

*India: Higher
Education sector*
Opportunities for
Foreign Universities



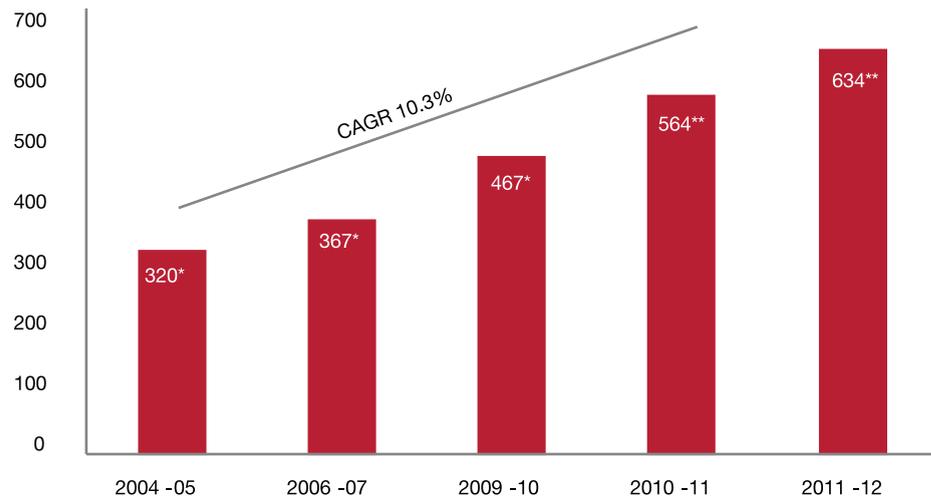




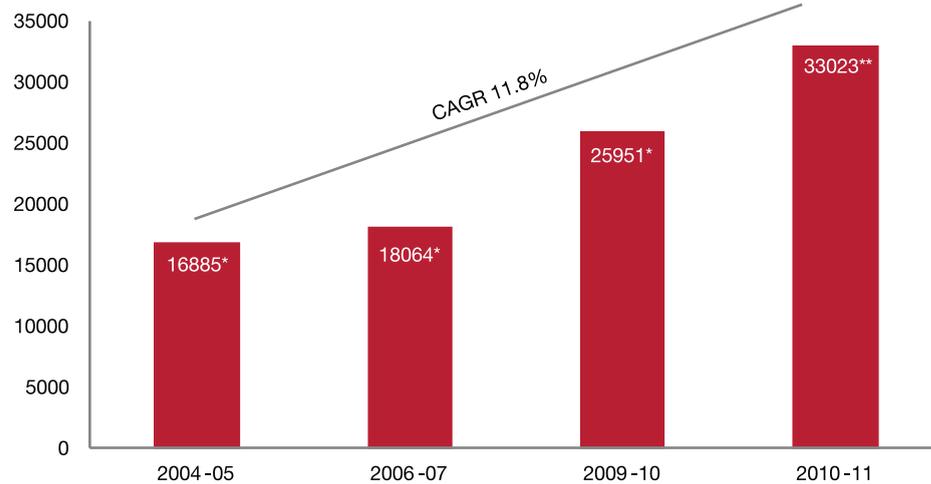
Overview of the Education sector in India

- Over the last decade, the Education sector in India has grown leaps and bounds. The Indian Education space is by far the largest capitalized space in India with Government spend of USD 30 bn and private spend of USD 50 bn¹.
- In terms of number of collaborations forged by Foreign Universities with Indian Educational Institutions, in 2011 alone, a total of 161 collaborations were reported².

