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UNESCO-APQN Toolkit: **REGULATING THE QUALITY OF CROSS-BORDER EDUCATION**



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**A collaborative project of the United Nations
Educational, Scientific and Cultural Organization
(UNESCO) and the Asia-Pacific Quality Network (APQN)**

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PREFACE

This *UNESCO/APQN Toolkit: Regulating the Quality of Cross-border Education* complements the Organization for Economic Cooperation and Development/*UNESCO Guidelines for Quality Provision in Cross-border Higher Education* and is intended to act as an aid in regulating quality assurance for countries that are involved in providing and receiving cross-border education. It discusses a range of key issues and some approaches that have been used to address them.

On 4 March 2006, a draft of the Toolkit was presented at the Second Annual General Meeting and Conference of the Asia-Pacific Quality Network (APQN) held in Shanghai, People's Republic of China. The current document incorporates comments and suggestions made by participants at that meeting, and the authors are grateful for the valuable input received.

The Toolkit has separate sections on regulatory frameworks for both receiver and provider countries. It is important to acknowledge that most countries both provide and receive cross-border education. However, the two sections are presented separately, because there is a need to focus on the different regulatory aspects related to providing and receiving cross-border education.

The OECD/UNESCO Guidelines on Cross-border Education specify six key stakeholders. The Toolkit at present tends to focus on government and policy makers. Over time, it is intended that the Toolkit will continue to develop and evolve to cover additional areas. Future sections are likely to cover other stakeholder perspectives, including:

- quality assurance and accreditation agencies
- higher education or other institutions which have or are contemplating the offer of cross-border education, including their senior management and academic staff
- credential evaluation and recognition bodies
- student bodies with an interest in cross-border education
- professional bodies

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SECTION I: INTRODUCTION



1.1 Intended Use of the Toolkit

This Toolkit is designed to provide a reference tool to assist with the development of regulatory frameworks for quality assurance in cross-border education, whether from a receiver or provider perspective. The Toolkit highlights important issues and considerations, different models of regulatory frameworks, the practical steps in setting up a framework and possible pitfalls drawn from the experience of some systems to date.

Conceived as a tool to assist policy makers and other relevant parties in their decisions to establish regulatory frameworks, the Toolkit does not, however, aim to provide definitive and comprehensive answers to all the issues that arise relating to assuring quality cross-border education. It explores possible options for establishing regulatory frameworks, but the options are not exhaustive. Neither does it advocate any one particular model of regulation or quality assurance for cross-border education, but it suggests the factors and circumstances that might affect the choice of regulatory models. Therefore, the primary intent of the Toolkit is to be illustrative and to help guide development of options and proposals. Further, it focuses on issues of quality assurance, and does not look in detail at wider issues that might affect regulation, such as trade policies or the relationship with the development of domestic education capacity.

One section of the Toolkit gives a number of country examples. These examples are intended to be illustrative and are not being advocated necessarily as preferred models. It is not the purpose of this Toolkit to provide a survey or critique of existing regulatory frameworks.

It should be emphasised that while problems related to cross-border education are discussed in the Toolkit, this is done in the context of quality assurance issues. It is acknowledged that there are many positive aspects and benefits brought about by cross-border education, but it is not the intention of the Toolkit to discuss these.

Finally, the audience for this Toolkit includes:

- policy makers and government personnel concerned with cross-border education
- quality assurance and accreditation agencies
- higher education or other institutions that are involved or are contemplating becoming involved in cross-border education
- credential evaluation and recognition bodies
- student bodies with an interest in cross-border education
- regional and international organizations with an interest in cross-border education
- academics and academic associations with an interest in cross-border education

1.2 UNESCO/OECD Guidelines

This Toolkit has been developed to support the implementation of UNESCO/OECD guidelines. In 2004, UNESCO and the OECD started a joint project to draw up a set of Guidelines for Quality Provision in Cross-border Higher Education. These aim to support and encourage international cooperation and understanding about the importance of quality in cross-border higher education. It is important that users of this Toolkit are familiar with the Guidelines. The Guidelines are available at: www.oecd.org/dataoecd/27/51/35779480.pdf

The Guidelines have been developed against a background of growing international mobility of academic staff, students, and programmes, as well as new forms of providers and delivery modes. These include for-profit providers, campuses abroad, and electronic delivery of higher education.

As the systems in many countries are still not geared towards meeting the challenges posed by cross-border education, there is an ongoing risk of students being exposed to low-quality provision and/or unscrupulous providers. There is a need for additional national initiatives, strengthened international cooperation, and more transparent information on cross-border education and its quality assurance.

UNESCO and the OECD have worked closely together to draw up the Guidelines in order to protect students and other

stakeholders from low quality provision, as well as to encourage the development of quality cross-border higher education that meets human, social, economic and cultural needs.

The Guidelines recommend actions to six stakeholder groups: governments, academic staff, student bodies, quality assurance and accreditation bodies, academic recognition bodies, and professional bodies.

The “Guidelines for Governments” recommends, among other things, that governments establish or encourage the establishment of:

- 1) a comprehensive system of fair and transparent registration, or licensure in the receiving country of all cross-border higher education provision; and
- 2) capacity for reliable quality assurance and accreditation of higher education provided not only in the country, but also across borders. Governments of receiving countries should, where appropriate, extend the systems of assuring quality to cross-border providers within the context of relevant national regulations.

The present Toolkit responds to these recommendations, providing a reference tool to assist governments and other relevant parties in the establishment/ongoing development of regulatory and quality assurance frameworks for cross-border education.

Recognising that there are many forms of cross-border education, the Toolkit does not assume to provide a comprehensive manual that caters to all situations. Instead, it illustrates some main scenarios, principles and themes that can be applied as appropriate.

Finally, a quick note on terminology. There is no agreed international usage of various key terms in quality assurance, and terms can mean different things in different national contexts. A glossary of usage for the purposes of this Toolkit is provided at the end of the document.

Some key issues to reflect on:

- To what extent do your country's arrangements for assuring the quality of cross-border education align with the UNESCO/OECD Guidelines?
 - What are the areas addressed in the Guidelines that you could improve?
 - How well-known and understood are the Guidelines in your country? What steps could you take to help increase awareness?
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SECTION II: CROSS-BORDER EDUCATION



2.1 Definition – What is “Cross-border” Education?

Cross-border education, for the purposes of this Toolkit, is the delivery in one country of education that directly originates, in whole or in part, from another country. This definition of cross-border education refers to the educational service going to the student across national borders, instead of the student going to the service overseas, as in another form of international education.

A distinction is drawn in the paper between provider and receiver country perspectives:

- **The provider country** is the source country of the programme, qualification or other intellectual property (eg. component of a course of study) that is delivered in another country
- **The receiver country** is the host country to which the programme, qualification or other intellectual property sourced overseas is delivered

Many countries are both providers and receivers of cross-border education, and both perspectives will be of relevance to them.

One approach to defining cross-border education focuses on the awarding of qualifications to students outside the country where the awarding institution is located. While this definition covers much of cross-border education, there are

a range of associated activities that are worth considering when developing regulation – eg. a programme may be sourced offshore, delivered with the input of the overseas developing institution, but result in a qualification from the “receiver country.” As the focus of this paper is on regulatory considerations, these types of arrangements are also considered to be within the definition of “cross-border” education.

2.2 Changing Nature of Cross-border Education

Education that crosses national borders is not a new phenomenon, and in some aspects pre-dates the development of modern education systems. In modern times there is a long tradition of students travelling to study abroad, including within the Asia-Pacific region, and there has also been an ongoing exchange of scholars and researchers.

The nature and scale of cross-border education, however, has changed in the last few decades. The traditional educational transfers have been supplemented by an increasing emphasis on the commercial potential of education - the “export” of education from one country to another. This has been aided by the development of new and widely-available technologies, and more affordable international travel. Change in cross-border education is now rapid and continuous.

Cross-border education takes many forms, from full face-to-face delivery of programmes in the receiver country, through to the distance delivery of programmes directly from the provider country.

A range of factors drive supply and demand for cross-border education. These include:

Demand side

- the attraction of an overseas qualification to students in the receiver country
- insufficient supply of level-appropriate education in the receiver country
- attraction to students of studying for an overseas qualification at a lower cost and without having to leave their home country
- the attraction of a more flexible mode of study offered by cross-border programmes, eg. part-time, distance learning, fast track, intensive mode, etc.
- the attraction of a greater variety of more programmes eg. top-up qualifications

Supply side

- developments in technology to facilitate improved remote delivery and remote support of programmes and qualifications

- pressure on institutions to generate additional sources of income
- a change in academic and organisational culture in some major education provider countries – an increased emphasis on entrepreneurship and seeking commercial opportunities
- desire to pilot new programmes or new modes of delivery in a foreign market
- desire of staff for self-advancement and fulfilment of educational ideals through delivery of education to a foreign country

The increasing transfer of education between countries means education is becoming increasingly globalised. Alongside this, educational products are often regarded as a trade commodity. In this way, they are increasingly tied to the market and consumer demand, as well as to the need to make a financial return for providers.

When consumer demand and the need to make a financial return becomes a factor influencing the offer of educational provision, it can create a tension with other priorities such as academic standards, autonomy and integrity. This tension can, in turn, give rise to problems with quality and consumer protection issues.

An extreme example of the problems that can arise are the so-called “diploma mills” that offer qualifications for little or

no study, but at a price. Often the qualifications “bought” at a diploma mill are of little or no value to the students. However, even legitimate and dedicated providers are affected by potential conflicts between academic and commercial imperatives. In addition, institutional failures and other factors may result in poor quality programmes, and these can have wide impacts on the reputation and value of a country’s education system and qualifications.

Thus, the changing nature and scale of cross-border education, and the consequent issues, have made the quality assurance of cross-border education very topical.

2.3 Types of Cross-border Education

To understand the problems that can arise with quality in some cross-border education provision, it is useful to consider the various forms that cross-border education can take. These include:

- setting up of a branch campus of the higher education institution
- collaboration with a local partner where the provider country institution/awarding institution controls much of the programme design and programme delivery (eg. teaching and assessment)
- collaboration with a local partner where the programme design comes from the home institution, but programme delivery is shared
- collaboration where the programme delivery is largely delegated to a local partner
- validation by an overseas awarding institution of a programme designed and taught by a local institution
- the provider country institution employs a pure distance learning mode of delivery through use of printed materials and/or electronic delivery

Where the provision of cross-border education involves collaboration with local partners, there can be different variables within this type of collaboration, including:

- the legal and organisational form adopted for the collaborative venture
- the extent of physical presence of the provider country institution
- the capital intensity and scale of involvement of the provider country institution
- whether a qualification resulting from a programme is from the country the programme is delivered in or from the provider country, or both
- the sharing of ownership of assets (including intellectual property)

- source and mix of staff (local/provider country/other international) and
- the extent of involvement of local partner organizations in major decisions and in programme delivery

Focusing on qualifications, cross-border education can encompass:

- programmes and qualifications that are externally quality assured by the quality assurance body in the provider country
- programmes and qualifications with a provider country branding that are internally approved/accredited by the provider country institution
- programmes leading to professional qualifications/international qualifications (eg. IELTS)
- programmes and qualifications from the country the service is delivered in (but with heavy provider country input into development and/or delivery)
- a mix of the above, including jointly-awarded qualifications

The examples above show that there are many possible approaches to programme delivery and structure, including different formats of collaboration with local partners and sharing of responsibilities, and a variety of options for awarding and recognising qualifications. These, in turn, have implications for the types of issues likely to arise, and the appropriate regulatory responses and safeguards.

