

# Regulating and assuring the quality of cross- border providers of higher education



United Nations  
Educational, Scientific and  
Cultural Organization



International Institute  
for Educational Planning



## External quality assurance: options for higher education managers

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These modules were typeset using IIEP's computer facilities and printed in IIEP's printshop.  
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# Module 5

.....REGULATING AND ASSURING THE QUALITY OF  
CROSS-BORDER PROVIDERS OF HIGHER EDUCATION

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## List of abbreviations

CHE	Commission on Higher Education (Kenya)
CHED	Commission on Higher Education (Philippines)
CONEAU	<i>Comisión Nacional de Evaluación y Acreditación Universitaria</i> (National Commission for University Assessment and Accreditation, Argentina)
CSE	Consejo Superior de Educación (Chile)
DECS	Department of Education, Culture and Sports (Philippines)
DoE	Department of Education
EQA	External quality assurance
GATS	General Agreement on Trade in Services
HEI	Higher education institution
HEQC	Higher Education Quality Committee (South Africa)
HRD	Human Resources Development
ICT	Information and Communication Technology
KCCT	Kenya College of Communication Technology
LHE	Law on Higher Education
LIA	Letter of Interim Authorization
MQA	Malaysian Qualifications Agency
MQF	Malaysian Qualifications Framework
MRTT&T	Ministry of Research, Technical Training and Technology
NAB	National Accreditation Board
OECD	Organisation for Economic Cooperation and Development
PIM	Programme and institutional mobility
QAA	Quality Assurance Agency
QAD	Quality Assurance Division
SAQA	South African Qualifications Authority
TNHE	Transnational Higher Education
WTO	World Trade Organization

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## Presentation of the module

Welcome to Module 5 “Regulating and assuring the quality of cross-border providers of higher education” of our distance course on External Quality Assurance.



### Objectives of the module

This module will:

- make you aware of the particular forms of cross-border higher education in developing countries and the challenges arising from them;
- introduce you to different approaches and instruments for regulating cross-border higher education;
- present you with approaches and instruments for the external quality assurance (EQA) of cross-border higher education; and
- acquaint you with different policy rationales and objectives, and their relationship with different types of regulatory and quality assurance regimes.



### Outcomes

Upon completion of this module, you are expected to:

- appreciate various options in the regulatory regimes and quality assurance systems of cross-border providers;
- categorize different types of cross-border providers;
- relate these options to policy rationales and objectives; and
- evaluate the suitability of available options for regulation and quality assurance in your country context.



### Questions for reflection

- 1) What particular challenges are posed by cross-border higher education in my country?
- 2) How can cross-border providers contribute to national development and the relevant objectives of higher education policy?
- 3) What regulatory and quality assurance regime for cross-border higher education exists in my country?
- 4) Is this regulatory and quality assurance regime in line with national policy objectives?



# Module 5

.....REGULATING AND ASSURING THE QUALITY OF  
CROSS-BORDER PROVIDERS OF HIGHER EDUCATION



## Characterizing cross-border providers

### Introduction

Globalization processes are increasingly affecting higher education systems worldwide. In an ever-more open world, university students and staff, research and the curriculum benefit from exposure to different values, cultures, ideas and modes of thinking. Institutions gain extra tuition fees and increases in student numbers. National education systems balance the demands made on them by domestic and international students either by increasing the student body, or by 'outsourcing' part of their education needs.

Globalization of higher education occurs via international students on campus, student exchanges, collaboration with overseas partners, hiring of international staff, and teaching an international curriculum.

Demand for higher education in many countries has led to formerly unknown levels of growth. Some countries wish to use other countries' higher education infrastructure for their short-term education needs. The *Global student mobility report 2025* (2002) prepared by IDP Education Australia predicted that demand for international education would increase from 1.8 million international students in 2000 to 7.2 million in 2005.

It is expected that the numbers of students moving to other countries will not be sufficient to satisfy the growing demand for higher education in countries with a dense population. Currently, much experimentation is taking place. This experimentation concerns new types of providers and forms of collaboration within countries, but increasingly also across countries.

This module looks at the issue of regulation and quality assurance of cross-border providers of higher education, from the particular angle of the receiving country. Both the sending and receiving countries are responsible in this respect. However, the receiving country is unquestionably the entity that will have to ensure that cross-border provision corresponds to its own educational standards and goals for national development.

In *Chapter 1*, this module presents you with a categorization of cross-border providers and provision of higher education in terms of programme and

institutional mobility (PIM). *Chapter 2* exposes options and instruments for regulating cross-border providers of higher education through legislative action. *Chapter 3* focuses on EQA as another major instrument for the regulation of cross-border providers of higher education services. Since regulation and quality assurance cannot be developed independently from broader policy rationales, *Chapter 4* aims to establish a relationship between the two. Finally, *Chapter 5* looks at international frameworks for the cross-border provision for higher education as a tool to guide national policy-making.

## 1. What is cross-border or transnational higher education?

'Transnational education' is defined in a joint UNESCO/Council of Europe *Code of practice in the provision of cross-border education* as the following:

"All types of higher education study programmes, sets of courses of study, or educational services (including those of distance education) in which the learners are located in a country different from the one where the awarding institution is based. Such programmes may belong to the educational system of a state, different from the state in which it operates, or may operate independently of any national system."  
(UNESCO and Council of Europe, 2001)

Traditionally, higher education has been characterized by its international outreach and linkages. This is because science, research and communities of scholars naturally interact across borders. The current level of international students, programme and institutional mobility is, however, a new phenomenon. Moreover, most of these traditional international linkages used to exist primarily for academic and cultural purposes. Recently, much cross-border education has begun to be conducted with a commercial aim. A shift from 'aid to trade' has occurred where academic co-operation involves both a developed and a developing country (OECD, 2004a).

Indeed, the inclusion of 'educational services' in discussions within the framework of the General Agreement on Trade in Services (GATS) is underway in the World Trade Organization (WTO). This in itself places higher education as a potential commercial service. The GATS distinguishes four modes of international supply of educational services:

- Mode 1: cross-border supply (distance education, virtual educational institutions, education software and corporate training through ICT delivery);
- Mode 2: consumption abroad (students studying abroad);
- Mode 3: commercial presence (i.e. local university or satellite campus, language training companies, private training companies) or programme or institutional mobility;
- Mode 4: presence of natural persons (professors, teachers, researchers working abroad).

Commercial presence (Mode 3) is when the service, and not its consumer, crosses the border. In Mode 3, foreign investment leads to the establishment of a branch/satellite campus, foreign-owned corporate institution or franchise programmes (programme and institutional mobility). At present, Mode 3 poses the

main challenges for regulation and quality assurance to receiving countries. This is because it throws up questions related to the recognition of credentials and institutions. Moreover, it sets challenges regarding quality and relevance for national development.

## 2. Who are the providers of cross-border higher education?

Trade in higher education covers the provision of educational programmes. However, there are also other related services such as educational testing and examination services, or multimedia education. These are offered by sometimes old and often new providers of higher education. Machado Dos Santos (2002) and Knight (2006) state that they include:

- publicly-traded companies<sup>1</sup>;
- corporate universities whereby multinationals set up their own training arm or 'university' for their own employees or for others<sup>2</sup>;
- private and for-profit providers operating at a cross-border level;
- media and publishing businesses; and
- educational services and brokers.

From both the publicly and privately funded sectors, the following providers can be distinguished:

- regional and international consortia;
- national virtual university initiatives; and
- national regular universities.

*Table 1* lists institutional arrangements relating to mobility.

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1. Such as Apollo (USA), Informatics (Singapore) and Aptech (India).

2. Such as Motorola and Toyota.

**Table 1. Typology of cross-border provider mobility**

<b>Category</b>	<b>Description of form/type of mobility</b>
Branch campus	Provider in country A establishes a satellite campus in Country B to deliver courses and programmes to students in Country B (may also include Country A students taking a semester/courses abroad).  The qualification awarded is from provider in Country A.
Independent institution	Foreign provider A (a traditional university, a commercial company or alliance/network) establishes in Country B a stand alone HEI to offer courses/programmes and awards.
Acquisition/merger	Foreign provider A purchases a part of or 100% of local HEI in Country B.
Study centre/teaching site	Foreign Provider A establishes study centers in Country B to support students taking their courses/programmes. Study centres can be independent or in collaboration with local providers in Country B.
Affiliation/networks	Different types of 'public and private', 'traditional and new' providers from various countries collaborate through innovative types of partnerships to establish networks/institutions to deliver courses and programmes in local and foreign countries through distance or face-to-face modes.
Virtual University	Provider that delivers credit courses and degree programmes to students in different countries through distance education modes and that generally does not have face-to-face support services for students

Source: Knight, 2005.

Table 2 distinguishes six categories of cross-border provision in terms of programme mobility.

**Table 2. Typology of cross-border programme mobility**

Category	Description of form /types of mobility
Franchise	An arrangement whereby a provider in the source Country A authorizes a provider in another Country B to deliver their course/programme/service in Country B or other countries. The qualification is awarded by a provider in Country A. This is usually a for-profit commercial arrangement.
Twinning	A situation whereby a provider in source Country A collaborates with a provider located in Country B to develop an articulation system allowing students to take course credits in Country B and/or source Country A. Only one qualification is awarded by the provider in the source country. This may or may not be on a commercial basis.
Double/ Joint degree	An arrangement whereby providers in different countries collaborate to offer a programme for which a student receives a qualification from each provider or a joint award from the collaborating providers. Normally this is based on academic exchange.
Articulation	Various types of articulation arrangements between providers in different countries permit students to gain credit for courses/programmes offered/delivered by collaborating providers.
Validation	Validation arrangements between providers in different countries which allow Provider B in receiving country to award qualification of Provider A in source country.
Virtual/distance	Arrangements where providers deliver courses/programmes to students in different countries through distance and online modes. May include some face-to-face support for students through domestic study or support centres.

Source: Knight, 2005.

IIEP research, led by Michaela Martin (2009), on the identification, mapping, regulation and quality assurance of cross-border providers of higher education in seven countries (Argentina, Chile, Kenya, Oman, the Philippines, Russia and South Africa) drew conclusions on programme mobility. Set out in *Boxes 1* and *2*, these conclusions are applicable both to face-to-face and virtual provision of higher education.

### Box 1. Programme mobility in seven countries

While branch campuses and corporate institutions are the most visible item of cross-border higher education, the quantitatively more predominant forms of TNHE are at the study programme level. Programmes of the cross-border commercial provision can be classified into:

- Franchise programmes (where the foreign university either sells a part or an entire curriculum, the associated training materials or an instructional design) and/or is in charge of one or several elements of the process of delivery, assessment or certification of either the entire programme or only part of it (in the case of a ladderized study programme).
- Joint study programmes or twinning arrangements: where either the programme delivery (credit transfer), assessment and certification are shared between the home and foreign university, but where students obtain a qualification from both higher education institutions.
- Validation arrangement: institutions in a foreign provider country establish a course offered in a local higher education institution as equivalent to their own and thus allow it to award their qualification (this latter modality was found only in Russia).

Twinning and joint study programmes cover very different realities in the case countries; only those countries such as Oman, which directly encourage their provision, have detailed information on such programmes. Chile mentions that many twinning programmes are organized under an “academic umbrella” of a licensed local university, but they are often not equivalent to those offered in the home country and are also frequently not recognized by the foreign country. In some cases, students are required to travel to the provider institution for a specific period of time. In Chile, most twinning programmes (32 out of 45) were of the Master’s level, only seven were located at the diploma level, and the other ones were at the PhD level. Joint degree programmes, where two higher education institutions commit themselves to grant a double degree, were perceived by case study authors as more reliable arrangements from a qualitative point of view.