Growth in number of universities and university level institutions



Growth in number of colleges



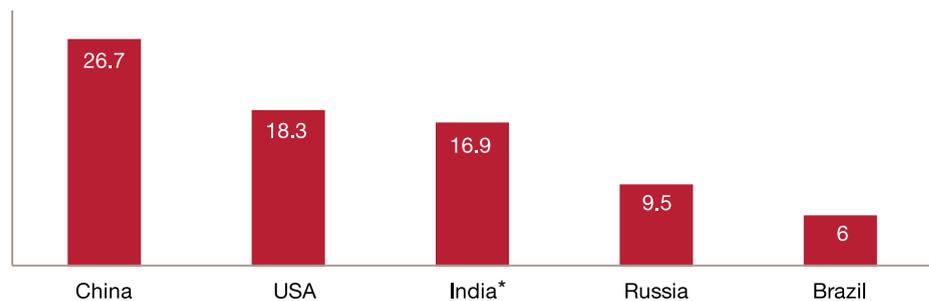
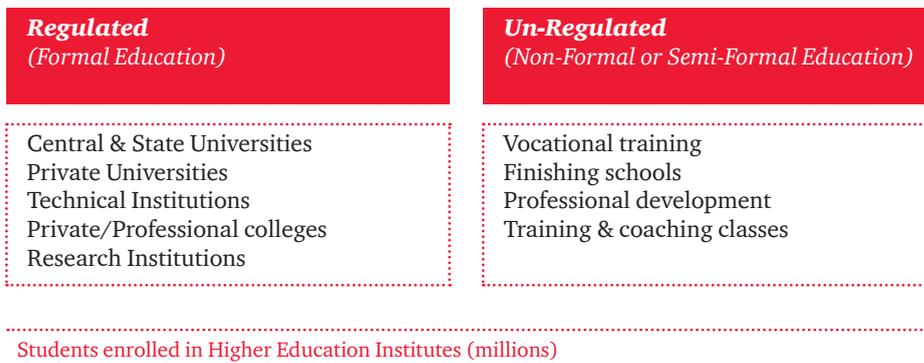
Source: *UGC report on HE in India Strategies during 11th plan (2007-2012) for Universities and Colleges, ** UGC Report on Higher Education at a Glance - February 2012.

“Indian education space is the largest capitalised space in India”



1 IDFC – SSKI India Report – January 2009
2 UK – India Education and Research Initiative

- The Higher Education sector could broadly, be divided into 2 segments: Regulated and Un-Regulated.
- While Foreign Direct Investment (FDI) in the Regulated segment is not feasible as of now due to restrictions imposed on the form of legal entity to be set up (viz. trust/ society/ section 25 company), FDI in the Un-Regulated segment is seeing a considerable inflow: it was USD 492 mn during the period April 2000 to January 2012³.
- If Indian statistics are to be compared with other countries, India's Higher Education system is the world's third largest with respect to student enrollment, next only to China and the USA (2008; *2010 - 11).
- There are several factors which have contributed to the exponential growth the sector has experienced in India:
 - Huge demand/ supply gap in the sector;
 - Greater number of private players venturing into the Education sector;
 - Growth of services sector, particularly the Information Technology sector, leading to demand for skilled workers;
 - Increasing FDI into the sector;
 - Increase in Internet based education methods;
 - Increased ability to capitalise on brand and reputation;
 - Opportunity to enhance scale and diversify risk by tapping new markets for entrepreneurs.
- Apart from the above, enhanced interest has been shown by Foreign Universities in the Indian Higher Education sector on account of following:
 - Increased focus of the Government of India on liberalising the Education sector in recent times, manifested by the proposed introduction of trend-setting Bills like Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010, Educational Tribunals Bill, 2010 etc;



* 2010 – 11 – UGC Report on Higher Education at a glance – February 2012
 Sources: UGC; UNESCO Global Education Digest 2010, MHRD Annual Report 2009-10; US Department of Education: National Centre of Education Statistics; Ministry of Education of the People's Republic of China

- Increased interest shown by Foreign Universities in India
 - Developed countries, particularly USA, UK and other parts of Europe are going through a recessionary phase on education, though in a different sense.
 - The share of their local students is consistently declining and many of them have realized that going global is critical for survival. The recent economic recession has adversely impacted them in terms of the grants and endowments that they usually receive. This is encouraging several universities to look at emerging economies like India for a more stable and self sustaining source of income – taking “campus to the students” seems to be the new mantra.

Regulatory Framework

- Education is governed by the Constitution of India. Maintenance of Standards of Higher Education comes in the Union List and Setting up of Universities falls in the Union and States list.
- Investment by Foreign Universities:
 - While 100% FDI in companies engaged in Higher Education is allowed under the automatic route, regulatory issues have constrained the actual flow of FDI. The major bottle-necks have been the “not for profit principle” and lack of clarity on existing regulations. The All India Council for Technical Education (‘AICTE’)⁴, in December 2010, permitted section 25 companies to act as sponsoring bodies of a technical institute with the rider that no foreign investment (directly or indirectly) will be permitted in such a company. While 100% FDI is permitted in the Education sector, this conflict has resulted in barring foreign investment in AICTE regulated technical institutes in the country.
 - The aforesaid challenge has encouraged Foreign Universities to look for alternative ways to enter India’s Education market, example, twinning arrangements with Indian Educational Institutions. This may be the reason for the exponential growth in the number of twinning arrangements forged between Indian Institutions and Foreign Universities in recent times in India, as also the huge interest being shown in this area.