2.4 Factors That Can Lead to Problems with Quality

In cross-border education, the usual issues associated with quality assurance are added to and complicated by issues of distance and the need to operate within different legal and cultural frameworks. If not carefully managed, there are opportunities for significant problems to arise and failures to occur.

While the primary onus for ensuring quality lies with the providers of the services, governments and quality assurance agencies in both the provider and receiver countries can play a role in ensuring the quality of programmes and qualifications, and that provider systems are in place. External quality assurance is also an important safeguard and signal for consumers and other stakeholders.

When deciding how to tackle issues of quality, consideration needs to be given to the special environment that providers operate in and the nature of the likely problems. These are factors to be considered when developing a regulatory framework, and also when considering the details of criteria and processes for its implementation. Some key problems with quality are outlined below:

Factors at the macro-level:

- **The inadequacy of quality assurance systems at the national level to control or monitor the quality of cross-border education.** Although many countries have established accreditation and quality assurance systems, many of these are focused on the national education system and not geared towards the monitoring of cross-border education.
- **The inadequacy of information sources for students and consumers.** Students may choose programmes of study for reasons other than their quality. Furthermore, consumers are often faced with a lack of clear and accurate information. Where there is a dearth of clear information and guidelines for consumers, low quality provision has the opportunity to flourish.

Factors at the institutional level:

- **Insufficient understanding of cross-border education.** Cross-border education is a whole new form of educational provision for many providers, requiring special planning and consideration. Institutions may under-estimate the complexity of the issues involved. For instance, there are issues of adaptation to the local educational environment, of understanding the needs of the local students, and of the quality and supply of local teachers and other support. Institutions may also choose a mode of delivery, such as distance learning, with which the local student population may not be familiar.
- **Inadequacy of institutional quality assurance mechanisms.** The provider country institutions may underestimate the need for a full-fledged system of control and quality assurance of a cross-border venture. Simply assuming that domestic processes will be transferred overseas, or that the partner will take care of quality assurance is unlikely to be sufficient. There is also a risk that where a system exists its implementation may not be vigorous.
- **Insufficient understanding of local education systems.** Unfamiliarity with the local situation may lead to wrong academic decisions being made that may affect the quality of the student intake or the delivery of programmes.
- **Difficulty in obtaining local resources.** When institutions offer cross-border programmes, they often have to rely on local resources, such as local staff, and library support. Adequate local resources of appropriate quality may not be readily available, and it may be impractical or costly for the appropriate quantity or quality of resources to be supplied from the provider country.
- **Over-reliance upon inexperienced local partners.** Problems may arise when there is over-delegation to local partners who are inexperienced. A further factor is the use of commercial or business organizations as partners, which can result in conflicting objectives for the operation (that is, a commercial venture aimed at providing a profit for investors versus an objective of providing a quality education programme to meet the needs of students).

- **Inadequate inter-institutional agreements or cooperation in place**

Often there are inadequate arrangements with other institutions, in particular with the domestic tertiary institutions of the receiver country. Many issues of quality may perhaps be resolved through joint ventures or sharing of resources with similarly matched institutions.

- **Inadequate management and governance structures**

There is often insufficient involvement of the awarding institution in the major academic decisions about off-shore provision and effective monitoring of the quality of the programmes. There has been a tendency for publicly-funded institutions to establish business ventures as private companies, which can result in unclear governance, including inadequate monitoring of the finances and the quality of overseas operations.

2.5 Quality Issues and Implications

The factors discussed above can lead to the following specific issues with quality:

Programme quality

Programme quality is central to the integrity of a qualifications system, and if the same qualification can be awarded for very different levels of input and programme outcomes, this integrity is undermined. Problems can arise in programme

delivery, content and structure. Some common examples of programme issues include:

- lower standard of programmes (eg. shortened or reduced content, less choice of modules/electives for students)
- lower entry and exit requirements (eg. lower entry standard, less requirement of prerequisite study, lower requirement for graduation)
- poor or inadequate teaching resources (eg. use of unqualified or inexperienced staff, use of poor quality or unsuitable learning materials for students, inadequate library resources, laboratories, etc.)
- undesirable teaching techniques or inappropriate delivery mode (eg. use of overly intensive/block teaching, shortened programme duration or fast track progression)
- mode of delivery that is poorly monitored and does not meet the needs of the students

Misleading or dishonest information

Another significant issue is the quality of available information. Problems include false claims relating to the programmes, such as information about the delivery of the programmes (matters of course content, teaching, resources, staffing, etc). Other issues are misleading information and false claims about the status or recognition of the programmes. For example, there are providers who claim that they or their qualifications are recognised by the government of the provider country, or

the government of the receiver country or its accreditation or professional bodies when, in fact, no such recognition exists.

Financial issues

Financial issues include default on fees, cessation of programmes due to the financial difficulty of providers, or even complete provider collapse. In a partnership situation, the viability of all partners is important to consider. Financial problems can also encompass financial fraud, for example, where unscrupulous owners try to make a quick profit using student and/or government funding.

Students and their families often pay considerable sums of money and end up enrolled in a programme that does not meet their expectations or needs. It is very important that students are provided with complete and accurate information so that they can discriminate and make informed, rational choices about programmes and providers.

These problems can result in serious repercussions for both the receiver and provider countries. It is, therefore, important for both the receiver and provider countries to work together to ensure that there are robust quality assurance mechanisms in place and that students have access to information.

Good-quality local provision may also suffer from the competition of low-quality programmes from overseas when there is insufficient consumer information or awareness.

With the existence of poor quality programmes on the market, students can end up with qualifications that are not valid or recognised by employers, or which do not equip them well for the job market. The low-level skills they acquire can affect their performance and pose hazards to users of their service. From a provider country's perspective, being associated with poor quality programmes can damage the reputation of even good quality providers from that country.

National interest concerns

Some countries are also concerned that cross-border education provision often does not cater well to their national cultural or economic needs, and might not fully perform the functions that are expected of educational institutions. While this is not strictly an issue affecting academic quality or the financial interests of students, it is also a matter of concern to educationalists and policy makers in some countries.

The next two sections look at possible regulatory approaches to managing these problems. Section III looks at the issue from the perspective of receiver countries and Section IV adds to this with some considerations that are specific to the role of provider countries.

Some key issues to reflect on:

- What are the different forms that cross-border education is taking, and what are the implications of these for quality assurance?
 - How is cross-border education changing? What are the implications of this for quality assurance – in particular for regulatory approaches to quality assurance?
 - What are the key risks to quality in cross-border education? To what extent are these different to the issues of domestic quality assurance?
 - What are the special factors behind quality issues in cross-border education?
 - What is the right balance of responsibility for quality between provider and receiver countries? How can this balance best be established and managed?
-

**SECTION III:
REGULATORY FRAMEWORKS -
RECEIVER COUNTRIES**



There are different approaches to regulating cross-border education and governments should adopt the model that best fits the circumstances and requirements of the country. There is, therefore, no ideal or “best” solution. The approach adopted is also tied in with the purposes/objectives of the regulatory system. This section begins by looking at some of the purposes that can underpin a regulatory framework for assuring quality cross-border education.

3.1 Functions of a Regulatory Framework

Broadly speaking, the functions of a regulatory framework when looked at from the perspective of a receiver country may include all or some of the following:

- enabling government to regulate and safeguard the quality of cross-border education – and its impact on domestic education outcomes
- enabling government to regulate the supply of education
- enabling government to regulate cross-border provision in accordance with national policies (educational, economic and other policies)
- enabling the government to collect information on the market and on the operation of cross-border education – this helps ongoing policy and regulatory development
- helping government to provide information to students and other stakeholders

3.2 Types of Regulatory Framework

The introduction, or further development, of any system of regulation or monitoring will have impacts on the operation of the market and on the autonomy of the provider country institutions.

Therefore, where a free market and concepts of institutional autonomy are highly safeguarded, governments have to consider the academic arguments as well as the political implications when deciding upon a model of regulation. This decision hinges upon the ultimate objectives that governments hope to achieve through the regulatory framework, and finding the most effective and efficient ways of achieving those objectives.

A regulatory framework can be thought of as a series of choices regarding approach - choices that need to be made according to circumstances, resources and prevailing regulatory culture. Following are spectrums of choice for different key considerations.

3.2.1 Tighter control vs. looser control

In setting up any regulatory framework, there is a continuum of measures with varying degrees of control. A light-handed approach with loose control is at one end, with a more proscriptive and tight control at the other.

The “looser” or “softer” type of approach may be characterised as a licensure or registration system, where controls and requirements are minimal, and the objectives of regulation are confined. Such a system may require no more than a business registration, sometimes with basic additional requirements such as assurance on the adequacy and safety of teaching premises.

Moving along the continuum, there may be other requirements, for instance, requiring teachers of cross-border education to be registered as professional teachers, or requiring the cross-border operation to have minimum capital outlay.

A simple system of registration enables government authorities to obtain information on market activity in cross-border education, as well as a minimal degree of control. A licensure/registration system would not usually set academic standards for the cross-border programmes of study.

On the other end of the continuum, it is possible to institute control through the setting of academic requirements, in addition to other requirements. An “accreditation” system may thus be put in place, representing a more vigorous type of regulation. The standard to be set for such a system is a matter of policy: It can be standards prevalent in the receiver country, the provider country or even both. This may lead to issues of conflicting requirements between jurisdictions.

Somewhere along the continuum, the receiver country’s national and economic requirements may be stipulated, in which case the control of education from overseas is tied not simply to academic quality, but also the needs and the national policies of the country.

3.2.2 Self-approval and accreditation vs. external approval and accreditation

A system may be set up that requires all cross-border provision to be subjected to the regulation (accreditation/quality assurance or monitoring) of an external organization that is independent of the providers (or representative of a category of providers). This organization can be a governmental body, an independent registration body or an accreditation agency.

On the other hand, the quality assurance role may be vested almost entirely in the providers or their local partners. This is likely to take place in a situation where there are mature tertiary institutions in the provider country and/or among the local partners. Typically these institutions would have a history of self-regulation and effective quality assurance systems. Where some regulatory responsibility is delegated or shared, it is usual for the government or accreditation body to retain some degree of final approval. Different categories of provider or programme/qualification types may warrant different approaches.

3.2.3 Enforced regulation (mandatory) vs. incentive system (voluntary)

A regulatory framework can also utilise different levers to encourage compliance:

- 1) permitting the operation of cross-border education on condition that it meets certain criteria and conditions, that is, it would be illegal to operate if the criteria are not met, and/ or
- 2) providing incentives if the stipulated conditions and criteria are met, eg. recognition of qualifications for employment purposes or eligibility for student loans

Although there may be an assumption that a regulatory system needs to be mandatory, it is possible to implement a voluntary system or to have voluntary features in addition to basic mandatory requirements.

3.2.4 Single system for both domestic and cross-border or dual system

Many countries have already established accreditation and quality assurance mechanisms to oversee the quality of the national education system and, thus, it is possible to apply this system to cross-border education coming into the country. On the other hand, there are countries that do not yet have accreditation systems for their domestic provision or are just in the process of starting one.