Programmes delivered are to be found predominantly in areas of professional specialization for the tertiary service sector such as: computer science, information technology, business administration studies, and law and accounting. Much of the TNHE provision concentrates on programmes in the non-university sector, thus offering professional higher education for middle-level managers at the diploma or certificate level. Another pole of concentration are MBAs or other professional graduate specialized courses.

Since TNHE programmes are fee-paying, they are market-driven and prepare in general for private sector employment. Several authors emphasized that the cross-border programme offer is not necessarily related to national manpower needs, as perceived by the public authorities. In Russia for instance, it was underlined that there has been an over-production of MBAs in relation to the real employment capacity of the emerging private sector. The problem lies in an excessive offer of MBA programs, most of which are of low quality. In South Africa, private providers were said to basically offer more of those programmes in low cost areas, which are already delivered by public institutions, and thus they do not offer anything complementary to the public system. In Oman, in 2003, only 19 per cent of enrolments in the cross-border sector were in medicine, engineering and sciences,

and the remainder in human and social sciences (with 21 per cent in computer sciences).

TNHE programmes frequently are offered as ladderized programmes and they thus offer the opportunities to pursue and obtain degrees in an institution abroad. Where local labour markets are constrained and where there are more lucrative employment opportunities in the home country of the foreign provider, TNHE may thus offer attractive employment opportunities abroad. Such programmes are very much in demand since they offer easier access to foreign labour markets. In South Africa, opportunities arising from the portability of degrees obtained from the branch campuses were said to be of particular importance for white South African students who may be particularly interested to emigrate to Australia, the UK or the Netherlands.

Case studies have mentioned only occasionally the financial agreements that rule the operation of franchise programmes. It is interesting to note that the example described under the Russian case study of an MBA programme jointly run by the Moscow-based Academy of National Economics and Kingston University foresees that 40 per cent of the income generated is reverted back to Kingston University Business School. In Oman, in one programme offered in affiliation with a British university by the College of Banking and Financial Studies, the British university perceives 70 per cent of the tuition fees and the local institution perceives 30 per cent. These few figures show that there are considerable financial interests for foreign higher education institutions.

*Source: Martin, 2009.*

#### **Box 2. Cross-border virtual higher education programmes in seven countries**

Cross-border virtual higher education (e-learning) is accessible and offered in all case countries, simply because access to Internet providers is increasing in all case study countries. However, the knowledge of the offer and its use is very scattered because the students can enroll into courses offered abroad without consent or without informing their national authorities. National authorities tend to have a more detailed picture of students studying with local universities offering programmes at a distance. National authorities receive information on cross-border virtual providers, when students seek for recognition or equivalence of qualifications obtained virtually. In this context, the case studies mentioned different mechanisms: decisions related to recognition are either the responsibility of the Ministry of Education, a national agency for quality assurance, or less frequently of a national university, such as in Chile. This is due to a tradition of strong academic autonomy where the national authorities have no say in the definition of academic programmes.

*Source: Martin, 2009.*

An analysis of linkages shows that strategic alliances are formed across the public/private divide of HEIs. However, there are also links between private firms and public/private higher education institutions. Frequently, a cross-border firm or private/public university operates with local private providers, since they are the most easily accessible segment in national higher education systems.

Most cross-border commercial higher education can be found in countries with a considerable number of English-speaking students. This is because the majority of providers are from Australia, the UK and the USA. Moreover, the English language medium is often perceived to offer a comparative advantage both for the national and international labour market. Countries in East Asia and the Middle East are most affected by cross-border supply. However, countries in other regions are also recipients of cross-border higher education. In Latin America, Spain is also becoming also a provider. Indeed, Spanish universities frequently offer franchise courses together with Latin American universities. In addition, most commercial cross-border provision can be found in countries with a relatively large sector of private higher education and already high levels of tuition fees. This means that the cost of commercial cross-border higher education is often not much higher than traditional provision. Finally, demand in medium-income countries can be expected to make establishing cross-border commercial higher education easier.

Cross-border higher education, however, not only involves a one-directional stream of provision from northern to southern countries. Institutions in developing countries are themselves exporting higher education to neighbouring countries. This makes cross-border higher education indeed a multi-directional flow of services.

### **3. What challenges arise from cross-border commercial provision, in particular for developing countries?**

Cross-border provision of higher education offers both opportunities and challenges for higher education systems, for their respective communities and for countries at large. In many developing countries the state cannot satisfy the social demand for education. In these circumstances, private provision may be a way to offer better access to higher education. In addition, foreign providers may bring innovative educational practices and opportunities to learn from each other. They may also offer a welcomed internationalization of curricula. They may provide new types of study programmes not yet available in the country, or complement the existing curriculum. Through direct collaboration between two HEIs, the possibility for transferring knowledge and innovative practices may be particularly high.

There are also many fears relating to cross-border higher education. These are loudly expressed by public national providers of higher education. A particular concern with cross-border provision is that it challenges quality standards and consumer rights in countries where administrative capacity is weak and where there are no functioning quality assurance systems. In particular, there may be problems associated with unrecognized, unregulated HEIs that are not subject to a national quality control system (by either the sending or the receiving country). Consumer protection is also an important national concern. This is particularly important in relation to so-called 'diploma mills' or 'fly-by-night providers' offering fraudulent services. Another problem is that cross-border provision is unstable. Its existence may be discontinued from one day to another when it is no longer profitable, leaving students unattended and without an opportunity to reach a final qualification. Wrong information may also be provided on the study offer and credentials to be obtained.

Currently, the challenges are perceived to be particularly important in those developing countries in which social demand for higher education is high and

expected to increase. In many developing countries, where populations are young and still growing, many more young people will request access to higher education in the years to come. Higher education systems today are often still fragile. Moreover, they suffer from a shortage of qualified academics, 'brain drain' and inadequate funding. The capacity of public administrations to steer and manage their higher education systems is also often rather weak. In addition, information systems are frequently underdeveloped both at the institutional and system levels.

In addition to the problem of assuring the quality of cross-border higher education, there are also possible negative effects on equity. Indeed, tuition fees might be prohibitive and access to cross-border education limited to privileged social classes. Cross-border provision may be concentrated in major urban areas. This exacerbates inequities created through uneven provision in the country. Finally, the state might be tempted to further cut down on costs related to higher education. It may assume that the market can bear a growing part of it.

Moreover, public institutions in many developing countries are frequently fee-paying. Western higher education may be perceived as providing a comparative advantage for labour market entry, both locally and internationally. At present, pressure is being applied on national authorities to accept foreign providers. This is due to relatively low participation rates, the intention to link up with the global knowledge economy and political pressure arising from increasing social demand for higher education. Branch campuses and franchised higher education in particular are often positively perceived. This is because they offer higher education within the country and thus lower the potential for brain drain. Indeed, the problem of brain drain is particularly acute when students reside for long periods of time in another country. All these reasons make developing countries particularly open to outside providers.

The IIEP case study research was concerned with assessing the impact of cross-border higher education provision on the local higher education system. This was done with the intention of shedding light on the frequently very heated discussions about their contribution to the national system. Governments often tend to welcome the cross-border provision of higher education because it offers new and often innovative opportunities for study. Moreover, it widens access while being less prone to brain drain. However, the public sector of HEIs tends to consider this new offer as a threat. *Box 4* outlines some findings from the impact on local higher education systems as well as on quality, access and equity in the seven countries studied.

### Box 3. Impact of TNHE providers on local higher education systems

TNHE providers in all case studies function predominantly with the academic staff of the public universities. The Kenya study states for example that 70 per cent of their staff in Kenyan TNHE providers teach at the same time in local universities. Foreign professionals join institutions and programmes generally for short periods of time.

Cross-border providers do thus sometimes offer additional opportunities for the generation of personal income to university teachers. The Russian case study mentions that the average pay of 50 per cent of university teachers is less than 1,500 roubles (around US\$50 per month). By the present standards, the authors assume that only the pay of 10 per cent of teachers can be considered as acceptable. As a consequence, 85.5 per cent of university teachers had a second employment in 2002 which included 43.7 per cent of teachers on a regular basis, 31.8 per cent from time to time, and 10 per cent rarely.

Some cross-border providers do offer opportunities for local staff development. The Philippine case study refers to the local staff that was trained by the TNHE provider to deliver courses, and the faculty qualifications that had been upgraded and updated. The Russian case mentions that academic staff from the local university engaged in a MBA programme with a British university have received training overseas. In the MBA programme, which illustrates the functioning of TNHE in Russia, there is a system of shadow teaching whereby a Russian expert follows the teaching sessions of the British colleague and thereby assimilates both methods and contents. It is somewhat difficult to judge whether these incidences are frequent or more of an exception.

Case study authors also commented on the question of whether TNHE provision does create competition for the local higher education system in terms of student attraction. The answer that was provided by several cases was that there is some marginal competition, however not with the local public system, because fees in the TNHE sector are relatively high and the public sector is generally the preferred option for students. Competition arises mainly between local and cross-border private providers because fees are of comparable levels. There may be exceptions in some parts of the system, for instance the post-graduate higher education provision where Argentinean universities charge relatively high fees, while undergraduate courses are generally free of charge.

Another question was asked to find out whether there were any institutional linkages between local and TNHE providers. Case study authors stated that there was very little organized interaction between the TNHE sectors and local public institutions beyond the movement of individuals. They simply co-exist without affecting each other's operation.

*Source: Martin, 2009.*

#### **Box 4. Summarized case study findings on quality, access and equity**

##### **Quality**

In South Africa, the Department of Education initiated the process of registration of private providers, including the cross-border ones in January 1999. Fourteen cross-border providers (11 universities and three colleges) from the UK, USA, Australia and the Netherlands applied for registration and only four were accepted according to established national quality standards. In 2003, the South African Council of Higher Education undertook the accreditation of all MBA programmes. This process brought to light that, of the four MBA programmes offered in the TNHE sector, only one could receive conditional accreditation and three saw their accreditation withdrawn. This was due to one of the following factors: lack of competent and adequate staff, heavy reliance on part-time staff from industry, dual certification by both the local partner and foreign institution in two cases, curricula not contextualized to reflect South African needs of management training, high supervisor-student ratios, lack of research track records, limited and under-resourced libraries, quality assurance dependent on the parent institution, and finally, external evaluation systems not implemented rigorously.

However, a report was also made of enhanced curricula and cross-fertilization of knowledge and teaching/training modes in much of the TNHE provision. The Philippines and Kenya mentioned that new technology and equipment had come along with those TNHE courses located in the ITC domain. Also, mention is made of many TNHE programmes offered in the English language in countries such as Russia, Oman, but also Chile and Argentina. Offering programmes in English provides graduates with a supplementary advantage, in particular when they attempt to access parts of the international labour market (multinationals) or work abroad.

Several case study authors mentioned that the TNHE providers were filling quantitative or qualitative gaps in the national offer in the area of professional higher education, mainly in the provision of training for the private service sector. This was perceived to lead to improved employability of graduates. In no country, however, was there information available, such as from tracer studies, that could have substantiated and quantified this impression. Oman also mentioned that the expectation to increase the offer in the sciences sector has not been fulfilled by the TNHE provision. It appears thus that the TNHE provision filled gaps in the national system of qualifications, but only where the profitability was high because the training provision could be reproduced at low cost, and because there were attractive labour market openings. This general principle rules out the proliferation of cutting-edge and research-informed programmes.

##### **Access and equity**

The case study research has shown that the TNHE provision offers new, however often small, increased opportunities for access. In Kenya for instance, existing institutions can meet only 30 per cent of the demand for higher education, not including adult learners. In Oman, the percentage of qualified secondary school leavers admitted in public higher education was only 27.8 per cent in 2003.

