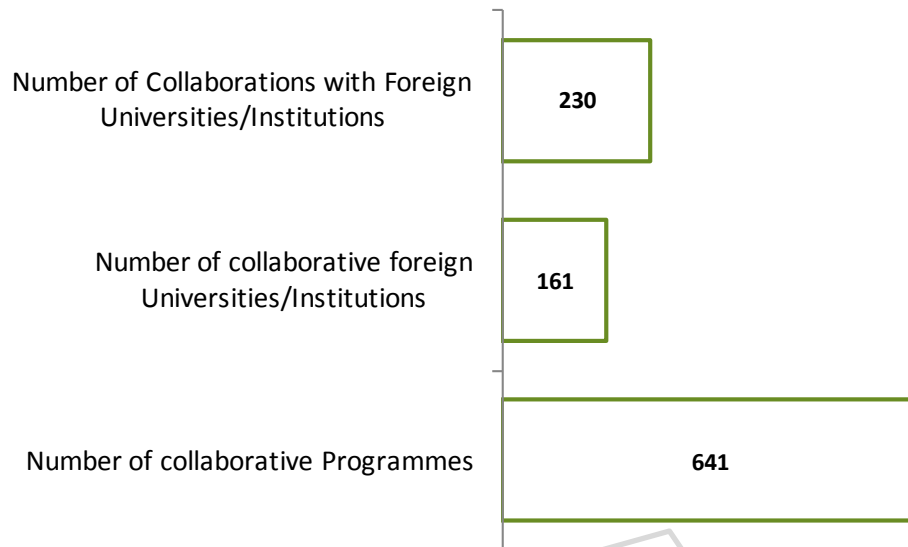
## Appendix

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Current delivery models of Foreign Educational Institutions in India

# Typology of Current Foreign Collaborations in India

- The total number of collaborations with 161 foreign universities is 230
- Each collaboration may have one or more than one program delivery. Thus the total number of programs that are collaboratively delivered with 161 foreign universities is numerically 641

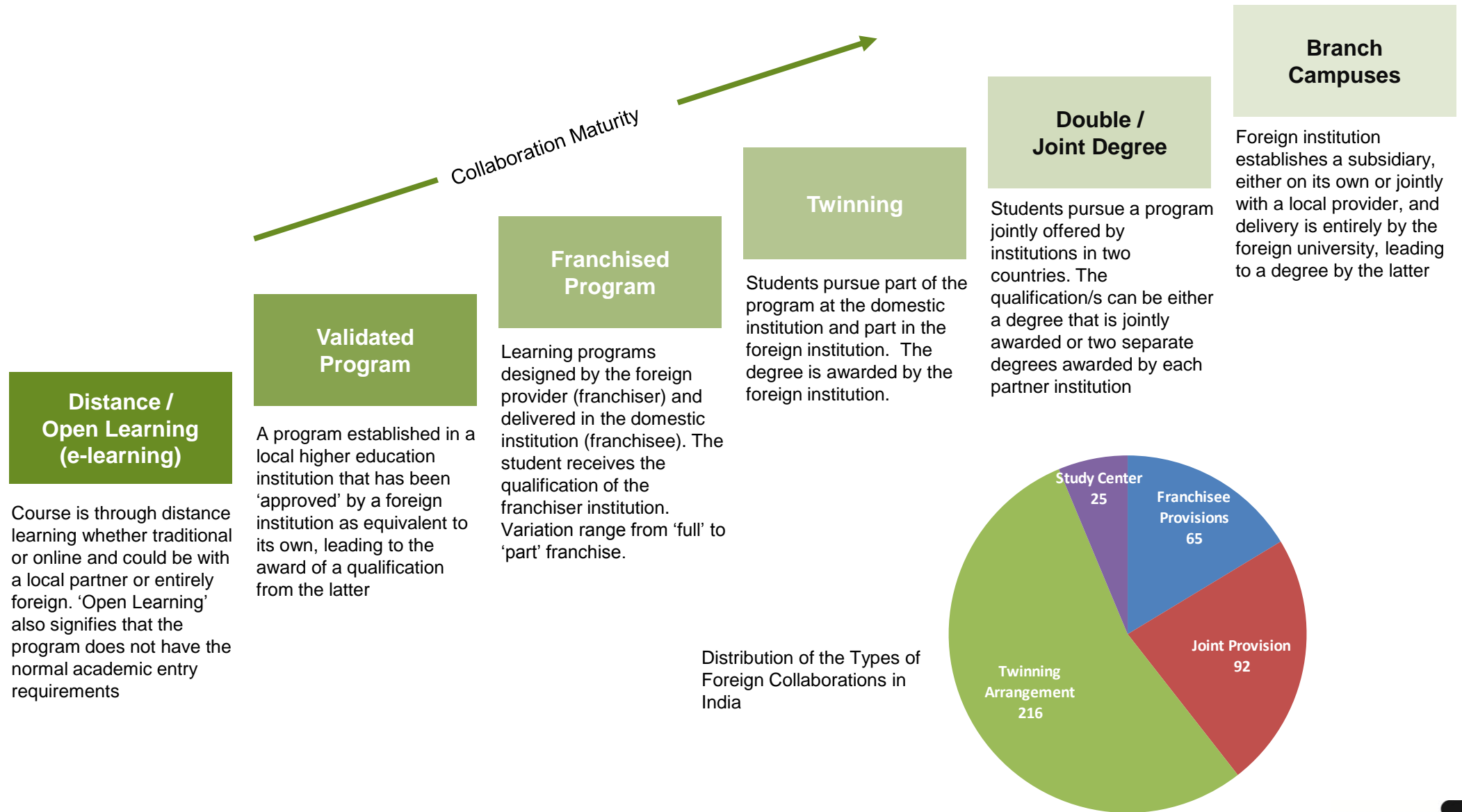


Country-wise Distribution of Collaborative Foreign Institutions/Universities

Management/Business Administration	170
Engineering & Technology/Computer Application/Information Technology	145
Hotel Management/House Keeping	134
Applied Arts (Fashion Designing / Textile / Interior Designing / Jewellery / Pottery / Graphic Design)	45
Applied Science	31
Commerce / Business Studies / Accounting / Finance	25
Media / Journalism / Mass Communication / Film & TV Animation	25
Any Other	66
<b>TOTAL</b>	<b>641</b>



# Modes of Collaborations / Delivery in India



Though not many universities are expected to start campuses, Foreign Educational Institutions Bill is expected to improve the maturity in collaborations



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## Thank You

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The complete text of the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010 can be accessed at the PRS Legislative Research (PRS) website [www.prsindia.org](http://www.prsindia.org).

Direct link to the Bill text:

[http://www.prsindia.org/index.php?name=Sections&action=bill\\_details&id=6&bill\\_id=1139&category=43&parent\\_category=1](http://www.prsindia.org/index.php?name=Sections&action=bill_details&id=6&bill_id=1139&category=43&parent_category=1)

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