In either case, countries are faced with the question of whether to apply the same accreditation and quality assurance system to both domestic and foreign provision (ie. the application of the same laws, the same standards, and use of the same organization/agency to conduct quality assurance) or to develop different approaches and systems.

While in theory it is possible to apply the same system across domestic and cross-border education, in practice countries may find that it is not feasible or desirable to do so. These two types of provision can be quite different in nature, in terms of the background of the providers and consumers, the size and nature of the market, and the economic and political issues involved. Some countries have therefore set up a largely separate system and set of regulations to handle cross-border education.

It is also possible to have a dual system within the cross-border education regulatory framework. For instance, it may be considered desirable to have different approaches covering different types of cross-border provision within the same country. This may be done because of the nature of the programme, for administrative effectiveness, or for other practical or political concerns. In Hong Kong, for example, there is a different system for programmes that are offered in collaboration with specified (mainly self-accrediting) local tertiary institutions from those that operate in partnership with other institutions.

While there may be administrative, political, economic or other advantages in having two or more systems in place, these advantages should be weighed against the possible disadvantages (such as lack of consistency or coordination between the two systems) and questions of fairness where there are differences in criteria, procedures or costs.

3.3 Factors Influencing the Choice and Design of Systems

The design of a regulatory system will be influenced by many factors, as discussed below.

3.3.1 Prevalent policy and public opinion

A government's decision is largely determined by prevailing policies and influenced by the beliefs and public opinion in the community. Attitudes towards the operation of cross-border education, concerns about provider quality, views on the free market and consumer choice may all influence the type of regulatory framework chosen by the government.

At the risk of establishing a false dichotomy, the debate sometimes occurs between the advocates of free trade and/or institutional autonomy on the one hand, and consumer protection and more centralised academic quality control on the other. Where there is a strong tradition of free trade, it is likely that the degree of control that is introduced will be modest in order to avoid significant market disruptions.

3.3.2 Development and scale of the market

The size of the market and the maturity of the market are important considerations that influence the choice of regulatory systems. The existence of a large market in cross-border education may make it more worthwhile to expend resources to set up a refined and complex regulatory system. On the other hand, the resistance to any form of control that may be encountered from a sizeable market can also be considerable, making governments hesitant when considering vigorous systems of control. To achieve buy-in, governments will need to carefully consider the design of the regulatory system and the strategies for developing support for the system. In a mature market, governments may be able to rely on consumer education and consumer awareness, at least in some sectors, and choose a more "light-handed" approach in their regulatory system.

3.3.3 Existence of a domestic regulatory system

If the receiver country already has in place a well-established quality assurance and accreditation system for its domestic provision, it is easier to justify the extension of regulatory control to incoming educational provision. Conversely, if there is not a domestic regulatory system, then the setting of control over cross-border education could be seen as discriminatory and may prove harder to justify.

The format of a country's domestic system can often become a benchmark for setting up the regulatory system for cross-

border education. The latter can be the same system as that for domestic education, or a similar system with either comparable or lower requirements.

Further, if the domestic system is a mature one, where some institutions are largely self-regulatory, then it may also be possible to assign part of the regulatory responsibility to the local institutions, which are often partner institutions in cross-border education.

3.3.4 Nature of cross-border education

The type and nature of cross-border education operating in the market also determines the nature of the regulatory framework. Whether the cross-border provision is in the form of face-to-face delivery or distance learning, and whether the operation is in the form of joint ventures with tertiary institutions or with non-academic institutions may influence the mode of regulation. For instance, pure distance learning modes of delivery are more difficult to monitor, and may call for different types of treatment. In designing a regulatory response, the varieties of cross-border education need to be taken into account and sufficient flexibility developed to accommodate future developments.

3.3.5 Resource considerations

Any regulatory system requires resources for its successful operation. A detailed and vigorous system, for instance, where

detailed examination of cross-border education is done on a programme by programme basis, or where site visits are involved, will be resource intensive. How the system is to be funded is a question to consider. The funding of a regulatory system can sometimes become a sensitive issue, especially where they mean additional costs for the foreign providers and their partners, and where these are profit-making institutions.

If a receiver country wants to encourage quality cross-border provision as well as a lively market in education provision, it will not want its regulatory regime to be too costly either in financial terms or in the amount of “red-tape” involved.

The following questions are intended to help the reader consider some of the above issues in the context of their own country:

Some key issues to reflect on:

- What is the size of the cross-border education market? Is it sizeable enough to warrant setting up a regulatory framework?
 - What are the dominant types of cross-border education?
 - Can the same regulatory system for domestic education be applied to/adapted for cross-border education?
 - What is the prevalent public opinion towards cross-border education?
 - What are the resource implications for setting up a regulatory framework?
-

3.4 Setting Up a Regulatory Framework

3.4.1 Issues to consider - defining the scope of regulation

If a country already possesses an active market in cross-border education operating with various modes and forms, then a foremost question it faces is how to define the scope of regulation.

A first question to consider is how to define cross-border education for the purposes of the regulatory and/or legal framework being established. One way to define this is to include programmes of study leading to awards of foreign qualifications issued by a foreign institution.

However, this simple definition may not be comprehensive. For example, if a foreign institution sets up a branch campus in the country, there is an issue as to whether it should be regarded as a foreign or local institution. One approach would be to see it covered by the regulatory framework for cross-border education; another would be to see it as a domestic institution and apply the relevant regulations and systems for domestic tertiary institutions.

The following are examples of other definitional issues to consider:

Defining the level of programmes to be regulated:

This point considers the scope of educational provision to be

covered. While cross-border education in many countries is in the realm of higher education, there are also other types, such as professional education.

Issues that need to be considered include:

- adequately defining “higher education”
- deciding whether sub-degree programmes should be regulated
- deciding whether vocational or professional programmes should be regulated

Defining the type of programmes to be regulated:

Examples of issues that need to be considered include:

- the type of programmes to be covered by the regulatory framework - covering academic programmes only or also professional programmes
- definition of professional programmes that lead to the award of foreign professional qualifications

Deciding on the modes of delivery that should be regulated

Examples of issues that need to be considered include:

- types of delivery modes that need to be covered by the regulatory framework
- whether distance learning programmes should be regulated, and the need to have a different monitoring system for such programmes

Defining the scope of programmes to be regulated:

Examples of issues that need to be considered include:

- whether short training programmes, non award-bearing programmes or in-house programmes should be regulated
- whether to include credit-bearing programmes that can eventually lead to a foreign award which can only be obtained through study in the overseas country

Defining the type of educational activities that should be regulated:

Examples of issues that need to be considered include:

- definition of what constitutes a programme of study
- whether to regulate non-teaching programmes where only examinations are conducted

While there are no straightforward answers to the above issues, countries need to decide on these issues in the context of their environment. It is important that such questions are thought through carefully and clear definitions and guidelines are given. This will avoid confusion in the administration of the regulatory framework as well as minimise complaints and appeals.

3.4.2 Issues to consider – criteria of regulation

Within the overall framework or approach adopted, whether it is a licensure, registration and/or accreditation framework, the criteria of regulation is a crucial issue. Criteria refer to the

requirements, standards, or conditions that need to be fulfilled so that the valid or legal operation of cross-border education in the country can take place.

Generally speaking, there are four broad types of criteria, which relate to:

- status/recognition of the programmes/qualifications in the home country
- academic quality
- consumer protection
- the needs or national policies of the country

Criteria that relate to status/recognition of the programmes in home country

A common criterion is that cross-border programmes should be recognised programmes in the provider country (or based closely on such programmes, adapted to local conditions). Recognition may mean that they are approved by the government or relevant authority, accredited by a recognised accreditation body or, where they are not required to be accredited, that they are awarded by institutions in the provider country which have valid and/or legal powers for awarding those qualifications.

This is an important criterion, but it is not always easy to establish the evidence for meeting this criterion, especially where there is no central or official accrediting body in the

provider country, or where the accrediting body does not extend its remit to offshore operations.

Criteria that relate to academic quality

A primary purpose in the establishment of a regulatory framework is to safeguard the academic quality of cross-border education.

(a) General academic criteria

In setting academic criteria, the standard that is stipulated may be benchmarked against the standards of the provider country, or the standards of the receiver country – as noted earlier it can be required that both sets of standards are met.

Where the standard set is that of the provider country, this is often described as the concept of “comparability,” that is, the incoming provision should be of comparable standard and quality to programmes offered in the provider country. In this case, the cross-border programmes need neither comply with local standards in the receiver country nor comply with a certain set of standards stipulated by the receiver country government or local accreditation body.

This threshold standard of “comparability” sets a standard that is easily acceptable to the provider country institutions/countries and, in theory at least, imposes little extra burden upon them. This type of standard is often able to achieve the policy objective of introducing minimum protection for

consumers, while the criteria of regulation are not so prohibitive as to restrict the market and the choice offered to consumers.

The concept of “comparability” is one that is promulgated in the UNESCO/OECD draft “Guidelines on Quality Provision in Cross-border Higher Education.” Under the “Guidelines for Higher Education Institutions/Providers,” it is recommended that providers should “ensure that the programmes they deliver across borders and in their home country are of comparable quality...”

On the other hand, it is possible to stipulate that standards of the cross-border programmes should meet the benchmarks of the local standards in the receiver country. These could be higher or lower than those in the provider countries, as the case may be. A system of “accreditation” may thus be put in place where local standards are applied. In this situation, an overseas based provider may, for example, develop a programme specifically for a particular market without delivering an equivalent programme in its home jurisdiction.

There are also situations where the overseas provider sets up branch campuses in the receiving country. The government or regulatory authority will need to decide whether to treat the branch campus as a form of cross-border education or to regard it as a part of the domestic education system, in which case local requirements and standards apply. A further option is for the local rules and standards governing tertiary institutions to

be adapted for this type of provision. Another phenomenon is the existence of international institutions or corporations that provide education to receiving countries (including traditional or distance learning courses). Where there is no “home” country for the courses, the government of the receiving country will not be able to use the benchmark of the home country and will need to decide on a suitable benchmark.

Dual systems

It is possible, if countries so desire, to put in place a dual system where both standards of the provider countries and that of the receiver countries apply. For instance, the minimum standards for “registration” are standards comparable with those in the provider countries. In addition, another system of “accreditation” may be put in place that adopts local benchmarks for academic standards. The latter system could be made a voluntary system where accreditation is sought on a voluntary basis. (See the Hong Kong example in Section V).

Another way that a dual system can be configured is simply to have two benchmarks with one higher and one lower standard, irrespective of whether they are linked to standards in the provider or receiver country. Cross-border programmes could thus choose the benchmark to apply for approval.

Lastly, as there is currently no commonly accepted definition of the terms “registration,” “licensure” and “accreditation” in terms of the standards they apply, these terms should be clearly

defined by the receiver country in the context of the criteria of regulation.

(b) Specific academic requirements

Some countries may also stipulate specific academic requirements for the operation of cross-border programmes. Some examples are:

- requiring cross-border programmes to have a minimum percentage of content taken from the “home” programmes
- requiring the programmes to employ a minimum percentage of teaching staff from the provider country institution
- requiring the foreign institution to collaborate with institutions that have similar degree/sub-degree awarding powers in the receiver country

The type of specific requirements that are imposed will be determined by what the receiver country regards as important indicators/guarantors of quality.