It was said that since 1993, some 10,000 students have graduated from TNHE providers in Kenya. Oman also mentions that the expansion of the private sector,

with the help of the cross-border provision of higher education, was the “relatively quick and cheap way“ of achieving a rapid expansion in higher education. In 2002, 34,5 per cent of enrolments in Oman were in the private sector.

Access is widening to different extents in all cases, but all authors insisted on the fact that this was happening only in major urban centers (mostly the capital city), where there is a considerable pool of both academic staff and potential students. The Russian case study mentioned that the TNHE provision thus somewhat sharpened regional disparities in the provision of higher education across the country. This was also confirmed for Oman where most private colleges are located in the Muscat area.

Again on the equity front, the Kenyan, Chilean, Argentinean and Filipino case studies underline that the TNHE provision is accessible only to those who can pay for it. In these countries, TNHE providers attract students from the upper social strata of the population because of the high fees. Indeed, in Chile, Argentina and the Philippines, the TNHE providers offer the most costly segment of private training provision: Argentina, Chile, Philippines (with the exception of Kenya where they are comparable to the local private offer, but double the public sector). In South Africa only 24 per cent of enrolment in the four branch campuses is from black Africans, while whites constitute the majority with 54 per cent. This is widely due to the fee structure which is twice that of the local public providers and four times more expensive compared to local private providers.

In some countries, such as Kenya, there is legal provision made to private providers (including) to offer a certain number of scholarships, but frequently needy students do not even know about them and thus do not apply for them. Oman again forms an exception to the rule of TNHE provision only accessible to upper middle class students. Indeed, the Omani government offers scholarships to 80 per cent of the students who study in the private sector. This was the reason for the quick expansion of the private sector.

*Source: Martin, 2009.*



## Activity 1

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1. Using the above-mentioned typologies for institutional and programme mobility, prepare a list of cross-border providers operating in your country. What (official) sources of information are available to do so?

2. Prepare a list of challenges that arise from these cross-border providers in your country.



# Options in the regulation of cross-border higher education

## 1. What are the basic approaches in the regulation of cross-border provision?

The first question that comes to mind when trying to address issues related to cross-border higher education is the need to determine its existing scope and the role it plays in any given country, at a specific moment in time.

For some countries, TNHE is an effective answer to unmet demands for higher education. This can be either in terms of enrolment or in terms of areas of knowledge that cannot be dealt with using national resources. It may also provide new pedagogical or curricular approaches that help modernize and update national higher education. It may also bring new technologies or approaches to teaching into the country.

For other countries, it is not such a great opportunity. TNHE may be coming into a country that already provides adequate coverage to those students who want to enter higher education. Or, it may be doing so in areas that are already well covered by national higher education. It may be bringing in 'more of the same', doing so in an expensive manner, charging high tuition fees or even providing a service that is lower in quality to national offerings.

There are different approaches to international trade in higher education. These approaches are frequently related to broader trade policies and the degree to which a liberal approach to trade is favoured in general in the country or not.

One extreme approach can be characterized as the '*laissez-faire* approach'. This involves no regulation, with countries simply ignoring the existence of TNHE providers. As a consequence, they do not recognize their qualifications in the area of public employment. This approach is often adopted by default. This could be because the cross-border provision is relatively small and there does not seem to be much demand for it. Or, it could be because it is politically difficult to define a national policy and a regulatory regime. Sometimes the *laissez-faire* approach may also be used when countries decide that TNHE is not necessarily bad. They therefore will not act against it. In these cases, recognition of degrees is not always an issue. This is mostly because TNHE providers offer degrees in non-regulated areas (where recognition is unnecessary). It is also the most likely strategy when countries do not have any regulatory schemes in place for national higher education. It may therefore be difficult to impose regulations on foreigners, even if the government wants to, which in many cases it does not.

A second type of option could be called the 'regulatory approach'. In this approach, countries accept the operation of international providers in the country, while at the same time trying to control it. They do this in order to guarantee a minimum level of quality, both in the interest of the students or in relation to broader national interests. These national interests could be a nation-building agenda or protecting the local higher education system. The regulatory approach has, however, many sub-options. These range from liberal regimes to tightly-regulated regimes.

Verbik and Jokivirta distinguish between the following approaches (see Table 3):

- no regulations (*laissez-faire*);
- liberal;
- moderately liberal; and
- very restrictive regulations.

Countries also move from one category to the other. They do so in both directions: from liberal to restrictive and from restrictive to liberal. This can be due to the fact that a 'by default' approach has been corrected. Or there may be a change in policy (sometimes outside the education sector) that requires a new approach to cross-border higher education.

**Table 3. National regulatory frameworks for cross-border higher education**

Model	Regulation
No regulation	There are no special regulations or control of foreign providers, which are free to operate without seeking permission from the host country.
Liberal	Foreign providers must satisfy certain minimum conditions prior to commencing operations (e.g. official recognition in the home country).
Moderately liberal	The importing country is actively involved in licensing and (in some cases) accrediting cross-border providers. This model requires that foreign institutions gain accreditation or other formal permission by the host country (e.g. Ministry of Education) prior to commencing operations. This category is diverse, ranging from compulsory registration to the formal assessment of academic criteria. Requirements are generally straightforward and non-burdensome.
Very restrictive	The government or another authoritative higher education body imposes strict requirements on foreign providers. Such institutions may be required to establish a physical presence in the country (i.e. franchised provision is not allowed), only institutions/programmes accredited by the host country's agency are authorized, and/or foreign providers must change their curricula to be in line with domestic provision, etc.).

Source: Verbik and Jokivirta, 2005.

These four approaches represent only broad lines of action. They are linked to and cover many options under these four different approaches. 'No regulation' is an option that strongly favours the development of TNHE in a country, possibly under the 'widening of access' rationale. This option does not require the establishment or development of new administrative structures charged with quality assessment and monitoring and/or the provision of information to the public. However, it is also a risky option. This is because public authorities will have no knowledge of a part of their higher education provision, or the way it affects and interacts with the public system. They thus lose control over what is often a considerable part of the higher education provision within the country. A regulatory approach that intervenes more has the potential to establish an information base on the provision of TNHE and to steer it in line with national policy objectives. In particular, a moderately liberal regulatory regime allows TNHE providers to be brought in line with national quality requirements. This is particularly true when all national providers, both public and private, fall under the same quality assurance regime. In this case, healthy

competition may be created between all providers and good practices exchanged. A tightly restrictive regulatory regime may restrain the development of TNHE providers, who may find it difficult to settle and develop with such a regulatory framework.

### **Specific legislation to deal with TNHE providers?**

One of the basic questions a country must address in relation to the regulation of cross-border providers is whether the existing regime for private providers is sufficient to cover TNHE providers. It must consider whether there are special challenges arising from cross-border providers that require a specific policy regime whose foundations will be stipulated in a specific legislation.

Despite the growing provision of TNHE, many countries have not yet developed specific legislation for cross-border providers. Or they have decided that it is either useless or unnecessary to do so. Regulations applying to local providers may be sufficient, if they are really effective. In this case, it is understood that TNHE providers must follow the regulatory regime for private higher education in the country. Some countries simply insert a reference to cross-border providers in their legislation for private higher education. This reference indicates that TNHE providers must follow the same framework. It is, however, becoming increasingly common for countries to pass legislation dealing specifically with cross-border providers. This legislation may target not-for-profit providers, for-profit providers and corporate universities, branch campuses and franchise education. The issues it should address will be discussed below.

## **2. Regulatory regimes for branch campuses**

Regulatory regimes are well-developed for branch campuses. These are generally treated as local private providers. Some countries request TNHE providers to undergo a separate registration and licensing procedure applicable to private providers. Higher education providers set up with a profit-making objective must usually register with an authority in charge of trade and commerce (such as a Chamber of Commerce). In addition, branch campuses must often undergo some type of licensing procedure. In this procedure, the academic, managerial and financial capacity of a provider to offer an educational programme is assessed. Registration usually takes place with a national authority in charge of private enterprises. This is the case in Kenya, for example (see *Box 5*).

### **Box 5. Requirements for registration in Kenya**

The requirements for the establishment of a private university as stipulated in the Universities Act Cap 210B are expounded in Part Three of the Universities (Establishment of Private Universities) (Standardization, Accreditation and Supervision) Rules of 1989. These are the same ones used for branch campuses of foreign universities. They include:

1. Making a written application to CHE in Form ACC/CHE3;
2. Presenting a written proposal setting out the proposed name, location, academic character, the aims and objects, the form of governance, proposed academic programmes, academic resources, and a timetable indicating the schedule of activities for the first three years;

3. Payment of application fees. This was revised from one-thousand (Ksh. 1,000.00) to fifty thousand (Ksh. 50,000.00) Kenya shillings (in 2002 through Legal Notice Number 160);
4. Payment of the requisite fees for all activities leading towards an award of a Charter. These include: evaluation of academic programmes, inspections, issuance of a Letter of Interim Authority, evaluation of a draft Charter and the awarding of a Charter. (The fees were revised in 2002 through Legal Notice Number 160).

Several bodies are involved in the process of registration which include the Ministry of Research, Technical Training and Technology (MRT&T) (this Ministry was merged with the Ministry of Education to form the MOEST), and the Registrar of Companies register cross-border commercial providers of non-university level higher education. It is worthy noting that some public post-secondary school institutions that are collaborating with cross-border commercial providers such as the Kenya College of Communication Technology (KCCT) are registered as companies.

MOEST registers institutions of higher learning under Part IV of the Education Act Cap 211. This part deals with the registration of unaided schools. Section 14 gives one of the requirements for registration as making an application to the Minister in charge of education. Under Section 17, it is stated that, "the Minister may make regulations with respect to the registration of unaided schools...". This is rather vague, but the Handbook for Inspectors of Educational Institutions gives the basic requirements for starting a school (which are also basically the requirements for registration) as:

- having a registered manager;
- existence of appropriate physical facilities;
- having an appropriate number of qualified teaching staff;
- inspection report from school inspectors and a Public Health Officer;
- making an application to the Minister for Education.

Once the relevant government ministry has registered the institution, the institution is required to get an annual trading license from the city authority. The institution presents registration documents, and pays the fees to the licensing office to process the license. This means an institution cannot get a license before it has been registered.

The requirements for registration under the Company's Act include:

- having a company name. (A search has to be conducted at a fee to ensure that the proposed name is not in use by any other company);
- making an application to the registrar of companies indicating the type of business to be transacted by the proposed company and providing names and identification of the directors of the proposed company;
- payment of the requisite application fees.

*Source: Kaberia, 2009.*

### **Licensing organized as an event or ongoing process**

The licensing procedure may be organized as a single event or as a process. In some countries, the procedures require institutions to undergo two stages in order to be granted 'autonomous' status. The second stage intervenes five to six years after the first. The underlying rationale is that the capacity of an HEI to implement a project can only be assessed on the basis of results obtained. South Africa, for instance, has created a specific requirement for its registration procedure of TNHE providers. There is an ongoing annual monitoring process. TNHE providers must collect and submit annual data on staff/student numbers, qualifications, programmes offered and student attainment to the Department of National Education (DoE). This data allows the Department to closely monitor the evolution and performance of the TNHE provider. In Chile, institutions in Chile must present yearly reports with academic information on students and staff during the supervision period. At least three external review visits are made and students in the different programmes are examined.

#### **Box 6. Licensing organized as a continuous process in Chile**

Chilean law does not recognize branches of foreign institutions as such, but considers them always as new institutions, subject to the same regulations applicable to new national institutions. Therefore, if a foreign provider wants to start operating in Chile, it must submit to licensing procedures, and to the supervision of the Consejo Superior de Educación for a time period of no less than six and no more than eleven years.

Indeed, between 1980 and 1990, the number of institutions increased dramatically and regulation was left to the market, which, unable to deal with quality issues, failed to legitimize private higher education offerings. As a consequence, the same neo-liberal military government that de-regulated the system decided that a licensing system was unavoidable.

Thus, in March 1990, a constitutional law created a new, public agency called Consejo Superior de Educación (CSE), with the responsibility of authorizing all new private universities and professional institutes, and supervising their operation in order to make sure that they fulfill the commitments made in their initial institutional proposal. The Consejo is chaired by the Minister of Education, and is integrated by eight academics appointed by different institutions.

This mechanism imposes strong requirements for all new higher education institutions:

- They must obtain initial authorization, including a statement that they have sufficient resources to develop their project.
- Once they have been authorized, they must submit to six years of supervision, which can be extended for a further five years.
- During supervision, the CSE must write an annual report, based on the assessment of all significant variables related to an institution's operation (teaching, management, finances, teaching and learning resources, infrastructure, etc.). In order to do this, the Consejo asks for self-assessment reports, visits the institution using external reviewers, looks at tests and

examinations, and can even directly examine the students of a given programme.

- As a result, it writes a yearly ‘action letter’ which states the strengths and weaknesses it has identified and establishes any necessary actions.
- During this supervisory period, if the CSE considers the institution is not complying with its requests, or is not operating in accordance to standards of quality and its own mission statement, it can prevent the institution from enrolling new students or it can even withdraw its license.
- At the end of the supervisory period, the CSE must certify the institution’s autonomy, or, if it considers its development unsatisfactory, it can withdraw its license and thus, close it down. Since 1990, the CSE has closed down 11 universities and 19 professional institutes, and granted autonomy to 33 institutions (24 of them universities).

The same process applies to new programmes these institutions wish to offer, and all changes in their initial project or new developments must be reported to the CSE.

During that time, the higher education institution asking for license must provide all the information that is requested, which relates to “all significant variables related to its development, that is: teaching, didactical, technical, pedagogical, or to their programmes of study, physical resources, infrastructure, as well as the economic and financial resources necessary for the granting of the academic and professional degrees it intends to offer” (LOCE, 1990, art. 39).

Source: Lemaître, 2009.

Licensing can be conducted on the basis of different criteria. Most often, these relate to the academic, administrative and financial viability of the institutional project submitted to the public authority in charge. The criteria used by Argentina’s national agency are listed in *Box 7*.

#### **Box 7. Requirements for licensing used by CONEAU in Argentina**

Concretely in the case of private universities and, by extension, foreign ones, the CONEAU (National Commission for University Assessment and Accreditation) assesses the consistency of the institutional project and, in this respect, the possibility to operate as a university. It is an analysis in which each institution’s *raison d’être* and its creation and development rationale are considered; but it is an ethical and responsible analysis as well, in which the data and development strategies submitted by the applying institution are handled confidentially. The assessment is in the hands of experts devoted to assessment topics and familiar with the specific topics to analyze, who, abiding by the current regulations and respecting each institution’s background or project, assess whether the institution meets the academic requirements set in order to operate as an institution.

The basic aspects considered in the report issued by CONEAU are the following:

**Moral, financial and economic responsibility of the members of the associations or foundations which promote the new university's creation**

The following must be ensured: absence of breach of the current legislation, absence of disqualifications, and evidence of a sound financial and economic position to ensure the proper operation of the institution put forward. The applying institution's and their members' academic, educational and cultural track records are also considered. The latter must have experience in university research and teaching as well as in managing education or research institutions. In addition, the projects' transparency and insertion in the jurisdiction proposed must be ensured. This refers to the public image that the institution gives to the local community regarding the future institution and its relations with other local, state or private organizations, among others.

**The viability of the institutional and academic project and the compliance with [Law on Higher Education] LHE's principles and regulations**

It is necessary that the enterprise's nature, its direct addressees, the type and reach of the commitments made in the project, the fundamental guidelines for its evolution in the short, medium and long run, and its particular contribution to education and social development are clearly defined, which in turn must be completely compatible with the Law on Higher Education. The mission and the objectives of the projected institution should contain them. The physical development plan and that of human and financial economic resources, as well as the organizational and administrative ones must be consistent to ensure achievements. In turn, the institution's mission and objectives must ensure the compliance with the basic duties established in Article 28 of the LHE, and the general operation requirements established in Article 33. The project has to include the design of organically institutionalized bodies responsible for organizing and executing the university processes, ensuring academic freedom and the autonomy of the academic organs which constitute it.

**The academic level of the teaching staff initially available and its track record in scientific research and university teaching**

The academic staff must have training and experience in line with a university project, and a successful record track in teaching and research. Their number has to be big enough, and with the necessary dedication, specialization and academic level to ensure the start and operation of the institution. The institution has to ensure the effective participation of the proposed academic staff, together with the development of an appropriate plan, to meet the project's requirements throughout the first years of its operation. In turn, it must have procedures for assessing the teachers' performance, and use the results for their promotion and upgrading.

**Quality and upgrading of the proposed curricula and research plans**

The curricula have to respond to the current standards in the respective subjects or professions and be in line with the profile sought for graduates. The project has to detail the procedures for admission and the assessment of students' academic performance. The staff of teachers-researchers must have an academic level suitable for the proper development of the courses, programmes, teaching and research projects. The creation of centers, institutes or research groups, the research areas encouraged, and the launch and development of university extension activities and services have to be included in plans where the link with

the teaching programmes is made clear. Their heads must have suitable qualifications for their tasks, and the projects must have real prospects of getting funding.

**Economic means, equipment and infrastructure available to allow the performance of their teaching, research and university extension functions**

The resources which the institution has, particularly the building infrastructure, equipment and libraries, have to be suitable for the commencement of the activities and their pursuance throughout the stipulated period. Otherwise, they must have incontestable means to have them at the institution's opening. Whatever the case, the project must have a detailed investments and maintenance plan as well as a sustainable financial plan to face such requirements.

**International linkages and the feasibility to reach agreements with other world centers**

Formal bonds with local and foreign universities and research centers are crucial for academic, scientific or financial assistance. The expected achievements and benefits of these exchanges are also important for the teaching programme and the intended research.

If the foreign institution has accreditation in its country of origin or other accreditations by international organizations, this is rather an extra item to be assessed, but it does not mean an exemption for the foreign institution from undergoing the accreditation processes established by the law. The main criteria with which CONEAU assesses foreign universities' institutional projects relate to the quality and consistency of the local office's project, the foreign applying university's features, and the real link that the local office has with the headquarters. If the foreign university has accreditations, there will be extra data to be added to the general assessment which it is being subject to, but in no case will they be decisive. The Argentinean state holds the power to carry out its own assessment and accreditation.

*Source: Villanueva, 2009.*

**Protecting the use of the term 'university'**

Many countries have created special legislation or regulations to protect the use of the term 'university'. While this does not specifically apply to TNHE, private providers tend to easily name their institutions 'university' or 'academy', because of the prestige that these terms convey. The range of disciplines and level at which programmes are offered are therefore often covered by the law. In South Africa, special legislation was enacted to protect the use of the name 'university'. This was because a high level of privatization led to many private HEIs using the label abusively. In the Philippines, a university must offer four-year study programmes, graduate level courses and some programmes having obtained an advanced level of accreditation (level 3 accreditation out of a maximum of four existing levels).

**Box 8. Special legislation to protect the use of the term ‘university’ in South Africa and the Philippines**

**Establishment as a university in South Africa**

In South Africa, the Department of education regulated in 1999 the naming of private institutions. No private institution was allowed to call itself a university or technikon despite the desire of many of them to use such designations. Increasingly, private higher education institutions were seeking to offer undergraduate degree programmes, as well as postgraduate programmes up to the level of the doctoral degree. The Council for Higher Education has been called upon in 2002 to make recommendations for the nomenclature of higher education institutions, which will be pronounced in 2005.

*Source: Naidoo and Singh, 2009.*

**Establishing a ‘university’ in the Philippines**

The application for Security Exchange Commission registration and license has to be endorsed by CHED. For an HEI wanting to register as “university”, there are certain criteria that must be met, including: 1) offering of four-year course programmes in liberal arts, basic sciences/mathematics and social sciences, three professional courses and two graduate level courses leading to doctoral degrees; 2) Level III accreditation for at least four of its undergraduate programmes of which one is in arts, and one is in the sciences, and for two of its graduate programmes; 3) adequate budgetary allotment for research; 4) provisions for community/extension programmes along areas of expertise; 5) faculty/personnel requirements – at least 50 per cent of faculty must be full-time, at least 35 per cent of faculty must be Master’s degree holders in their respective areas of specialization, at least 70 per cent of whom are on full-time basis, and at least 20 per cent must be doctoral degree holders in their respective areas of specialization, 50 per cent of whom must be on full-time basis; 6) adequate library facilities; and others.

*Source: Tayag, 2009.*

**Special legislation for for-profit higher education?**

Countries may also have general requirements in the area of for-profit higher education. In some countries, declared for-profit higher education may simply not be allowed by law. Again, this is a legal constraint imposed on all private providers. However, since many TNHE providers are established as profit-making, they are particularly affected.

This is the case in Argentina, where for-profit universities are not allowed to operate and to grant recognized degrees. They may, however, function as non-degree granting institutions, such as higher professional institutes. Or they may provide continuous professional education.

### Box 9. Legislation in Argentina with regard to for-profit university providers

Chapter 5 of the Higher Education Law deals specifically with regulation for private universities: the articles in this section establish the terms and procedures for their creation and operation. The private university institutions have to be non-profit making and have to obtain a provisional permit from the National Executive Power with a previous favourable report from CONEAU (Articles 62 and 63). After the temporary authorization, and once the corresponding requirements are met, they obtain definitive recognition (Article 65). The Executive Power has the authority to keep on monitoring the operation of the above-mentioned institutions to make sure that they continue abiding by the stated aims and meeting the terms on which they are allowed to operate. The institutions operating without the corresponding authorization can neither use university denominations nor issue university degrees (Article 68).

Source: Villanueva, 2009.

### Limitations on the equity stakes

Education is a socially sensitive area. In many countries, there is public understanding that there should be national control over educational providers. For this reason, some countries have introduced limits on the share of ownership (or 'equity stake') that a foreign provider may have in an educational venture. Usually, these limitations are set up so that the company is mostly owned by locals, who will therefore be able to control it.

### Box 10. Limitations on equity stakes in the Philippines

All business establishments, for-profit or not-for-profit, are required to register with appropriate government entities. Corporations (stock and non-stock) and partnerships should register with the Securities and Exchange Commission, single proprietorships with the Bureau of Trade Regulation and Consumer Protection of the Department of Trade and Industry, and cooperatives with the Cooperative Development Authority.

The new Constitution of the Philippines (1987) provides that:

*No alien and no firm, association, partnership, corporation or any other form of business organization, formed, organized and chartered, or which is not a Philippine national or more than forty percent (40%) of the outstanding capital of which is owned and controlled by aliens shall do business or engage in any economic activity in the Philippines. (Article 4)*

Further, the Constitution stipulates that educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations; at least 60 per cent of the capital is owned by such citizens. The Congress may, however, require increased Filipino equity partnership in all education institutions (Article 14, Section 4). Hence, under a joint venture arrangement, the foreign education institution may own up to 40 per cent only of the capital stock, and in no instance can a foreign national sit in the Board of Directors or have any participation in the management or administration of the school.

Agents, brokers, facilitators or third parties that act as intermediaries between awarding institutions and clients or recipients of TNE arrangements/services are not usually involved in the provision of educational services. Still, they have to be duly registered/licensed to operate.