Criteria that relate to consumer protection

It should be noted that all regulations and requirements under a regulatory framework are ultimately designed for purposes of consumer protection. However, issues relating to academic quality have been treated under a separate heading because of their singular importance. Other requirements can be set to protect the students and consumers who participate in cross-

border education. Examples include requirements in relation to:

- capital and/or financial arrangements of providers
- student fees and policies for refund (“fee-protection”)
- the use of appropriate and safe premises
- publicity of the programmes, provision of accurate/honest information to students, and other aspects of student support (pastoral care)

Criteria that relate to the needs and national policies of the country

Governments that are concerned that cross-border education should serve their national interests and exist to meet specific needs of the society may sometimes set requirements to ensure that education from overseas meets these objectives. Such requirements are quite separate from issues of the quality or standard of the programmes, but pertain more to the educational, cultural, economic, or linguistic needs of the society. It is a matter of national policy whether and how such criteria are stipulated. Where these criteria are set, they are often additional to, rather than in substitution for, the other types of criteria.

Some key issues to reflect on:

- Should cross-border courses be approved or recognised by their home country? What is the relevant authority for granting approval or recognition?
 - In setting the academic criterion for cross-border courses, should the benchmark be set at the level of the provider country (or provider country institution) or the receiver country?
 - Should there be one standard/system for all types of cross-border courses?
 - What type of regulations can be set to ensure consumer protection?
 - Should cross-border courses meet any specific national policies, such as cultural or linguistic requirements, economic or educational policies?
-

3.4.3 Other issues to consider in establishing a regulatory framework

Other issues that need to be considered when setting up and establishing regulatory frameworks include the following:

Type of framework – regulation and/or legislation

One of the pertinent issues to be considered is the issue of the backing of a regulatory framework – whether by the enactment of laws or alternative regulatory and administrative mechanisms.

Generally speaking, any regulatory system would need to have some form of legal backing if it is to be enforced, unless it is a voluntary system of registration and accreditation, where registration is dependent upon goodwill or upon the use of rewards and incentives. The issues that need to be considered include:

- Whether existing laws can be applied and the relationship of these to further regulations and/or a system of incentives
- The nature of the new law to be enacted; this could be of either a broad and general nature, with details of implementation to be enacted through regulations and administrative measures, or could be comprehensive and include details of implementation such as detailed criteria for registration and programme approval

There is a balance to be struck between achieving the necessary specificity in legislation (and the weight and force that legislation has) and being overly detailed and constraining. The irony is that a high level of specification in legislation can sometimes be counter-productive and allow more loopholes to develop than a broad definition in legislation that is accompanied by greater specifics in regulation and policy documents (which are swifter and easier to change and adapt).

Nature of the framework

A regulatory framework can have a punitive or an incentive emphasis. The punitive approach permits the operation of cross-border education on condition that it meets certain criteria and conditions. Under this type of framework, it would be illegal to operate if criteria are not met. To be effective, a punitive approach needs to be backed by legal enactments providing for penalties. Another approach emphasises the use of incentives if the stipulated conditions and criteria are met. This can be done, for instance, through granting recognition to qualifications for employment purposes or through eligibility for student loans under programmes that meet the stipulated criteria.

Choice of implementing organizations

There are different types of organizations that can be used to implement and administer the regulatory framework:

- a governmental organization or department
- an independent organization outside of government, eg. an accreditation body
- use of more than one organization, each with separate responsibilities; for instance, one organization having responsibility for the administrative side of the system and another organization being responsible for assessment or accreditation (see the Hong Kong example in Section V)

The choice of organization depends on factors such as whether there is any existing body to assume regulatory responsibility, its current status and role, and whether it has the expertise as well as the human resource capability/capacity to effectively manage the additional function. In considering whether to set up a new organization, the time and resources required have to be weighed against the advantages and disadvantages of using or re-deploying an existing organization for the task. In addition, there may be policy or political considerations for the choice of organization.

Funding the regulatory framework

In setting up a regulatory framework, governments need to decide how the quality assurance of cross-border education should be funded. There are different philosophies. Some believe that since regulation is for the benefit of the receiving country (ie. the public good), the taxpayers should pay for it and, hence, the government should bear the costs. Others

believe that the cross-border providers should pay for the system (ie. private good), or at least for part of the costs, such as the assessment or accreditation costs. Some systems have opted for a sharing of costs between the government of the receiver country and the cross-border providers.

These are some of the policy decisions that governments have to make, taking into account the set-up and operational costs of the system, as well as the reactions of the cross-border providers and the community. Considering that many of the providers or their partners are for-profit organizations, financial issues can sometimes take on a significant dimension, to the extent of influencing the design of the regulatory system.

Some key issues to reflect on:

- Should a regulatory framework be enacted through legislation? Can existing laws be amended to provide for such a framework? Or can regulation be achieved through administrative measures?
 - Should the regulatory framework be enforced by penalties for non-compliance? Or should it be implemented through incentive measures? Or both?
-

3.5 Preparation, Implementation and Enforcement

3.5.1 Preparation

It is suggested that at least four areas of work be considered in the preparatory stage of setting up a regulatory framework.

- Background research, analysis and consultation regarding cross-border education
- Investigation into regulatory issues and design of a regulatory system
- Preparation for implementation
- Publicity and promotion of the system

a. Background research, analysis and consultation

This includes research on the size of the cross-border education market, the type of programmes offered (including their level and disciplines), the format of the cross-border provision (such as whether these are offshore campuses, collaboration with local tertiary institutions or with commercial institutions), and the mode of delivery, including whether the majority of programmes are delivered through distance learning mode. This research should look not only at current and past trends, but at likely future developments, as well. All these questions might affect the type of regulatory system put in place.

Governments should arrive at an understanding of any problems associated with cross-border education through effective research and consultation. This may involve a collection of feedback from the public, students, employers, the local academic community, and cross-border providers. Stakeholders may also have opinions on the most appropriate courses of action to take in responding to issues. This process will assist governments to form a view of the type of regulatory system that is needed to address the problems identified, and also to gauge the reaction of the public and the cross-border providers to any regulatory system.

b. Investigation into regulatory models and design of a regulatory system

A second stage, which can be conducted in parallel with research, is investigation into different options and models of regulation with reference to systems set up in other countries. This needs to take into account the market situation, the typologies of cross-border education, and any problems of quality identified during the research stage. Both desk research and direct correspondence/meetings with colleagues in other countries is likely to prove useful.

Another task is to investigate existing laws and regulations in areas of education and consumer protection to see whether and how these can be adapted to cross-border education. If new legislation is to be enacted, it is important to consider the

impact of new legislation upon existing legislation and vice versa.

In designing the regulatory framework, issues that have been highlighted in the previous sections (such as deciding on the scope of regulation, the criteria and benchmark for approval of cross-border education; identifying the responsible organization; and deciding on financial issues) will also need to be addressed.

c. Preparation for implementation

Preparation to implement the system is likely to involve the following:

- Establishing a project plan and a timeframe for implementation, considering the necessity for phased implementation, and the necessity to set any “grace” period for registration/ accreditation
- Establishing an estimation of workload and the resources required, setting the fees for application, drawing up procedures, etc.
- Setting up the organization or re-deploying an organization to undertake the regulatory role; training personnel; designing the system for application and systems for processing and data management of applications; and recruiting specialists/ assessors as required
- Conducting pilot testing of criteria, documentation and processing systems

d. Publicity and promotion of the system

Prior to implementation, it is important to publicise the regulatory system and establish stakeholder support with different target groups (including cross-border providers and their local partners, education representatives of provider countries, professional bodies, employers’ and students’ representatives, etc.) and to communicate the system to the general public.

3.5.2 Implementation

a. Starting implementation

An implementation date should be set and clearly announced, including any time limit for application and any grace period prior to full implementation. After the start of implementation, it may be necessary to find out whether the system effectively covers the intended target of cross-border provision. It would be prudent to widely publicise the scheme at an early stage of implementation, including directly approaching known providers.

It is also necessary to educate consumers and the public about the regulatory system and the implications of non-compliance, as well as about the pitfalls of enrolling in study programmes that are not registered or accredited, as required by the regulatory system. This type of publicity will need to be ongoing and periodically repeated or stepped up, as necessary.

b. Establishing the evidence for compliance

It is necessary, during implementation, to solicit and decide on the evidence that is required for establishing compliance with the stipulated criteria of regulation. Evidence may be gathered from:

- the information submitted by the course provider
- investigation undertaken by the regulatory authority
- information or guarantees provided by the government or quality assurance agency of the provider country

For meeting the criteria of academic quality/comparability, the evidence may be sought, *inter alia*, from aspects of the programme and its delivery pertaining to:

- the programme structure, duration, and content
- entry and exit requirements
- mode of delivery
- staffing
- learning materials and other student support
- assessment – requirements and responsibilities
- programme management – quality assurance processes of the provider country institution and its local partner (if any)
- agreement on respective responsibilities of the provider country institution and its local partner

- communication channels between the provider country institution and its local partner

The evidence for other types of criteria, such as those pertaining to consumer protection, should be established as necessary. Programme providers should be made aware of the types of evidence required.

3.5.3 Enforcement

Enforcement of the regulations will also need to be implemented concurrently, including identifying any illicit operation of cross-border education and any non-compliant cases. This can be done by actively uncovering unscrupulous providers, relying on reports of fraudulent practice and non-compliant cases. During the early stages of enforcement, consideration may need to be given to extenuating circumstances such as a lack of understanding of the regulatory requirements.

With the implementation of the regulatory framework, the opportunity should be taken to identify any difficulties in enforcement or loopholes in the design of the system, and to take follow-up or remedial action as is appropriate and possible to do so.

Some key issues to reflect on:

- Have studies been conducted on the cross-border education market? On the regulatory frameworks in other countries? On the reaction of the cross-border providers and the local community towards regulation?
 - In designing a regulatory framework, have the following been considered: scope of regulation, criteria of regulation, choice of organization, timeframe for implementation, short- and long-term resource implications and fees?
 - In the implementation stage, how should evidence be collected to establish compliance and how can the evidence be verified? What are the indicators of quality?
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3.5.4 Cooperating with provider countries

Cooperation with the provider countries and their quality assurance authorities is desirable and often necessary in the implementation of a regulatory system because:

- There are limitations to what a receiver country can do to regulate quality.
- It is necessary for the receiver country to communicate their requirements to the provider country.
- It is often easier for the provider country awarding institutions to regulate quality.
- The provider country awarding institutions should be responsible for the quality of their awards.