With the passage of the Foreign Investment Act in 1991, foreign equity participation of up to 100 per cent is permitted in all areas except those designated by the Constitution or special laws (including education) as reserved to Filipino citizens in which case foreign equity participation cannot exceed 40 per cent. Education is in the Foreign Investment Negative List containing investment activities/areas where foreign equity participation is limited by mandate of the Constitution and specific laws, which in the case of education is limited to 40 per cent.

*Source: Tayag, 2009.*

### **Regulatory regimes for the use of the language of instruction**

In certain countries, the language of instruction may be another socially sensitive area. This is because of the relationship between the use of language and the nation building agenda. The use of an instructional language different from the local language (such as English) brings with it particular educational gain (language capacity and cultural openness). However, there may be special groups (for instance minorities) with a better ability to benefit from it than others. This could exacerbate disparities. Malaysia is a country that has insisted for a long time upon the use of the national language (Malay) as the only language of instruction in the public sector. This is, however, more of an exception than a rule. Indeed, most countries welcome an educational provision in a language of international communication.

### **Specific requirements to contribute to specific policy objectives**

In addition, specific national contexts and their histories may generate particular national sensitivities. These then lead to the establishment of explicit requirements. In South Africa for instance, where the apartheid regime created a highly segmented higher education system, the current regulatory regime for TNHE providers requests that both private and cross-border providers sign a declaration of non-discrimination in relation to students and staff. Moreover, they must declare their intention to advance the agenda of redress and equity.

### **How can regulatory frameworks for branch campuses be made more effective?**

This account of regulatory instruments shows that procedures to obtain authorization to function as a new institution are relatively well developed for private providers of higher education. However, they are relatively cumbersome and quite time-consuming. TNHE providers will always choose the less-constraining route for registration. They will prefer to register simply as companies and offer educational programmes without granting a nationally recognized qualification at the diploma or certificate level. This does not then prevent them from issuing qualifications of their home institutions. But since they mainly prepare students for work in the private sector or employment abroad, official recognition of

qualifications is often not considered essential. In order to save the validity of national qualifications, regulatory instruments must specify that only authorized institutions can grant regulated degrees.

When TNHE providers wish to operate without undergoing the procedures leading to official recognition, they may also register with national agencies that do not require licensing. This may be the case in some countries' non-university sector, for instance. In order to avoid TNHE providers choosing the less-constraining route for registration, it would be important for licensing arrangements to exist for both the university and the non-university sectors. If there are several national agencies, they must co-ordinate themselves to ensure that no TNHE provider remains unattended when a branch campus or new institution is opened.

Regulatory regimes must make sure that maximum equity stakes or 'equity ceilings' cannot be easily avoided by creating umbrella firms. The same is true of international corporate universities that buy a majority equity share from an existing licensed private institution and then transform the programmes offered by the institution without having to undergo licensing. Regulatory regimes must therefore also include some type of ongoing supervision of the functioning of existing institutions and their programme offer.

It should also be underlined, however, that effective regulation should not apply only to cross-border providers. It is important to have a regulatory scheme in place that applies to both national and foreign providers. Regulation is not just necessary because some institutions may be taken over by foreigners. It is necessary because the quality of all institutions – national and foreign, public and private – is important.



## Activity 2

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What regulatory regime is currently in place in your country with regard to institutional mobility (no regulation, liberal, moderately regulatory, or restrictive)? What is the rationale for this?

Has any specific legislation been passed to regulate cross-border institutions (possibly with regard to language policy or equity stakes, etc.)?

### 3. Regulatory regimes for franchised courses and twinning/joint study arrangements

In most higher education systems, franchised courses and joint study programmes are the most common type of commercial presence in cross-border provision. Here, regulatory frameworks relate to the general regimes for establishing new study programmes. They may also relate to specific regulations governing twinning and franchising arrangements.

#### General requirements linked to the opening of new study programmes

The general regulatory framework for new study programmes is quite different in various countries. In many countries, chartered universities do not need to undergo an approval process by the Ministry or a national buffer organization for newly-created study programmes. But increasingly, an official body (Ministry or a buffer organization) requests certain types of programmes to undergo an authorization process. In most English-speaking Western countries and some Latin American countries, chartered or licensed universities can open new study programmes without any additional governmental authorization. However, government approval is needed for new programmes that are opened in the non-university sector. In most other regions, a ministerial or buffer body is involved in one way or another in the authorization related to a new study programme. However, rules vary significantly depending on the level and type of the new study programme.

*Box 11* presents the general requirements for creating new study programmes for Filipino private HEIs.

#### Box 11. Rules and regulations for creating new study programmes in the Philippines

This government authorization requirement consists of two levels, namely: 1) the permit phase; and 2) the recognition phase (DECS, 1992).

**Permit phase** follows the school's application to open and should be applied for no later than the beginning of the school year prior to the desired school year when the proposed course is to be operated. The permit provides the school with approval to operate a particular course or courses of study for a specified period. This is valid only for a specific programme issued on a school year basis and may be cancelled for cause. Students who are enrolled are, nonetheless, given the same rights and privileges as those enrolled in recognized programmes.

**The recognition phase** follows the permit phase application for which should be filed no later than the end of January of the school year prior to the year when the first batch of students enrolled in the programme are expected to graduate (third SY for 4-year programmes; fourth SY for 5-year programmes). The Certificate of Recognition shall be issued at the beginning of the last curriculum year of the course. The Certificate of Recognition has the following effects:

The Certificate of Recognition continues to be valid unless revoked for cause and after due process. Hence, once recognized, the programme may be offered by the institution unless a slippage is discovered through monitoring and evaluation.

Permit and recognition are granted to programmes that meet the minimum requirements and standards set by CHED in its policies, standards and guidelines (PSGs) for academic programmes. These PSGs prescribe the minimum content (curriculum), inputs and processes/methods required for each programme.

CHED has issued PSGs for more than 40 programmes. These were formulated (and updated) by 10 technical panels (TP) composed of experts and academicians in the disciplines plus representatives of the Professional Regulations Commission in the case of TPs in charge of programmes covered by licensure examinations.

Source: Tayag, 2009

### **Policy approaches linked to franchise education**

In addition to these requirements of a general nature, countries have developed quite different approaches to franchise education. These approaches relate directly to the wider objectives of higher education policy. They embrace the general approaches to TNHE and thus include the following three broad options:

- direct encouragement;
- no regulation (or *laissez-faire*); and
- the regulatory approach.

### **Direct encouragement of franchise education**

Direct encouragement may be obtained when governments put in place incentives for the development of franchise education. These incentives are generally financial in nature. This is the case of Oman. Social and economic demand for higher education in Oman have increased sharply, especially in the last 10 years. Indeed, development programmes implemented in the last 30 years have led to a sharp increase in the number of students who leave secondary education and apply for enrolment in higher education. However, the capacity of the higher education system has not developed to a level sufficient to meet this demand. In response to this challenge, the Omani Government has chosen to encourage the opening of private institutions (universities and colleges). To ensure the quality of the programmes delivered by these institutions, private HEIs must be affiliated with well-recognized foreign universities.

### **Box 12. Direct encouragement of franchise education in Oman**

Oman pursues an approach which directly encourages franchised higher education in the private sector of higher education. Indeed, licensing requirements include, as a condition for the establishment and provision of private higher education, that these local universities and colleges have an “academic affiliation agreement” with “recognized and accredited higher education institutions” abroad. Indeed, Oman is looking for well-established overseas institutions to build alliances with local private higher education institutions, and thus to extend quickly the local provision of “quality” higher education. The Ministry of Higher Education of Oman has designed a standard academic affiliation agreement through which services and modes of cooperation between the local and foreign higher education institution are specified. The systems of teaching, programmes offered, methods of evaluation, and types of qualification are determined by the affiliated university.

It is interesting to see that Oman makes it an explicit requirement that foreign institutions that enter into franchise agreement with the local institutions accept students from either branch campuses or franchise education into their home institutions.

Source: Martin, 2009.

### **No regulation on franchise education**

The second option is 'no regulation'. This is frequently a by-default regime in countries where university status automatically confers the right to create new study programmes. In such a context, the university itself is responsible for quality assuring its own study programmes. This is the case in Kenya. Indeed, under the chartered university regime of this country, public universities do not need to seek approval for new programmes, including the franchise provision (see *Box 13*).

#### **Box 13. No regulation in Kenya for chartered public universities**

Collaboration between any public university and a cross-border education provider is initiated through the signing of Memoranda of Understanding (MOU) between the concerned institutions. The Acts of Parliament that establish various public universities allow for collaboration between universities and other institutions or organizations for the purpose of fostering the objects of the universities. Under these circumstances, it is the duty of the collaborating local university, through its senate, to ensure that the educational services offered are of good quality and that the institution that they are collaborating with are accredited and/or recognized in their home countries.

Source: Kaberia, 2009.

### **Regulatory approach to franchise education**

Countries that decide to take an active stance regarding franchise education choose the regulatory approach. Most of them establish regulatory mechanisms at two stages: when joint ventures between foreign and home institutions are set up; and through an ongoing control system. This approach is effective when there are adequate regulations in place for local providers, since franchising operates through them.

When existing franchise education has led to a perception of it being of low quality, countries may simply decide to moderately or tightly regulate this type of TNHE provision. Hong Kong has adopted moderate regulation. TNHE providers must register with local authorities and information is made available on their course offerings. In both South Africa and the Philippines, a tight regulatory regime has been adopted. In these countries, TNHE providers fall under local quality assurance regimes (see *Boxes 14 and 15*).

#### **Box 14. Moderate regulatory approach to franchise education in Hong Kong**

The Hong Kong government regulates foreign provision via the Non-Local Higher and Professional Education (Regulation) Ordinance, introduced in 1997. The government provides the following rationale:

*The objective of the legislation is to protect Hong Kong consumers by guarding against the marketing of substandard non-local courses conducted in Hong Kong. It will also enhance Hong Kong's reputation as a community which values reliable and internationally recognised academic and professional standards. The objective is to be achieved through a system of registration as well as control over advertisements, refund and use of premises.*

The Ordinance is a model of regulatory transparency, and a useful listing of the components involved in the delivery of transnational education. Foreign providers are required to submit detailed information on various aspects of their course offerings. Courses are listed on the government website, and the detailed documentation is publicly accessible at the registry office in mid-town Hong Kong.

Operational details are required, including: course content (aims and objectives, structure and content, and any adaptation for Hong Kong); delivery methods; requirements of the student (admission standards including language proficiency, course assessment tasks and weightings, and details of who carries out the assessment); staff involved (qualifications and relevant experience); facilities and support offered in Hong Kong (classrooms, library, computer laboratories). The respective responsibilities of the foreign and local provider must be specified in relation to the following activities: Advertising & marketing; Admission; Registration; Receipt of students' fees; Recruitment of local tutors; Induction and supervision of local tutors; Student support; examination and assignment setting and marking; Gathering student feedback. A description of the quality assurance procedures must be provided. Providers must submit an annual report, detailing numbers enrolled or graduated, and any changes to the course.

The Ordinance serves as a registration system and source of information for prospective students. It does not guarantee quality. Like other consumer protection legislation, the Ordinance contains a caveat emptor warning: "Local consumers should pay attention that the registration or exemption of a non-local course does NOT on its own confer any particular standing to the course or recognition of its equivalence to a local degree".

Source: Government of Hong Kong SAR, 1997.

#### **Box 15. Tight regulatory approach to franchise education in the Philippines and South Africa**

The Philippines and South Africa take a regulatory approach to franchise education. In South Africa, franchise education has simply been prohibited, since 2002, if a foreign provider does not have local representation through a branch campus. Indeed, it had appeared that too many franchise programmes of low quality had appeared and that it was very difficult to make sure that consumers were rightly informed about the quality and status of accreditation of such programmes. Evidence has been provided recently in South Africa of MBA programmes which had been quality assured in their home countries, but could not

receive accreditation in South Africa. The reason was that programmes had been assessed on paper only in the provider country without a site visit being undertaken to check on the actual conditions of implementing such a programme.