Therefore, the quality of cross-border education should be a shared responsibility, and it is undesirable to have a situation where the provider country and receiver country adopt suspicious or negative attitudes. It is a far better approach for the governments and quality assurance authorities of both sides to establish channels to work together. Cooperation can include the following:

- seeking confirmation from the provider country on the status or recognition and accreditation of particular cross-border programmes and their awarding institutions
- obtaining information on the education system and quality assurance system of the provider country

- providing information to the provider country on the regulatory framework in the receiver country and seeking cooperation in disseminating this information
- exchanging information between the relevant quality assurance bodies on particular institutions or programmes and their cross-border operation
- cooperating in the regulation and quality assurance of cross-border education, for instance, participating in the assessment and audit activities of each other on an ad-hoc basis or on a regular basis; in other instances, the receiver country may choose to rely on the provider country to undertake the quality assurance activity (eg. through overseas audits) or rely on the guarantee provided by the provider country of the quality of education that it delivers
- co-operating in drawing up common codes of practice, or exchanging any existing codes of practice
- participating in multilateral forums and agreements

3.5.5 Possible problems during implementation

It is usual during the implementation stage to encounter problems with the system. However, it would be helpful to know ahead of time some of the problems that could possibly emerge. These are discussed below.

3.5.6 Interpretation of the laws and regulations

It is quite likely that, no matter how carefully a law or regulation has been drafted, some difficulties or uncertainties will occur during the implementation phase. These will be due to difficulties or differences in interpretation (including differences in local/regional interpretation), loopholes in the law, or unforeseen circumstances. The authorities must be prepared to manage issues of interpretation and possibly face challenges from those who are subject to regulation. It will be possible to deal with some of the issues as they arise and to accumulate precedent cases for future reference and application. However, with more difficult issues, it may be necessary to wait until a suitable time when the relevant laws can be amended.

3.5.7 Resistance from providers and others

Due to the burden imposed by any new regulatory system, it can be expected that the target groups of the regulation will feel unfamiliar with the system, which could result in attitudes ranging from passive resistance or non-cooperation to outright challenge. In some situations, a “compliance culture” may also result when providers have learnt the rules of the game and it becomes increasingly difficult to obtain a true picture from providers. The authorities will, therefore, need to be prepared with different strategies to resolve differences and to build up support for necessary regulation. It is often useful to rely on

the force of public opinion, and hence on market forces, to consolidate support for the regulatory system.

International initiatives, such as the UNESCO/OECD Guidelines on Quality Provision in Cross-border Education, can be promulgated by the governments of the receiving countries. The force of these international frameworks is likely to lend further backing to any regulatory schemes put in place.

3.5.8 Pressure of workload and unpredictability

If a regulatory system is delivered to manage an existing large market of cross-border provision, then the pressure of handling a large number of providers and their programmes at the inception of the system will be great. The demand for the system may also be difficult to predict, especially if it is a voluntary system, or even if it is mandatory, providers may decide to withdraw from the market. Strategies will thus need to be designed to handle what might be unpredictable workflow. Otherwise, problems such as inadequacy of resources or manpower might affect the successful implementation of the regulatory system.

3.5.9 Difficulties in promoting public awareness

A regulatory system will only work effectively and efficiently if it is complemented by public awareness. But it is not always easy to educate consumers about the needs for quality education and for adherence to a regulatory system. Relevant authorities

must make consistent efforts to disseminate information about quality and regulatory systems.

3.5.10 Recognition of qualifications

Recognition of qualifications is sometimes very difficult and complex to manage. Students enrolled in cross-border courses, as well as parents and employers, are understandably concerned about the recognition of the cross-border qualifications for purposes of employment and/or further study. While some countries will give recognition to qualifications from cross-border programmes that are duly approved for operation, others do not adopt this stand and require separate processes for the recognition of cross-border qualifications (see Hong Kong and Mainland China examples). Thus, a cross-border programme may be registered for operation, but its graduates may not be recognised as having the status of graduates if they seek public appointments. This situation may not be clearly understood by students and employers, and constant efforts again have to be made to educate the public. At the same time, the recognition of the cross-border qualifications in the country of origin, or in other countries, is equally important as graduates these days are increasingly seeking employment abroad. To resolve these issues, furthering cooperation between sending and receiving countries both internationally and regionally will be necessary.

3.5.11 Challenges posed by new or changing format of cross-border education

The new and forever changing format of cross-border education poses many challenges. Certain forms of cross-border education, such as pure distance learning courses that are delivered directly to individual students, pose special difficulties for regulation. For distance learning courses, this could be due to difficulties in monitoring delivery. Other new formats include “serial franchised” courses, which are “re-exported” by the receiving country to other countries. During this process, the institution of origin loses much of its control over the courses and the qualifications. Posing as much difficulty for the regulatory authority are the existence of “international” institutions or corporations delivering courses (including traditional and/or distance learning courses) that have no “home” country and, hence, the regulatory authority cannot rely on a benchmark from the “home” country to adjudicate the courses.

3.5.12 Resource and other implications in continuous monitoring of the system

A regulatory framework will only be effective if there is continuous monitoring after its implementation. However, the regular monitoring of courses and providers will require resources as well as a monitoring system that should be effective without being burdensome. This will provide a continuous challenge for the regulatory agency.

Some key issues to reflect on:

- How can consumer/provider awareness of the regulatory framework be further promoted?
 - Are qualifications regulated under the framework automatically recognised by the government? If not, is there a separate system for the recognition of cross-border qualifications, and are students/employers aware of the recognition issue?
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3.6 Conclusion

As the preceding section illustrates, there are many questions to consider - and interests to balance - when developing regulation for cross-border education from a receiver perspective. Many of the same issues arise for provider countries, but sometimes with a different emphasis or weighting, as the next section discusses.

Some key issues to reflect on:

- Why might a receiver country want to regulate cross-border education quality assurance?
 - What are the options available for developing a regulatory framework? What is an appropriate balance between tighter control/looser control, mandatory/voluntary approaches, etc.? Should this balance vary according to sector or by some other criteria?
 - Which approach best describes your country at present? What approaches could be used in future development?
 - Where change might be needed, what are the factors to consider in developing and implementing improvements?
 - What are the problems and obstacles that might be encountered in developing and implementing a framework/improving an existing framework in your country?
 - How best to develop links with, and work with, provider countries' quality assurance agencies?
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**SECTION IV:
REGULATORY FRAMEWORKS –
PROVIDER COUNTRIES**



4.1 Why Provider Countries Should Consider Regulation

While it is obvious why a “receiver country” may wish to regulate inbound cross-border education - the impact on its domestic education outcomes and achievement, welfare and well-being of domestic students (and/or students from other countries studying there) - it is perhaps less obvious why provider countries would consider regulation to help assure quality. As the interests of domestic students are not apparently at stake, there may be a temptation to adopt a laissez faire or buyer beware approach.

Five issues a provider country should consider are:

- reputation of their education system, qualifications system and individual programmes and qualification
- relationship with domestic education – impact on domestic institutions (eg. if a provider gets into financial difficulty offshore) and on the status and recognition of qualifications awarded to domestic students (and overseas students studying onshore)
- desire to ensure that its nationals, institutions and companies are delivering quality services overseas (this may align with foreign relations and international aid policy and philosophy)

- receiver countries may require some form of external quality assurance or government endorsement before accepting initiatives
- general international reputation

These points do not necessarily mean that regulation is required, or the best approach available, but indicate why provider countries’ governments and quality assurance agencies have a legitimate interest in the activities of education providers overseas. Counterbalancing considerations include balancing costs with benefits and not wanting to unduly constrain academic and commercial freedoms.

As noted earlier, there are a large range of activities, academic delivery approaches and business models that make up “cross-border” education. The drivers for provider country regulation do not apply equally across the spectrum, nor are various forms of regulation equally practicable for all cross-border education activities.

4.2 Approaches to Regulation

Provider countries have not developed their approaches to assuring quality cross-border education from a “blank sheet of paper.” The approaches taken have developed out of the existing legal and structural framework for assuring quality domestic education. Some observations are that:

- Quality assurance of cross-border education is still a relatively new field and that ideas and approaches are still evolving.
- Often development has been reactive in response to problems arising.
- Development has sometimes been quite ad-hoc and the domestic frameworks/legislation from which any system has developed are not necessarily well-tuned for cross-border quality assurance.

As a result, provider countries may have mandatory or voluntary frameworks in place. These may be implemented by government agencies, independent not-for-profits representing various sectors, or government regulated not-for-profits. Professional bodies will usually also have a role to play.

Typically quality assurance in the main English speaking provider countries (with particular reference to Australia and New Zealand) follows a basic pattern of:

- use of a five-year audit cycle (sometimes with shorter audit periods for new providers or providers with specific risks identified)
- use of a four-stage model for quality assessment by an independent agency: self-assessment, peer review, site visit, and a public report
- a trend towards the external evaluation of quality assurance agencies' use of regional frameworks to improve cooperation and understanding

4.3 Defining the Scope of Regulation - Breadth of Coverage

External quality assurance processes may have four possible broad options for regulating cross-border programmes/qualifications:

- no coverage offshore
- coverage only of programmes and qualifications that are already externally assured for quality
- coverage of all offshore programmes and qualifications offered by a registered or statutorily constituted education provider
- coverage of all programmes and qualifications offered offshore by a provider country institution (this would be similar to the rules for enrolling foreign/international students in New Zealand for example - see Section V); where organizations enrolling foreign students have to be a registered, or statutorily constituted, provider and programmes have to be quality assured (unless specifically exempted)

In addition, these approaches can be varied by sector (eg. compulsory/post-compulsory) by provider type (university, polytechnic, school, etc.), by programme/qualification offered (sub-degree, degree, post-graduate) or by ownership status (public or private). Different sectors or different provider types may be characterised by different levels of scale, different

incentives and drivers, and different levels of organisational “maturity” – which may require different approaches to quality assurance. For example, in New Zealand the responsibility for external quality assurance of universities lies with the New Zealand Vice-Chancellors’ Committee, with responsibility for other higher education institutions going to a government agency, the New Zealand Qualifications Authority (NZQA), which in turn delegates responsibility for the polytechnic sector.

Some observations now follow on the options outlined above:

- **No coverage offshore.** It is possible to argue that the logistic and jurisdictional issues of trying to assure quality offshore delivery outweigh the benefits that are gained. This would effectively mean that either:
 - a) No externally assured programmes and qualifications could be offered offshore. While this approach would significantly limit risk exposure, it may not be in line with other government policy settings.
 - b) Externally assured qualifications could be offered offshore, but with no additional external quality assurance. The level of risk associated with this is generally high – though this will vary. For example, it is less risky for mature sectors with a strong history of high-quality provision.
- **Cover only programmes that are already externally quality assured.** This approach does provide some comfort

as regards the “heart” of a qualifications system. However it could mean that a lot of activity offshore may not have the added security of external quality assurance, which could reflect internationally on the provider country.

- **Assure all offshore programmes and qualifications offered by a registered or statutorily constituted education provider.** The benefit of this approach is that it extends coverage to all programmes and qualifications offered by most providers. It should enhance the confidence of both provider country and international stakeholders in the quality of a provider country’s overall involvement in transnational education
- **Assure all programmes and qualifications offered offshore by *any* provider country organization.** The benefit of this approach would be coverage, but the downside would be significant difficulty in enforcement. Covering the risks associated with non-registered or statutorily constituted organizations is perhaps better achieved by ensuring that overseas authorities recognise the role of provider country quality assurance agencies and the importance of registration or statutory establishments.

4.4 Defining the Scope of Regulation - Depth of Coverage

Following on from this consideration of breadth of coverage, another question is what aspects of an operation to cover under quality assurance and what level of information verification to

seek. The key challenge here for a provider country is verifying information and systems overseas, which may lie outside their experience and outside their jurisdiction. This can also raise significant issues for cost and staff resourcing.

Options include:

- Limited approach – The quality assurance agency limits itself to approval of programmes modified for offshore delivery, but does not accredit the offshore delivery
- Thorough quality assurance of provider country organization - This could entail limited coverage of the overseas partner, limited information verification, domestic accreditation processes modified for approval and accreditation of offshore delivery (including site visits and information about offshore partners and about compliance with local requirements where not fully-verified by local authorities)
- Full quality assurance of the provider country organization and any overseas partners, including verification of information in conjunction with local quality assurance bodies and other authorities - This encompasses the second option, but includes a joint approach and shared responsibility for quality assurance

The third option requires increasing cooperation and mutual recognition of quality assurance systems, both multi-laterally and through bi-lateral agreements. Cooperation with overseas authorities also offers the potential to strengthen areas where

provider country jurisdiction is weak, and involves a degree of shared responsibility, which somewhat mitigates the generally higher level of risk associated with assuring the quality of offshore ventures.

An initial challenge for provider countries will often be identifying the relevant agencies and their responsibilities in receiver countries, especially where there are structures that have significant provincial and municipal layers of regulatory control in the education sphere. There is also a question of assessing the quality and comparability of policies and processes. Communicating a provider country's qualifications system to receiver countries is also crucial.

4.5 Criteria for Accreditation

Once high level policy decisions are made on how to approach cross-border quality assurance, there are also significant challenges in operationalising policy and in ensuring that the detail covers all the major risk areas.

As well as the issues covered in onshore quality assurance, there are special and additional risks associated with delivering education offshore. These have largely been discussed earlier, but are recapped here:

- the usual risks that apply in the provision of programmes onshore in provider countries, but with characteristics

specific to delivery in an overseas environment (for example pastoral care – complicated by factors such as the role of any partners, different regulatory and cultural expectations, and governance and management issues – increased by distance and cost of intervention)

- additional risks that only apply offshore (examples include concluding agreements and contracts in an overseas jurisdiction and meeting the requirements of local authorities)

Within the broader policy setting, the challenge is then to ensure that all areas of quality and risk are adequately covered, and that policies are sufficiently flexible to cover the multiplicity of variations and forms that cross-border education can take both programme-to-programme and country-to-country.

While it is stating the obvious, there is also a challenge in ensuring that the processes and requirements that are instituted can feasibly be implemented offshore (eg. the government of the provider country may want to require approval of the overseas quality assurance body before granting approval to a provider who would deliver a programme offshore). On the other hand, the overseas authority's rule may require approval from the provider country's government before they will grant approval.

To address these issues, background work needs to be done on the specifics of each jurisdiction that provider country

organizations are operating in, and, crucially, about relationships formed with other quality assurance bodies. This can enable co-ordination and complementarity between nationally based quality assurance systems, and avoid regulatory conflict. Mutual understanding and confidence in each other's quality assurance systems and qualifications frameworks can reduce the scope for loopholes.

Specific criteria areas to consider

Notwithstanding differences of approach between each country's existing frameworks, there are some common criteria that may be important when considering assuring the quality of cross-border education ventures. The offshore activities should be:

- covered by the provider's quality management system – and that it is clear how this will be applied to adapt to the differences and challenges of the overseas venture – eg. sourcing appropriate facilities and staff, maintaining effective communications and reporting, identifying specific risks and putting management plans in place
- consistent with the standards of the provider's domestic operations – this is particularly important when a qualification is to be offered both onshore and offshore – eg. how authorities will assure the comparability of programmes and qualifications

- likely to be viable and sustainable – this includes academic, managerial and financial aspects
- tailored to be appropriate to the local requirements and context – while still meeting the comparability criteria above
- compliant with legal requirements in the receiver country and meet any applicable quality assurance requirements there
- acceptable to the relevant educational authorities in the particular country

Where, as will often be the case, an overseas partner is involved, the following criteria could be relevant:

- Evidence of the overseas partner institution's good standing and track record and evidence that it meets appropriate quality assurance requirements in the receiver country
- A clear written agreement between the parties that details expectations and obligations between the provider and the receiver (and any other involved parties)
- Details of the quality assurance processes that apply to the overseas partner

The better the communication and co-operation between the quality assurance bodies in the respective countries, the easier it is to obtain and the more robust this information is likely to be. This emphasizes the importance of developing relationships between quality assurance bodies, including through multi-lateral organizations and agreements.

Some additional issues to consider

Jurisdiction

Another complicating factor at the heart of cross-border education is the fact that delivery and consumption of the service occurs outside the jurisdiction where the service (or part of it) originates and continues to develop. Two or more regulatory frameworks could apply, with the framework of the country in which the service is consumed holding the most weight. Where there is a conflict, the local authority will prevail over the requirements of an overseas agency.

While provider country jurisdiction will not generally extend offshore to a significant extent, that does not mean that provider country quality assurance organizations have no control or leverage over the offshore activities of providers. The provider country quality assurance organizations can derive some authority over the activities of provider country organizations from authority over domestic operations and from rights over the use of certain endorsements and terms.

Non-academic areas - Pastoral Care and Fee-protection

In relation to overseas students studying onshore, some provider countries have specific regulatory requirements and mechanisms relating to fee-protection and pastoral care. In terms of regulation, a provider country may wish to consider whether it should attempt to extend its controls, perhaps in a modified fashion, offshore. There are likely to be issues relating

to jurisdiction and to ensuring that any requirements are adapted effectively to a different cultural and legal context.

4.6 Preparation, Implementation and Enforcement

The following points summarise key elements of the implementation process and some key issues that arise:

- The preparation and decision-making process will usually follow this broad pattern: understanding the current situation and regulatory needs, defining the desired future situation, determining high-level policy settings, detailed policy making, and drafting/establishing the legislation, regulation, and guidelines. The exact processes involved will differ according to the government systems and the nature of structures being developed.
- During this process, it is usually fruitful to examine overseas examples in detail.
- Involving stakeholders in the development process can enhance the effectiveness of the result; for example, achieving voluntary buy-in and compliance even if some processes are mandatory.
- Enforcement may rely in the first instance on sanctions applicable within the provider countries' jurisdictions, rather than directly in the overseas jurisdiction in which delivery is taking place. The sanctions available are likely to mirror

those available in relation to domestic delivery, though there may be opportunity to tailor sanctions specifically to cross-border activities. A further option is joint action between the authorities of both the receiver and provider countries, particularly where there are joint ventures involving organizations from both countries.

Potential Problem Areas

Some potential problem areas to note include:

- **Utility of existing structures and legal framework for cross-border purposes** – As noted in earlier discussion, these may not be well-tuned to cross-border education. Consideration may need to be given to developing special structures and amending legislation.
- **Providers may attempt to structure delivery models to evade jurisdiction** – While regulation could attempt to be detailed and comprehensive to reduce loopholes, another approach is to give sufficient flexibility to address a range of scenarios.
- **Possible conflict between the requirements of receiver and provider countries and/or insufficient communication and co-operation between the authorities of receiver and provider countries** - Again, flexibility may be required and also, as mentioned before, investment in establishing understanding of other jurisdictions and systems, and in establishing relationships between agencies.

- **Ensuring the responsible quality assurance bodies have good systems in place for cross-border quality assurance and suitably skilled and experienced staff** – Just as cross-border provision makes additional demands on providers, so does it require additional skills of the agencies involved in quality assurance, especially if overseas site visits are part of the approval process.

4.7 Conclusion

The development of large scale cross-border education provision and its changing forms and structures pose significant challenges, both conceptual and practical, to ensuring quality. This Toolkit has discussed so far some of the pressing issues, and possible ways of addressing them. The next section briefly describes the approaches taken in practice by some countries to the challenges of receiver and provider country cross-border quality assurance.

Some key issues to reflect on:

- Why might a provider country want to regulate cross-border education quality assurance?
 - What are the options available for developing a regulatory framework? What is an appropriate balance between tight control/looser control, mandatory/voluntary approaches, etc.? Should this balance vary according to sector or by some other criteria?
 - How best to manage the issues of quality assurance operations in another national jurisdiction?
 - How best to approach associated areas outside core academic quality assurance, eg. pastoral care issues?
 - What are the problems you might encounter and obstacles you might face in developing and implementing a framework/improving an existing framework?
 - How best to develop links with, and work with, receiver countries' quality assurance agencies?
-

SECTION V: EXAMPLES OF REGULATORY FRAMEWORKS



The following section uses examples from different jurisdictions to illustrate the enactment of regulatory systems for cross-border education and the special features of these systems. The authors would like to acknowledge *Quality and Recognition in Higher Education – The Cross-Border Challenge* (OECD Centre for Educational Research and Innovation, 2004) as a particular source of information for this section.

5.1 Mainland China, People's Republic of China – Receiver Example

The operation of foreign education providers in Mainland China is governed by the Regulations of the People's Republic of China on Chinese and Foreign Cooperation in Running Schools, enacted in March 2003 and implemented with effect from September 2003 (The Regulations).

The Regulations are supplemented by the enactment of the Implementation Methods of the Regulations of the People's Republic of China on Chinese and Foreign Cooperation in Running Schools in June 2004 and implemented from July 2004 (The Implementation Methods).

These regulations govern the offer of academic disciplines and programmes that are jointly offered by Chinese educational institutions and foreign educational institutions. (Occupational/vocational training that is jointly offered with foreign institutions is separately governed by the regulations of the relevant department of the State Council.)

The Chinese Government encourages joint educational ventures conducted with well-established foreign institutions, and particularly the offer of disciplines that are in demand and in poorer and distant areas.

The Regulations require that joint ventures that award foreign qualifications or degrees should ensure that their programmes and teaching are not lower in standard than the standards required of the foreign institution in its home country.

The levels and disciplines in any joint educational venture should be comparable to those already operated by the foreign educational institution and the Chinese educational institution. The award of any foreign qualifications in such joint ventures should be the same as in the foreign country and recognised in the home country of the awarding institution.

The Regulations require the applicants for joint educational ventures to possess suitable educational experience and qualifications. Those that are already in operation and are starting new ventures should show that they have obtained accreditation from accrediting authorities.

In making an application, the joint venture should submit the official agreement between the partners of the joint venture, the certification of investment, qualification certification of any foreign teachers and personnel, and names of the joint venture's first board of directors.

Approval for the operation of degree or higher level studies should be granted by the relevant departments of the State Council, upon recommendation from the provincial/local authorities.

Managers of approved joint ventures should submit annual reports to the approving authority. They should also release their audited accounts every year.

If joint ventures lead to the award of Chinese qualifications, the Chinese educational institution should evaluate the teaching and standard of the foreign institution.

The level of fees charged to students should follow the regulations of the Chinese Government.

There are penalties for those using false or misleading advertisements to make money, those with poor management or low educational quality, for unauthorised fee charges, and inappropriate financial management.

While certain foreign programmes may be approved to be offered, they may not be automatically recognized outside of the conferring institution. It is possible to seek recognition of foreign qualifications by applying to the Chinese Service Center for Scholarly Exchange.