In the Philippines, a very specific framework of quality requirements for both partnering institutions are requested for both twinning and franchise programmes. CHED, the Philippines buffer organization for the regulation of higher education, makes it a requirement that only CHED-recognized higher education institutions (with programmes having permit and recognition) twin with a recognized and accredited foreign higher education institution. In addition, a foreign provider may offer extension classes only if the programme has been accredited in the home country or through a local HEI partner if he has received Level II accreditation from the local private accreditors. Also, institutions have to set up a Memorandum of Understanding (MoA) under a prepared format by the CHED.

*Source: Martin, 2009.*

### **Tax regimes and foreign exchange regulations**

In addition to licensing and other regulatory requirements, countries may adopt specific regulatory regimes in the area of tax and exchange. Such regimes are usually part of more general economic policies related to foreign investment, foreign trade and legislation related to the taxation of foreign income.

#### **Box 16. Tax regimes and foreign exchange regulations in Russia and the Philippines**

The Philippines has put into place a rather favorable tax regime for educational providers, including cross-border operators. All income from non-profit educational institutions is exempt from income and property tax as well as from customs duties. For-profit institutions may also avail of exemptions from taxes and duties subject to certain limitations, but profits are subject to tax.

In Russia, cooperation agreements between local and foreign higher education institutions frequently face problems related to currency legislation, taxation law and foreign trade law. Direct payments from a Russian partner for services of a foreign university (teaching services, right to use a teaching content or method) with outflow of capital requires special permission from the Russian Central Bank – a long and complex task. Also, proof has to be provided that the service (including the granting of intellectual property) for which there is outflow of capital has been properly VAT taxed. Also, cooperation agreements between Russian and foreign universities need to be confirmed by attendant banks. When a bank transfer exceeds the sum of US\$10,000, a special permission needs to be obtained from the Russian Ministry of Finance.

*Source: Martin, 2009.*

### **How can regulatory regimes for franchising higher education be made more effective?**

Franchise and twinning arrangements often operate in rather loose regulatory frameworks. In addition, there are often many opportunities to get around these frameworks. In order to be effective, regulatory frameworks for franchise education must apply to all segments of the higher education system (both the university and non-university sectors). Often, TNHE providers collaborate with local HEIs that do not need authorization to open new programmes. When a large part of the higher education system is regulated, they may then sell training programmes under the non-degree-granting offer. However, in this case the qualification will not be recognized nationally, since the provider is simply registered as a commercial enterprise.

It is of crucial importance that national governments provide public information on the higher education programmes they recognize. Many governments publish such information. They may do so through the websites of their Ministries of Education or through buffer organizations in charge of recognition issues. They must also enable a potential student to find out whether an institution or study programme they are interested in is recognized by national authorities. Some countries even make a special effort to inform the public on the availability of such information. In particular, they conduct awareness programmes among students at upper secondary level on ways of finding information on what is publicly recognized and what is not.

#### **Box 17. Empowering students to make informed choices about higher education providers, South Africa**

In South Africa, as in many other developing countries, the liberalization of higher education has increased. Among the entrants to higher education, a diploma and especially overseas qualification are often seen as ‘tickets’ to transnational mobility to jobs and labor markets in the industrialized countries. Choosing a poor quality or even illegitimate institution and programme means not only a huge disappointment to the student, but it can also have devastating effects on family survival, as families usually pay the student fees with loans.

The recruitment of students is primarily done through advertisement in the South African mass media, especially in newspapers. These adverts often do not contain enough or proper information about the level of the institution or whether it is registered with the official offices, the Department of National Education (DoE) and the South African Qualifications Authority (SAQA). Institutions might also deliberately mislead students regarding the aforementioned information.

After various complaints from the prospective students and the public, the HEQC (Higher Education Quality Committee) undertook some research and launched an information campaign in January 2002. This was to inform the public and to provide prospective students with more information in order to protect themselves from unscrupulous and illegal providers; it was also hoped that people would learn to identify legal and illegal providers of education. The national information campaign was organized in the mass media (radio and printed media) and it targeted first-time higher education entrants. (To see the information campaign you can go to: [www.che.ac.za/student\\_literacy/index.php](http://www.che.ac.za/student_literacy/index.php)) Also, during two months, the

adverts of the institutions were scrutinized and analyzed, and what appeared was that misleading advertising had decreased during the campaign and those institutions who continued were ordered to stop.

After the information campaign, the students have been more aware of the difference between legal and illegal provider of higher education. But still, they and the general public misunderstand the concept of accreditation and quality assurance. This indicates that more work has to be done, especially in student education about quality literacy and the involvement of students in quality assurance at the institutional level.

Advertisements are still monitored by HEQC, and HEQC has as well developed good practice guides and protocols for advertising. Workshops have been conducted to help legal institutions improve their ethical practice in advertising and SAQA has also developed advertising protocols, particularly the use of the SAQA logo. At present, the HEQC is reviewing the current information campaign and plans to develop a new approach along the lines of a quality literacy and empowerment of the students.

*Source: Naidoo, 2004.*



### Activity 3

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What regulatory approach is used in your country for franchised higher education (direct encouragement; no regulation; or the regulatory approach)? What rationale do you think is behind this regime?

If there is a regulatory approach, what does it cover? Is it sufficient?

If there is no regulation, what is needed to cover the challenges arising from franchised higher education?



## Options for external quality assurance regimes for cross-border higher education

As shown in *Modules 1-4*, EQA systems have quite diverse scopes and modes of functioning. Most of the currently-existing approaches to EQA were developed to deal with national concerns related to the diversification of institutions and programmes. In other words, they were set up to come to grips with mushrooming private higher education or with a proliferation of low-quality programmes. Since the cross-border higher education phenomenon is still relatively new and frequently marginal, only a small number of QAAs address it directly through specific regimes.

### 1. Institutional accreditation for TNHE provision

Many countries have set up quality assurance agencies responsible for institutional accreditation and auditing. As discussed in *Modules 1 and 2*, accreditation and auditing are frequently non-compulsory procedures established mainly to stimulate quality improvement rather than enforce minimum standards. Where institutional accreditation is compulsory, it often applies only to private universities. This is the case in Kenya. In this context, it will necessarily apply to all corporate universities (if they are degree-granting). It will therefore cover local branch campuses or other forms of institutional cross-border provision. Institutional accreditation as it is conducted in Kenya, for instance, is compulsory for private universities with interim authorization to function. However, the timeframe under which HEIs must comply with this requirement is not specified.

#### Box 18. Institutional accreditation in Kenya

The accreditation process of the CHE has the following steps:

1. Application for the establishment of a private university. The application is done through completion of form ACC/CHE 3. The completed form is returned together with the requisite application fees and a proposal detailing the historical background, mission, vision, proposed name, location, academic character, aims and objects, form of governance, academic programmes, resources, and the plan on how the proposed university will be established.
2. Evaluation of the proposal and the items contained in the proposal. This involves the evaluation of the documents, visits to the site of the proposed university and holding meetings between the Commission and the applicants or their representatives.
3. Grant of a Letter of Interim Authority (LIA). When the CHE is satisfied that the proposed university has made the necessary requisite arrangements to start launching university level education. The Commission, through its chairman, issues the institution with a LIA, which is a recognition by the government that the institution has the ability to offer university-level education. This is also an indication that the institution is working towards full accreditation.

4. Preparation of institutional legal documents. On issuance of a LIA, an institution starts mobilizing its resources in preparation for the awarding of a Charter. The institution also expands its academic programmes and physical infrastructure. During this period, the Commission guides the institution in preparation of the relevant legal documents: the Charter and the statutes. The institution holds the LIA until they meet the entire requirement for award of a Charter. There has been no specified period for this process as it mainly depends on the speed at which the institution mobilizes its resources. Although the Commission feels that they are partners in helping institutions with Letters of Interim Authority to graduate to full accreditation, some institutions may take a bit too long. The Commission plans to hold consultative meetings with the concerned institutions to come up with reasonable duration for operating with LIA.
5. Final inspection. When the proposed university feels that it has what it takes to become a fully-pledged university, it prepares its internal evaluation report. The Commission examines this report critically and if it is convinced that the institution appears to be ready, it arranges for a final inspection. If the inspection reveals that the institution is ready to be a fully-pledged university, the Commission recommends to the government that the institution be awarded a Charter. The Commission then prepares an accreditation report for the institution.
6. Award of Charter. A Charter is only awarded by the Head of State. During the ceremony for the awarding of a Charter, the institution is also issued with an accreditation report prepared by the Commission. The symbols of authority: the official logo, the mace, and the seal are then handed over during this occasion.

*Source: Kaberia, 2009.*

There is growing awareness that quality assurance should apply to both public and private institutions. Indeed, it should be assumed that both contribute to the national objectives of social, economic and cultural development. This means that quality standards and processes should be assessed in the same way in both sectors of the higher education system. This assumption guided the creation in South Africa of a system of institutional auditing. In addition, the South African approach explicitly states that TNHE institutions should be audited together with the quality assurance agency (QAA) of the exporting country.

Whether this institutional accreditation should be voluntary or compulsory is an important matter of debate. Voluntary accreditation is more frequent, at least at the institutional level. It obviously makes it easier to obtain acceptance from the higher education community. However, the expectation is that voluntary accreditation will in time become quasi-compulsory when the majority of institutions have obtained it. Moreover, voluntary accreditation may be linked to sufficiently attractive incentives or consequences for accredited institutions. But if an immediate problem of low quality provision needs to be solved, a compulsory scheme may be more effective in the short-term. This solution was preferred in South Africa, where low quality private providers mushroomed after a liberal regime was established in the post-Apartheid period.

### **Box 19. Institutional auditing in South Africa**

The institutional audit system works on a 6-year cycle during which period all higher education institutions are to be audited at least once. The focus of the audit is on the effectiveness of internal quality management systems for the three core functions of teaching, research and community engagement. The audit follows a standard methodology where institutions prepare a self-evaluation portfolio in relation to the 19 criterion areas specified by the HEQC. A site visit by a panel of peers and experts is set up to validate the self-evaluation report by the institution. Close attention is paid to the evidence relating to quality issues. Based on the assessment of the review panel, the HEQC issues a report to the institution, consisting of commendations in areas of good practice and innovations, and recommendations in areas in need of improvement. A summary of the report is publicly available. The institution is required to submit an improvement plan in respect of the recommendations and a mid-cycle progress report on the implementation of the improvement plan. The audit does not produce a ranking of institutions, has no funding or other legal consequences, and is essentially about quality development and enhancement.

In the case of foreign institutions, subject to the institutional audit or other quality requirements of their home country, the HEQC makes arrangements with the quality assurance agency in the home country to conduct a joint audit visit (where possible). In such a case, South African auditors and senior members of the HEQC staff would form part of the audit panel set up by the quality assurance agency in the home country. The audit self-evaluation portfolio prepared by the foreign institution would have to address the criterion requirements of the HEQC in addition to any other requirements. This arrangement is intended to relieve the foreign institution in South Africa of the burden of two separate institutional audit visits. The HEQC has a memorandum of co-operation with the Australian Universities Quality Agency (AUQA) to address this issue in relation to Australian universities offering higher education programmes in South Africa. It is presently preparing a similar memorandum of co-operation with the Quality Assurance Agency in the United Kingdom in respect of United Kingdom universities operating in South Africa. The above agreements also cover broader areas of co-operation between the HEQC and its counterpart agencies in other countries in order to increase the sharing of good practices, undertake joint research and development projects, and exchange relevant information in ways that could contribute to the more effective international regulation of transnational provision. To date, no audits of any transnational providers have taken place and it remains to be seen how such co-operation agreements can be made as effective as possible.