(The above are extracted from The Regulations and The Implementation Methods. For complete and accurate information, readers should consult the Regulations at www.moe.edu.cn, and www.jsj.edu.cn)

5.2 Hong Kong, People's Republic of China – Receiver Example

Hong Kong is an example of a regulatory system that is underpinned by legislation. The legislation regulating cross-border education is the Higher and Professional Education (Regulation) Ordinance (Chapter 493 of Laws of Hong Kong), which was enacted in 1997 and implemented in a sizeable market that was hitherto largely driven by free trade.

The purpose of the legislation was to introduce a minimum degree of consumer protection while maintaining a free market to offer a wide choice to consumers. The legislation can be viewed at www.doj.gov.hk/eng/laws or at www.legislation.gov.hk/eng/home.htm.

Features of the Regulatory System in Hong Kong

The target of regulation covers both higher academic and professional courses. Thus, programmes that satisfy, or partly satisfy, the qualification or membership criteria of non-local professional bodies are also governed by the legislation.

As the majority of courses in Hong Kong are delivered through face-to-face tuition or a mixed mode involving both face-to-face teaching and distance learning, regulations target these types of programmes. It is not mandatory for pure distance learning programmes to be registered, although they may apply for registration on a voluntary basis.

The Hong Kong system makes use of both legislation (penalty system for non-compliance) and an incentive system. Registration is mandatory under the law for all cross-border education (the term used is “non-local courses”). On top of this, institutions may seek voluntary accreditation. Accreditation is not mentioned in the legislation and is a separate process for which providers can apply at the local accreditation body, the Hong Kong Council for Academic Accreditation.

The standard for registration, as required by law, is comparability of standards with the provider country. On the other hand, accreditation uses local standards in Hong Kong as a benchmark.

Non-local institutions are permitted to collaborate with either tertiary institutions or non-academic institutions provided that the programmes they offer meet the legal requirements for registration. There are two separate channels/processes for obtaining registration: one for providers who collaborate with a number of specified tertiary institutions in Hong Kong (mostly self-accrediting institutions) that may apply for “exemption” from registration, and a separate process for those who collaborate with other organizations. For the latter, the Registrar of Non-local Courses currently appoints the Hong Kong Council for Academic Accreditation to advise on the compliance of the courses with the stipulated academic criteria. For the former group of institutions, there is a limited amount of delegation to the local partner institutions for ensuring that the stipulated

criteria are met. Nevertheless, despite the different channels and processes, the criteria applied are the same.

Registration under the law is done on the basis of individual courses. After initial registration of the programmes/courses, they are required by law to submit annual returns.

There is no requirement for cross-border courses to meet criteria that relate to the national/cultural/economic requirements of the society. The cross-border providers may at their own discretion cater for the local needs of the community in Hong Kong, but in changing or adapting the content of their programmes, should maintain comparability in standard with the home programmes.

There are strong consumer protection features in addition to requirements pertaining to the academic quality of the programmes. For instance, it is illegal to publish inaccurate or misleading information regarding the cross-border programmes, or to neglect to display the registration number of programmes in publicity materials.

The recognition of qualifications is a separate issue from the registration of cross-border programmes: programmes that are registered under the law are not automatically recognised by the government for appointment purpose.

5.3 Malaysia – Receiver Example

The Malaysian Government has pursued a policy of encouraging quality private sector and overseas involvement in higher education, including the delivery of overseas-based programmes and involvement on the institutional level. It regulates to ensure that overseas involvement is of a high quality, and is aligned with Malaysian cultural and economic requirements.

Overseas higher education providers in Malaysia are subject to Malaysia's national quality assurance framework. Overseas providers have the option of either applying to be licensed as a higher education provider within Malaysia in their own right, or to deliver programmes through a local partner licensed as a private education provider.

In 2004, Malaysia established a Ministry of Higher Education, separate from the existing Ministry of Education. All institutions of higher education in Malaysia are under the supervision of this Ministry. The Ministry of Higher Education co-ordinates and monitors higher education activities, and its Quality Assurance Division (QAD) is responsible for quality assurance of public institutions.

The Ministry's Department of Private Education is responsible for dealing with private providers on their establishment and registration. The National Accreditation Board (LAN) is central

to assuring the quality of educational programmes. For private providers, it provides quality standards and guidelines, and ensures that the quality of provision is comparable to that offered by public institutions.

There are three levels of assessment under the LAN guidelines:

- Approval to conduct programmes of study – this is mandatory
- Minimum standard – which is mandatory and must be met to offer a degree
- Accreditation – this process is optional; it is necessary if the qualification is to be recognised for the purposes of employment in the Malaysian public sector

This has provided impetus to the streamlining and unifying of the public and private quality assurance systems. LAN and QAD are merging to form the Malaysian Qualifications Authority (MQA). The MQA will combine the functions of LAN and QAD and be responsible for the development and maintenance of the Malaysian Qualifications Framework.

It should also be noted that Malaysia is also a provider country and regional educational hub, and that overseas institutions/partner programmes in Malaysia enrol overseas students, particularly from other Asian countries.

5.4 New Zealand – Receiver Example

While New Zealand is an education provider that hosts tens of thousands of overseas students each year, it also hosts an increasing number of education institutions that have a parent organization overseas, and overseas organizations engaging in joint-venture programme delivery with a New Zealand based organization. In New Zealand, the responsibility for external quality assurance of universities lies with the New Zealand Vice-Chancellors' Committee, with responsibility for other higher education institutions lying with the government agency, the New Zealand Qualifications Authority (NZQA), which in turn delegates responsibility for the polytechnic sector.

An overseas provider wishing to deliver education in New Zealand is essentially treated the same as a New Zealand organization wishing to commence operation as an education provider.

The two basic options for a provider coming to New Zealand are to either work with an already registered provider (a private training establishment - PTE) or one established by statute (eg. a university) or to apply to establish a PTE, themselves. There are limited circumstances in which a provider from overseas could deliver programmes in New Zealand without needing to register or work with an established, quality assured provider. These circumstances would usually only apply to providers in the executive/professional education/training area, as quality assurance is required if a provider wishes to:

- enrol students from overseas ("international students")
- access subsidies for the tuition of domestic students or have enrolled students eligible to access government assistance (eg. student loans)
- deliver and award a degree or degree-related programme and qualification within New Zealand

These criteria cover the core of the education market in New Zealand, and in particular many overseas providers in New Zealand to date have been targeting the international student market.

If an overseas provider wishes to establish a PTE in New Zealand, it will need to go through NZQA's registration processes. The only special considerations for a PTE with an overseas parent body will be the status and track record of that body, and its relationship with the proposed New Zealand PTE.

Any programmes to be delivered, whether solely or in partnership with a New Zealand organization, will need to go through the relevant programme approval and accreditation procedures. Resulting qualifications will be benchmarked to New Zealand standards. If a programme originates overseas, part of the quality assurance process will be to ensure that it has been suitably adapted to New Zealand requirements. NZQA has the ability to take overseas quality assurance processes already undertaken into account when assessing for approval a programme originating overseas.

5.5 New Zealand – Provider Example

Alongside its role as a receiver destination for cross-border education, New Zealand is also a provider country, though on a smaller scale than, say, Australia and the United Kingdom.

New Zealand is concerned that the quality of education its providers delivers offshore is as high as the quality delivered within New Zealand. Providers under the jurisdiction of NZQA who wish to deliver programmes that are approved by NZQA or one of its delegated agents must seek accreditation to deliver the programme offshore.

Applications are considered in a rigorous two-stage process in which the proposal is first assessed in New Zealand using all available evidence, and then this is usually supplemented by a site visit to ensure that delivery facilities/resources are of an appropriate standard and that local stakeholder interests, including those of local quality assurance bodies and professional bodies, have been taken into account.

NZQA has recently consolidated and revised the guidelines it uses to assess applications for out-going cross-border education, and is using these on a trial basis. Key features include ensuring that:

- a balance is maintained between adaptation of programme materials and structure to local needs while maintaining comparability of quality with equivalent domestic programmes

- adequate staff and other resources are in place to deliver the programme
- appropriate management structures are in place
- robust and clear agreements and divisions of responsibility are in place with any overseas partners
- there is financial and other sustainability of the proposal for overseas delivery
- all relevant local regulatory requirements have been identified and met
- the interests of both domestic and overseas stakeholders have been considered

Appropriate monitoring arrangements with the quality assurance body will be put in place, and overseas delivery will be considered during regular audits, with the option of special audits and site visits if needed.

5.6 Australia – Provider Example

In Australia the constitutional responsibility for education lies with individual states and territories, but the Commonwealth government is responsible for funding higher education. The Commonwealth body with responsibility for cross-border education is the Department of Education, Science and Training (DEST), through Australia Education International (AEI). Each state and territory has its own education registration authority and applicable education legislation.

The federalised system of Australian government has important implications for the quality assurance of cross-border education. For a start, “cross-border” can mean between states and territories within Australia – so the term transnational is often favoured. Another implication is that any generalisations about the “Australian” approach, often have to be caveated with reference to differences between state jurisdictions.

The Australian Government plays a significant role in the quality assurance of higher education by participation in the national system of recognition and accreditation agreed by Commonwealth and State/Territory Ministers, and by providing funds to the Australian Universities Quality Agency (AUQA) to undertake quality auditing of higher education institutions and accreditation agencies.

The National Protocols for Higher Education Approval Processes (the National Protocols) set out agreed procedures and broad criteria for higher education approval processes across all Australian jurisdictions. The states and territories implement the protocols through their local legislation – this means there is an overall consistency of approach to approvals, but there are differences in local emphasis and practice.

The framework governing incoming cross-border education providers seeking to operate within Australia is comprehensive. Legislation protects the use of the term ‘university,’ the titles of higher education awards (such as ‘degree’), and governs

the operation of non-Australian higher education providers. For foreign providers, there is a de facto accreditation system through the requirement for programmes to be comparable to those of Australian institutions. Foreign programmes cannot be promoted as providing an Australian award.

The ESOS Act provides a comprehensive system governing provision of education to international students – which are also expected to apply to provision outside Australia. The Australian Vice-Chancellors committee has a “Code of Ethical Practice in the Provision of Education to International Students by Australian Universities,” which also helps assure quality provision and student protection.

The national protocols however, do not cover outgoing cross-border education, and most states and territories have seen this as outside their jurisdiction. Queensland and South Australia are the exceptions, and cover outgoing provision by non-university providers within their jurisdictions. For example, Queensland has guidelines for out-going cross-border provision, which are largely aligned with the OECD guidelines.

Universities are recognised by state specific legislation, and are “self-accrediting,” eg. universities not subject to ongoing recognition requirements and are responsible for their own quality. Australian universities have the authority to accredit their own programmes.

The Australian Universities Quality Agency (AUQA) has overarching responsibility for higher education quality assurance in Australia. It conducts quality audits of universities and state and territory government higher education accreditation authorities (established to implement the national protocols) on a five-year cycle. AUQA is a non-government body that audits for 'fitness of purpose' and focuses on implementation of the national protocols when auditing state bodies. AUQA audits are voluntary.

In its audits of institutions, AUQA looks closely at transnational operations and has a policy to determine whether a site visit is necessary to the overseas site/sites. Any overseas audits are undertaken using AUQA's general audit principles.

An important recent development is that in November 2005 Australian Education and Training Ministers agreed to a Transnational Quality Strategy framework to further the existing requirements outlined above.