*Source: Naidoo and Singh, 2009.*

## 2. Programme accreditation for TNHE provision

Accreditation of study programmes is also frequently voluntary. It does not necessarily cover both public and privately-provided programmes and the university and non-university sectors. This is why many franchise programmes often do not undergo any programme accreditation process. Again, South Africa is an exception to this general rule. Indeed, all programmes in this country must be accredited against the standards of the South African Qualification Authority.

### Box 20. Programme accreditation in South Africa

In a context of higher education provision, that is of vastly uneven quality and where student awareness of quality issues is not uniformly high, the HEQC has prioritized the protection of students against poor quality programmes and maintaining the credibility of qualifications as non-negotiable. In its new programme accreditation framework, which came into operation in 2005, the HEQC uses a rigorous 2-step process that gives accreditation status only to those programmes that can meet the minimum standards as specified in its 18 accreditation criteria. Accreditation will be granted to a programme for a stipulated period of time after an HEQC evaluation indicates that it meets or exceeds such minimum thresholds of educational quality. The focus will be on new programmes which will go through a candidacy phase until full accreditation is finalized. Given the large volume of existing higher education programmes in the system and the limited resources and capacity available to re-accredit all of them, the HEQC plans to address existing programmes through a combination of national reviews and granting self-accreditation status to institutions, both of which are explained later.

South African higher education institutions which offer programmes outside the country are subject to the HEQC's programme accreditation requirements for all of their local as well as their cross-border academic programmes. In addition, the quality requirements of the importing country have to be complied with. The HEQC plans to cooperate with national quality assurance agencies in countries, where South African higher education institutions have an operational presence, and to share relevant quality-related information with them in order to ensure that South African institutions pay appropriate attention to quality issues when they go cross-border.

Foreign institutions which offer higher education programmes in South Africa, including those institutions which are subject to the accreditation requirements of other national, regional or international agencies, are subject to the HEQC's programme accreditation requirements. In addition, these institutions have to satisfy the registration requirements of the DOE and the qualification registration requirements of SAQA.

*Source: Naidoo and Singh, 2009.*

Malaysia has encouraged TNHE, including franchises. However, recent developments show EQA trends that are similar to those in South Africa. These include, for example, the establishment of a comprehensive system for all higher education providers. This system includes institutional audit and programme accreditation based on a common framework of standards in a national qualifications framework. This example shows that while policy objectives may diverge, quality assurance regimes of TNHE are increasingly converging.

### **Box 21. Quality assurance of cross-border providers in Malaysia**

In Malaysia, the regulatory framework put in place in 1996 covered only private education. The public institutions remained largely unaffected by formal quality procedures until the Quality Assurance Division (QAD) was established by Ministerial order in the Ministry of Education in 2002. In enhancing public confidence in the standard of qualifications and delivery of programmes of public universities, QAD focussed on training workshops for developing institutional capacity for self evaluation, conducting external peer review and reporting the strengths, areas of concerns and opportunities for the purpose of building a quality culture for continuous quality enhancement. QAD combines institutional audit with programme accreditation at the faculty or school level, i.e. accreditation by disciplines or fields in nine areas essential to higher education. The discipline approach gave rise to another feature – the development of guidelines on standards for broad discipline areas which are used for programme accreditation. These standards, which are developed by national consensus of relevant stakeholders in the discipline comprising academia, industry, the professions, government and significant individuals lead to the development of the Malaysian Qualifications Framework (MQF).

The MQF underwent extensive multi-level and multi-sectoral consultation with local and foreign stakeholders and was approved for implementation in January 2005. Like other qualification frameworks, it is Malaysia's declaration about its qualifications in relation to its education system and their quality. It is the instrument for the development and classification of qualifications according to a set of criteria for levels of learning attained. The criteria include specification of learning outcomes and a common understanding of credits based on total student workload. Being the reference point for information about qualifications and quality assurance, the MQF is used for determining the national "equivalence" of foreign qualifications for the purpose of recognition. The MQF provides articulation principles for individual progression by accrediting prior learning and credit transfer from formal, informal and non formal learning in flexible learning pathways which recognizes self-directed lifelong learning and workplace training and experiences.

A significant event in Malaysian Higher Education was the establishment of the Ministry of Higher Education in March 2004. It gave the impetus for unifying the quality systems and to restructure NAB and QAD into a single entity called the Malaysian Qualifications Agency (MQA). Under the MQA concept, all processes related to the regulation of quality of higher education (approval, institutional audit and enhancement, accreditation and recognition) are being reviewed taking into consideration two factors: 1) the rapid changes in the cross-border environment mediated by communication technology to enhance on campus education as well as to 'distributed' learning; and 2) the need to provide transparency and safeguard national sovereignty under the GATS discipline. Only quality assured programmes will be registered in the MQF.

*Source: Shahabudin, 2005.*

### **How can accreditation schemes be made more effective?**

Only a few higher education systems currently have a comprehensive approach to quality assurance, including quality assuring TNHE. In many countries, TNHE providers can easily avoid accreditation procedures. Moreover, these procedures may be cumbersome, time-consuming and costly. When there are compulsory institutional licensing and accreditation requirements, TNHE providers may attempt to access markets through franchising schemes. They may also buy into existing institutions or locate their TNHE programmes in parts of the system where accreditation is not compulsory.

It is therefore important that quality assurance regimes take into account the conditions in which higher education is offered in the country. They must also take care to address the quality issues that appear to be more important at the institutional and programme levels.

It should be emphasized that regulatory and quality assurance mechanisms are only frameworks for action. However, their enforcement is also important. Many countries have established such regulatory frameworks. But in practice a great number of unrecognized and unaccredited HEIs and programmes still exist. In vast countries, the enforcement of regulations and compulsory quality assurance requires considerable political will and decentralized administrative capacity to conduct quality assurance schemes.

Voluntary accreditation systems generally use a number of incentives. These can include prestige (all); some financial incentives, such as access to development funds; access to student grants or loans; and greater levels of autonomy. Such incentives must be strong enough to ensure that TNHE providers will agree to undergo accreditation. This is particularly true of financial incentives. Providing funding schemes for students studying in accredited HEIs may provide a strong incentive to all providers – both public and private – to request accreditation. This system is practiced in the USA.

Another strong incentive for HEIs to seek accreditation is for national authorities to provide information on the status of quality assurance of all HEIs. With regard to TNHE providers, the accreditation status of a TNHE in both the home and host countries should be made accessible. Moreover, those who make decisions about study programmes must be made aware of its availability.

#### **Box 22. Providing information about the status of institutions and programmes to the public in Kenya and Chile**

##### **Kenya**

The Commission for Higher Education publishes information on recognized and accredited universities in the local print media from time to time. The Commission has a brochure containing information on recognized universities, which is given to the public free of charge. The Commission has also put this information in its website for public consumption.

Since 2002, the Commission has been organizing an annual exhibition for the recognized and accredited universities. During these exhibitions, the public is informed of the accreditation status of local private university-level institutions. The Commission is in the process of preparing a directory of post-secondary institutions in the country. This is viewed as the first step toward accreditation of post-

secondary institutions or validation of some of the courses offered in these institutions. It is hoped that accreditation and/or validation would place an institution at a level where its graduates would be eligible for university admission or the institution could be allowed to offer some university-level programmes.

*Source: Kaberia, 2009.*

### **Chile**

The Chilean Ministry of Education is currently working on the improvement of a public information system, intended to answer three different needs:

- information needed for policy decisions;
- information for institutional management and quality assurance;
- public information for all stakeholders.

The third aspect is the one that is most relevant in this context, and the efforts have been addressed mainly at working with higher education institutions to determine the basic data they are willing to share, and to establish institutional information systems organized on a common basis.

At the same time, the Ministry is working with external consultants on an employment observatory, in order to determine the level of employment for different types of professional and technical graduates, their income level and the relationship between years of study, type of degree, employment rate and income level. This information is published and complements that which is provided by each higher education institution.

Work has also been carried out in order to eliminate misleading publicity and false claims by institutions, but this is still at an initial stage, except in the case of institutions or programmes taking part in the accreditation processes described above.

It is expected that the publication of relevant information will have not only a regulatory impact on the system (providing incentives for institutions to improve those areas where indicators are published), but also a pedagogical effect by making stakeholders more attentive to certain variables and less dependent on publicity and advertising.

*Source: Lemaître, 2009.*



## **Activity 4**

1. Does your country have a specific regime for the EQA of cross-border higher education both at the institutional and programme levels?

If not, is it covered by the general quality assurance regime?

2. Is there any public source of information from which students can find out whether a cross-border provision (programme or institution) is recognized, licensed and/or quality assured by national authorities?



## Regulatory and quality assurance regimes and national policy objectives

Cross-border higher education is a multi-faceted reality that throws up many policy challenges for developing countries. Countries are affected by cross-border higher education to different extents. This can depend on local socio-economic conditions, and the development and functioning of the local higher education system. Major conditions are:

- the overall development and economic policy of countries;
- existing initiatives of regional integration and trade agreements;
- local purchasing power, local tuition fees and existing student support systems;
- the development of the local higher education system; and, in particular
- the extent to which higher education systems are able to satisfy social demand both from a quantitative and qualitative point of view.

These local factors lead to different policy rationales related to the internationalization of higher education. Larsen *et al.* (2004) have outlined four major policy rationales that can underlie internationalization policies in higher education. They include:

- mutual understanding (encompassing political, cultural, academic and development aid goals);
- skilled migration (aiming at attracting foreign students in particular scientific fields that are strategic for national development);
- revenue generation; and
- local capacity building.

From the point of view of the receiving countries (which are frequently developing or emerging), local capacity building is certainly an important policy rationale. This is because higher education systems are frequently not able to satisfy social demand. There may also be qualitative gaps in the training provision. Other policy rationales include:

- better opportunities for the mobility of students and professionals;
- increased coverage and response to unmet enrolment demand; and
- improvement in curricular and pedagogical strategies.

In addition to overall policy rationales, countries must make a number of basic choices. They should address questions such as:

- whether the government can act as a regulator and/or as a (major) provider of higher education;
- whether TNHE will be invited or tolerated and then be part or not of the officially recognized higher education provision;

- whether programme and institution mobility (PIM) will be the preferred option in TNHE over student mobility; and finally
- what regulatory and quality assurance regimes best suit the national context and policy objectives.

Regulatory and quality assurance regimes are therefore policy instruments that must be consistent with broader policy objectives. For example, they may aim to widen access, fill qualitative gaps in the higher education provision, or protect a still-fragile local higher education system from what is perceived as unfair competition. However, it should be recognized that regulatory and quality assurance regimes are only one type of policy instrument. Others include scholarship, visa and emigration policies (OECD, 2004a).

An analysis of the relationship between broader policy objectives and regulatory responses is presented below.

### **Box 23. Liberal regimes in Oman, Kenya and Russia**

The regulatory regime developed in Oman for TNHE shows clearly that the overall policy rationale guiding the regulatory regime is capacity building through the expansion of the higher education provision aimed at the widening of access to higher education. This objective is pursued through the development of a local private higher education sector which is expected to enter into academic affiliation agreements with cross-border providers. Widening access for a rapidly growing, very young population of which only a third can currently be accommodated in the public institutions provides a strong rationale for an encouraging regulatory regime. This also easily explains the generous support of the Omani Government to the local private sector.

Kenya and Russia face similar situations of insufficient local capacity to respond to the social demand for higher education. In Kenya, the non-university sector is under-developed, while the labour market requires middle-level manpower in the service sector, in particular in the IT area and accountancy. The booming demand for higher education puts Russia in a similar situation of insufficient capacity to respond to social demand, while in addition, qualitative gaps need to be addressed in the training provision. Both countries use liberal or moderately regulated regimes for their cross-border providers which leave ample space for them to develop and operate in the local higher education system.

*Source: Martin, 2009.*

#### **Box 24. Moderately liberal regimes for TNHE providers in Argentina and Chile**

Argentina and Chile regulate the TNHE providers through their existing regimes for private providers. In both countries, local capacity is developed enough to respond to social demand, but there are certainly qualitative needs for the development of the local private sector. Chile has by now some tradition in the development and regulation of its private higher education sector and the TNHE provision is simply understood as being part of the private provision that can be regulated the same way. There is also a strong claim for autonomy from the universities which seems to be seen as contradictory with ongoing tight control systems at the programme level. Both, the yet moderate presence and the power of the existing local providers, seem to maintain at present a relatively moderate regime of regulation. They are the same for national and foreign providers, at least at the degree level.

*Source: Martin, 2009.*

#### **Box 25. Tight regulatory regimes in the Philippines and South Africa**

Both the Philippines and South Africa have tight regulatory regimes in place for TNHE providers. In both countries, local provision of higher education is sufficient; however, there are perceived qualitative needs in several areas. The Philippines clearly refer to unsatisfied needs in the local labour market at the same time as there is graduate unemployment. These needs are located in graduate education in many areas, but also in engineering and sciences at the under-graduate level. There are also unfilled needs in IT-related areas, health-related and business-related areas, such as: accountancy, entrepreneurship, and continuing professional education. The current provision from the TNHE sector in the Philippines, as by the way in the other countries, provides training for middle-level manpower and it is thus not of a cutting-edge type. The present rather constraining regulatory regime in the Philippines in place thus does not seem to be particularly geared towards the attraction of those TNHE providers that could fulfill the gap. In order to fill these qualitative gaps, private providers would need to commit considerable investment. It is thus doubtful, whether bureaucratic regulation can be the answer.

The situation in South Africa is rather different. While there are also qualitative gaps of the same nature, the country has moved from a very liberal to a strongly regulated regime for TNHE providers. This was seen to be necessary since it was perceived that many low quality providers had entered the South African system and that they were not really contributing to local capacity building. The present regulatory regime was set up under the rationale that all South African providers, both public and private (including the TNHE sector), should contribute equally to the same national development objectives and all be quality assured against the same system of national standards. Franchise education was frequently perceived as poor quality and difficult to regulate since there is no physical presence of the TNHE provider. This has now led to a very low presence of TNHE providers which, in 2005, have not registered more than 0.2 per cent of all South African students.

*Source: Martin, 2009.*

In conclusion, no single and universal model can be used for the regulation and quality assurance of TNHE. It is also difficult to identify clear trends in the development of regulatory and quality assurance regimes. Currently, liberal or moderate regulation are more frequently chosen than tight regulation. This may be 'by default', or a conscious choice. In addition, many countries are or intend to become both importing and exporting countries. Uncertainty as to whether national providers will be able to compete in regional and international markets makes choosing the appropriate regulatory framework to be put in place more difficult. Moreover, ongoing negotiations within the GATS may push countries to adopt 'wait and see' strategies.

The current situation in terms of regulation can certainly be characterized as one of many 'social experiments'. This module intends to shed some light on the rationales, content and impact of this ongoing experimentation. The aim is to help countries make better informed choices – now or later – in building their regulatory policies for cross-border providers.



## Activity 5

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Is your current regulatory and quality assurance regime of cross-border providers in line with national policy objectives? Or is it a regime 'by default'?

What regime would you recommend to bring it in line with the objectives of your higher education policy (access, quality, equity, relevance, cost)? For what reasons?



## International frameworks for regulating and assuring the quality of cross-border higher education

This module has emphasized only the importing country in terms of policy and the regulatory response. However, exporting countries also have a stake in cross-border higher education. They may have policy objectives over and above the income generation objective. These may include attracting skilled labour, and enhancing their image and international standing in other countries through the cultural outreach and links provided by TNHE. This is why many exporting countries consider that they are responsible for ensuring the quality of the higher education provision their institutions are exporting. For this reason, they insist that their TNHE be regulated and quality assured in the same way as the national provision of higher education.

Cross-border higher education is therefore an international responsibility. Indeed, international organizations, including the Council of Europe, the International Association of University Presidents and more recently UNESCO together with the OECD have taken action to develop guidelines for TNHE provision.

The UNESCO/OECD *Guidelines for quality provision in cross-border higher education* aim to support and encourage international co-operation and understanding of the importance of quality provision in cross-border higher education. They also seek to protect students and other stakeholders from disreputable providers, and to encourage the development of quality cross-border higher education that meets human, social, economic and cultural needs. In assuring quality and relevance in cross-border higher education, one of their major features is enhancing responsibility for partnerships, sharing, dialogue and mutual trust and respect between sending and receiving countries.

The internationalization and trade of higher education can benefit both sending and receiving countries. However, certain conditions must be fulfilled in order for the receiving country to reap all the potential benefits (OECD, 2004a). Hugonnier (IIEP, 2005) has identified eight main conditions. These are presented in *Box 26*.

### Box 26. Conditions under which countries can benefit from TNHE

- The foreign provision meets the needs (economic, social and cultural needs) of the importing country (relevance condition).
- Learners are protected from low-quality provision and qualifications (quality condition).
- Qualifications are internationally valid and portable (usefulness condition).
- The risk for the stability and continuity of the education system of the receiving country is limited (sovereignty condition).
- International co-operation among national quality assurance and accreditation agencies is increased (co-operation condition).
- There exists strong quality assurance and accreditation systems or their development is to be supported (capacity building condition).
- The brain drain risk is minimized (brain drain condition).
- The education gap between the least developed countries and the other developing countries is mitigated thanks to appropriate development aid in education (education gap condition).

Source: Hugonnier, 2005.

Unless all these conditions are met, questions can be raised about the benefits for importing countries of undertaking more internationalization of their higher education by further expanding the import of higher education services as well as foreign direct investment in this area. This is particularly true for developing countries.

The text of the guidelines is available at the following site:

[www.unesco.org/education/amq/guidelines/](http://www.unesco.org/education/amq/guidelines/)



### Activity 6

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What can you, as a policy-maker or manager in the area of quality assurance, learn from the UNESCO/OECD guidelines on cross-border higher education?



## Lessons learnt

### **Lesson 1: Responsibility for quality assuring cross-border higher education is with the receiving country (possibly in co-ordination with the sending country)**

Many countries function with moderately restrictive regimes for regulating cross-border providers. Foreign providers must simply satisfy minimum conditions prior to starting operations, such as official recognition in their home country. However, such a regime may not be sufficient to ensure that the foreign provision is in line with national quality requirements. It is therefore a basic principle that the main responsibility for any provision of higher education is with the receiving country. Quality assurance of the cross-border provision of higher education may be conducted in collaboration with the sending country. It can therefore take into account information generated from the quality assurance system of the sending country (to avoid duplication of efforts in quality assurance). However, national quality requirements need to be enforced.

### **Lesson 2: Need for a complete and up-to-date information and monitoring system on TNHE provision**

Most countries do not have a centralized system of data collection and monitoring of TNHE providers. In order to obtain a picture of the situation, they have to pull together information from different sources to get an approximate picture of the provision. Moreover, this latter is constantly changing. Information can be located through print and media advertisements or educational private directories. In most case study countries, no centralized information is available on joint study programmes or the distance education delivery. While it is difficult to plan for the TNHE segment, it needs to be monitored with the following questions in mind:

- Who are the providers?
- What is their impact on the national system?
- How are they evolving?

### **Lesson 3: Need for stronger consumer protection mechanisms through public information on the status of TNHE providers**

Students need access to information on recognition and accreditation (both from the home and receiving countries) so that they can make informed choices. They must also be informed of the potential existence of fraudulent providers and of how they can find out about the status of a cross-border provider. In South Africa this is done at the upper secondary school level. Finally, it is important to regulate advertising to ensure that no wrong information is presented.

### **Lesson 4: Need for better collaboration between government agencies in charge of different stages of regulation and quality assurance**

Often, regulation and quality assurance mechanisms are in place. However, they are weak because they are fragmented and there is no collaboration between government departments. In many cases, procedures for obtaining registration and

licensing are not articulated because government entities lack co-ordination systems. Also, cross-border providers may manage to bypass local regulatory frameworks. This may be because responsibilities are not clear enough between government agencies working for the technical and professional sector and those working for higher education. There are also grey areas, such as 'ladderized' degree programmes and short duration programmes.

**Lesson 5: Need for regulatory policies with wider scope and a long-term view (the higher education system is often reluctant to address the challenge) depending on long-term policy objectives (quality and equity)**

Many countries do not have a regulatory framework geared towards the cross-border provision of higher education. They simply use the one they established for the private higher education sector. Where such a framework exists, regulatory regimes and quality assurance policies are often determined somewhat randomly to deal with specific problems. In particular, they do not reflect a clear-cut view of what the cross-border provision can bring to the system. It seems that higher education systems are somewhat reluctant to address the policy challenges posed by TNHE provision. It is therefore necessary to develop regulatory policies with a wider scope. In particular, quality and equity issues should be addressed. Policy also needs to take a long-term view and be developed in line with other national objectives for the development of higher education. Countries should determine fields in which TNHE providers are needed to serve human resource development needs. They should then identify appropriate TNHE providers and work out how they could deliver the needed TNHE in the country.

**Lesson 6: Need for strong incentive systems related to voluntary accreditation at the programme level (for local quality control of franchised higher education)**

Licensing procedures in many countries are relatively well-developed and an effective filter for low quality provisions. However, other quality assurance mechanisms frequently either do not cover the whole higher education provision, or are voluntary in nature. This means that there is much scope for TNHE providers to by-pass national quality assurance mechanisms, in particular at the programme level. In many cases, franchised programmes are frequently not quality assured at all. This is because franchised higher education is located in already-licensed institutions and accreditation is voluntary. When quality assurance systems are voluntary, it is necessary to link them up with strong incentive systems to encourage TNHE providers to request accreditation.

**Lesson 7: Need to put public and private providers on the same footing**

In the past, many quality assurance systems targeted the rapidly-growing private provision of higher education. Indeed, this provision was identified as problematic in quality terms. More recently, countries have acknowledged that there are also quality problems to be addressed in the public sector. Moreover, the boundaries between what is public and what is private have become somewhat blurred. Both public and private institutions should contribute to fulfilling the same policy objectives. For this reason, quality assurance mechanisms are increasingly covering both the public and the private provision of higher education.



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## **The modules on External quality assurance: options for higher education managers in CIS and South-East European countries**

Quality assurance has become a topical issue on the higher education policy agenda. More and more countries are questioning their existing structures and are introducing new mechanisms and structures for external quality assurance. They seek to ensure minimum educational standards across diversified higher education systems and to provide a lever for continuous quality improvement.

The present material was developed by UNESCO's International Institute for Educational Planning (IIEP). It targets decision-makers and managers in government departments such as ministries of education, buffer organizations of higher education and quality assurance agencies whose task it is to design or develop the national framework for quality assurance. These modules should provide support for their decisions on external quality assurance systems, while discussing options that have been tried out successfully in a variety of countries.

The modules are based on the outcomes of two IIEP case study research projects, one on "methodological and organizational options in accreditation systems" and another on "regulation and quality assurance of cross-border providers of higher education".

Accessible to all, the modules are designed to be used in various learning situations, from independent study to face-to-face training. They can be accessed on the IIEP web site [www.iiep.unesco.org](http://www.iiep.unesco.org), and will be revised as needed. Users are encouraged to send their comments and suggestions.

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