The principles of the strategy are:

1. Australia's quality assurance arrangements should be well understood and well-regarded internationally.
2. Providers and consumers should be able to clearly understand the accountabilities in the delivery and quality assurance of transnational education and training.
3. Quality assurance functions should be effective and efficient.

4. Courses/programmes delivered both within Australia and transnationally should be equivalent in the standard of delivery and outcomes of the programme, as determined under nationally recognised quality assurance arrangements.

Its key areas of focus are on better communication and promotion of Australia's quality arrangements, increased access to data and information about Australia's transnational education activities, and a strengthened national quality framework to ensure the quality of Australian education and training delivered transnationally.

The initial actions of the strategy are development of a web portal and hard copy material, trialling more cost-effective offshore auditing, development and conduct of a pilot data collection activity and establishing a list of quality providers. More information on the strategy can be found at: <http://aei.dest.gov.au>.

5.7 United Kingdom – Provider Example

UK universities and colleges of higher education are self-governing and are not owned or run by the Government. The level of autonomy is high compared to many other countries. All have an independent legal identity; some have a Royal Charter, some are higher education corporations, while others have been created through an Act of Parliament. They are self-

accrediting. However, most rely on government funding to operate.

External quality assurance for cross-border education conducted by colleges and universities is undertaken by the Quality Assurance Agency for Higher Education (QAA). QAA was established in 1997, and is an independent body funded by subscriptions from UK universities/colleges of higher education and through contracts with the main UK higher education funding bodies. Subscription to QAA is voluntary.

The QAA does not approve or accredit programmes, but publishes a code of practice, information on benchmark standards, and qualification frameworks that detail the quality and standards publicly funded institutions are expected to maintain. It undertakes reviews and institutional audits.

Section Two of the “Code of Practice of the Assurance of Academic Quality and Standards in Higher Education” focuses on collaborative provision and flexible and distributed learning, which includes cross-border activities. Section Two is a substantial and thorough document in its own right.

The areas that the Code covers include:

- responsibility for, and equivalence of, academic standards
- policies, procedures and information; selecting a partner organization or agent

- written agreements with a partner organization or agent; assuring academic standards and quality
- assessment
- examination
- certification
- information for students, publicity and marketing

It also covers specific aspects of flexible and distributed learning: E-learning; delivery; learner support and assessment of students.

Under each heading there is usually significant discussion and guidance provided, and the Code provides a useful resource when looking at some of the specific issues discussed earlier in the Toolkit.

The Code also provides a basis for audit by QAA. QAA has undertaken numerous audits of the overseas activities of UK institutions in many locations around the world and the findings are available on its website: www.qaa.ac.uk.

5.8 USA – Provider Example

The USA has a more distributed model of higher education quality assurance than the other provider examples. It has a large number of accrediting bodies and also relies heavily on private rather than government organizations.

In the US, higher education regulation and policy is mainly a responsibility of state governments. Public higher education institutions have to be authorised to operate by a state, while private institutions must be licensed. The requirements vary between states, and in many states accreditation by an accrediting organization (see below) is not a necessary precondition for operation.

The federal government is not directly involved in authorising or licensing higher education institutions. It is, however, the main source of student funding, provides public funds for research, and has significant accountability requirements on institutions associated with these funds. The federal government relies on federally recognised accrediting organizations for advice on the quality of higher education institutions in many circumstances.

External quality assurance activities in the US are carried out by private, non-profit accreditation organizations. There are three types of accrediting organizations:

- Regional accreditors are based in a geographical region - these carry out a comprehensive review of an entire institution
- National accreditors accredit special interest providers - eg. theological studies, across the entire USA
- Professional accreditors accredit specific programmes of study within institutions - eg. law, medicine, nursing

External accreditation is mandatory and self-accreditation is not an option within the US higher education system. Accreditation is subject to a process of ongoing review by the accrediting body. The timing of review cycles can vary from a few years to ten years.

To operate as an accrediting organization, an organization must be incorporated in a state, and they are subject to standards and periodic review in order to be “recognised” as a bona-fide accrediting organization. Two bodies in the US undertake recognition of accrediting organizations:

- Council for Higher Education Accreditation (CHEA) – a non-governmental national co-ordinating body of accrediting organizations
- United States Department of Education (USDE) – USDE recognition puts emphasis on accreditors focusing on ensuring that institutions and programmes are of sufficient quality to warrant access to federal funds (including for student financial aid)

Accrediting organizations can be recognised by either or both CHEA or USDE.

Many, but not all US accrediting organizations are involved in the accrediting of US institutions and programmes offered overseas, and also in the accreditation of some wholly overseas institutions and programmes. Accrediting organizations develop their own policies and standards for review of international operations – there is no central co-ordinating organization or common policies or standards for the accreditation of overseas operations by US based providers. Most of those involved in offshore accreditation of US institutions and programmes are regional accreditation bodies. During review procedures, accrediting bodies will review the range of international activities of the organization they are reviewing.

While there are no centrally determined policies for overseas quality assurance of US institutions, CHEA does provide a central point and focus for issues relating to international quality assurance issues.

CHEA undertakes policy research, publishes research and discussion materials, represents the US in international quality assurance forums and bodies such as UNESCO and OECD, and also represents the interests of accreditors to the federal government, particularly in relation to World Trade Organization

(WTO) and General Agreement on Trade in Services (GATS) matters. In general, CHEA acts as a central point of contact and source of information on international accreditation issues in the USA. CHEA maintains a database of recognised accreditors and also makes available information on diploma and degree mills.

The federal government maintains the United States Network for Education Information, which provides general information about the US education and quality assurance systems and advice on potential issues with fraud/abuse that can arise within the US system.

SECTION VI: GLOSSARY



As mentioned in Section One, there are a variety of different terms in international quality assurance. The following is a brief list of the definitions used for key terms in this Toolkit. Acronyms are not included in the glossary, but are given in full where they first occur in the text.

Glossary:

Accreditation generally refers to a process of review to establish that an institution or programme of study meets stipulated standards or criteria of an external body. Accreditation is used to denote different meanings and it serves different purposes in different countries, including purposes of granting approval for the operation of the institution or programme, or of establishing the status, legitimacy or appropriateness of an institution or programme.

In the context of cross-border education, accreditation may refer to the approval process for courses, or a process for assessing courses according to stipulated standards that is different from the approval process.

Course is used differently by different institutions/countries. It can denote either a component of a programme of study, or a stand-alone programme of study. For the purposes of this Toolkit it is used only to denote a self-contained component part of a programme of study.

Cross-border education denotes the delivery in one country of education that directly originates, in whole or part, from another country. The service goes to the student across national borders, instead of the student going to the service overseas, as in another form of international education. It encompasses awarding of qualifications outside the country of the awarding institution.

(Institutional) Licensing/licensure is a usually “light-handed” process of authorising a higher education institution to operate within a jurisdiction.

Programme (of study) is a structured series of courses or modules leading to a qualification.

Provider country is the source country of the programme, qualification or other intellectual property (eg. courses within a programme) that is delivered in another country.

Quality assurance in the context of the Toolkit usually refers to external quality assurance and indicates a systematic approach to externally checking that required standards (“quality”) in education provision are being achieved and systems are in place to maintain and develop standards. This can encompass various processes, including registration/licensure and approval/accreditation to deliver specific courses or programmes, and will usually involve ongoing review and quality audit.

Receiver country is the host country in which the programme, qualification or other intellectual property sourced overseas is delivered.

Recognition usually refers to (i) the acceptance of qualifications by tertiary institutions for purposes of admission to programmes, or (ii) the acceptance of qualifications by governments or employers for purposes of employment, or (iii) the acceptance between governments or recognition bodies or professional bodies of different countries of their respective academic or professional qualifications.

Registration is a process of authorising a higher education organization to operate within a jurisdiction. Can be a light-handed process or more intensive.

SECTION VII: REFERENCES AND LINKS



The following is a listing of sources the authors have used in the preparation of the Toolkit and resources that readers may find useful when exploring issues further.

Documents and Publications

Australian-Chancellors' Committee. "Code of Ethical Practice in the Provision of Education to International Students by Australian Universities," December 2002.

OECD. "Guidelines for Quality Provision in Cross-border Higher Education," December 2005.

OECD. "Quality and Recognition in Higher Education – the Cross-Border Challenge," OECD Centre for Educational Research and Innovation, 2004.

OECD. "Internationalisation and Trade and Higher Education – Opportunities and Challenges," OECD Centre for Educational Research and Innovation, 2004.

Government of Hong Kong. "Non-Local Higher and Professional Education (Regulation) Ordinance," 1997.

People's Republic of China. "Regulations of the People's Republic of China on Chinese Foreign Cooperation in Running Schools," 2003.

People's Republic of China. "Implementation Methods of the Regulations of the People's Republic of China on Chinese

Foreign Cooperation in Running Schools," 2004.

INQAAHE. *Biennial Conference Papers*. Wellington, New Zealand: April 2005. Particularly:

Davies, T. "Navigating the Labyrinth of Transnational Education: A New Zealand Perspective"

Kimber, I. "Quality Assurance Issues in Transnational Higher Education Challenges for an Accrediting Agency – The Queensland Experience"

Wong, W.S. "The Quality of Cross-border Education: Whose Responsibility and What Can the Major Stakeholders Do?"

UNESCO. *Seminar on the Establishment of Cross-border Assessment Mechanisms*, Kunming, China: May 2005. Seminar papers:

Wong, W.S. "The Quality of Cross-border Education: Setting Up Assessment Mechanisms - The Role of Governments and Quality Assurance Agencies"

United Kingdom Quality Assurance Agency for Higher Education (QAA). "Code of Practice for the Assurance of Academic Quality and Standards in Higher Education, Section 2," September 2004.

Web-links

Asia-Pacific Quality Network www.apqn.org

Australian Universities Quality Agency (AUQA) www.auqa.edu.au

Australian Education International (AEI) www.aei.dest.gov.au

Centre for Quality Assurance in International Education (CQAIE) USA www.cqaie.org

Council for Higher Education Accreditation, USA www.chea.org

Government of Hong Kong Special Administrative Region, China www.emb.gov.hk, www.doj.gov.hk/eng/laws, www.legislation.gov.hk/eng/home.htm.

International Network for Quality Assurance Agencies in Higher Education (INQAAHE) www.inqaahe.org (includes links to regional networks and resources)

Malaysian Ministry of Higher Education www.mohe.gov.my

Malaysian National Accreditation Board (LAN) www.lan.gov.my

New Zealand Qualifications Authority www.nzqa.govt.nz/

New Zealand Universities Academic Audit Unit www.aau.ac.nz

New Zealand Vice-Chancellors' Committee www.nzvcc.ac.nz

Observatory on Borderless Higher Education www.obhe.ac.uk

Organisation for Economic Co-operation and Development (OECD) www.oecd.org

People's Republic of China, Ministry of Education www.moe.edu.cn

People's Republic of China, Chinese Service Centre for Scholarly Exchange www.jsj.edu.cn

United Kingdom Quality Assurance Agency for Higher Education (QAA) www.qaa.ac.uk

United Nations Educational, Scientific and Cultural Organization (UNESCO) www.unesco.org

United States Department of Education (USDE) www.ed.gov



United Nations
Educational, Scientific and
Cultural Organization

UNESCO Bangkok
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