Policy Making
Ministry of Human Resource Development Higher Education Department
Association of Indian Universities
Central Advisory Board of Education
State Councils for Higher Education

Regulation
University Grants Commission
AICTE, MCI, PCI, DEC, BCI, NCTE
ICAR, ICMR, ICSSR, CSIR
State Regulators

Accreditation
National Board of Accreditation
National Assessment and Accreditation Council

Note: Please refer Glossary section at end



⁴ All India Council for Technical Education was set-up in November 1945 as a national level Apex Advisory Body to conduct survey on the facilities on technical education and to promote development in the country in a coordinated and integrated manner. AICTE is vested with statutory authority for planning, formulation and maintenance of norms and standards, quality assurance through accreditation, maintaining parity of certification and awards and ensuring coordinated and integrated development and management of technical education in the country.

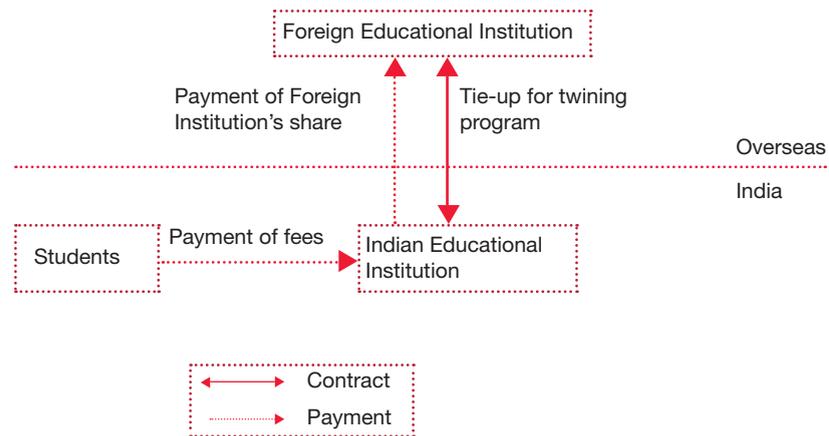
Present opportunities for Foreign Universities in India

Within the parameters of the extant regulatory regime, there are a variety of opportunities for Foreign Universities in India, inter-alia, the following (this is not an exhaustive list and only illustrative samples based on general observation of the sector/media reports):

- Tie-ups with Indian Educational Institutions for Twinning programs
 - There could be several variations of twinning programs. Generally, a twinning arrangement operates via a student undertaking a study course at its own institute in India for a prescribed period and then subsequently spending equivalent time in the overseas institute.
- Tie-ups with Indian Educational Institutions for providing services
 - Foreign Universities can enter into tie-ups with Indian Educational Institutions for providing expertise and services like faculty for teaching, curriculum, affiliations etc.
- Tie-ups with Indian Educational Institutions for Distance Education programs
 - Another mode of operation which is rampant is the e-learning or the distant education course/program offered by many Foreign Universities to Indian students. Here, Foreign Universities deliver their teaching, often on an individual basis, to students who are not physically present in a traditional educational setting such as a classroom, using technologies/medium like the Internet. Distance education in India is regulated by the Distance Education Council which is established under the Indira Gandhi National Open University Act, 1985.
- Setting up entity in India/entering into arrangements with Indian parties for assistance with student recruitment activities – where the objective is to attract students from India and encourage them to enroll with the University overseas.
- Tie-ups with Indian Educational Institutions for Student exchange programs
 - With an intention to enhance cross cultural exposure and so as to provide a global perspective to students, these programs encourage Indian students to spend short time periods generally ranging from 2 weeks to a term/semester at the campus of Foreign University overseas.
- Tie-ups with Indian Educational Institutions for Faculty exchange programs
 - These programs are devised with an intent to enable the teaching staff to teach or conduct research for short periods at the campus of the counterpart university/college. This is often a win-win situation for both the institutions as the teaching staff can benefit tremendously from exposure to a culturally varied and diverse faculty make-up, with an opportunity to exchange ideas and observe a variety of styles.
- Tie-ups with Indian Educational Institutions for Joint research programs
 - The purpose of these programs is to advance collaborative research between excellent researchers in Foreign Universities and Indian Institutes while providing opportunities for young researchers to hone their skills. These programs are typically carried out in cooperation with overseas science-promotion organizations so as to respond to the global development of scientific research activities.
- India has a fairly liberated economy with no regulatory restrictions on payments made outside India for services amongst others. Thus, there is a vast opportunity for provision of innovative services. Given the lack of infrastructure and severe competition for quality education, amongst others, there is a large and rapidly growing market for coaching and tutoring services imparted through new and innovative means, particularly the internet. Another recent trend that is catching up is that Indian corporates are increasingly looking to outsource skill training activities to specialised institutions abroad.

Sample operating model observed

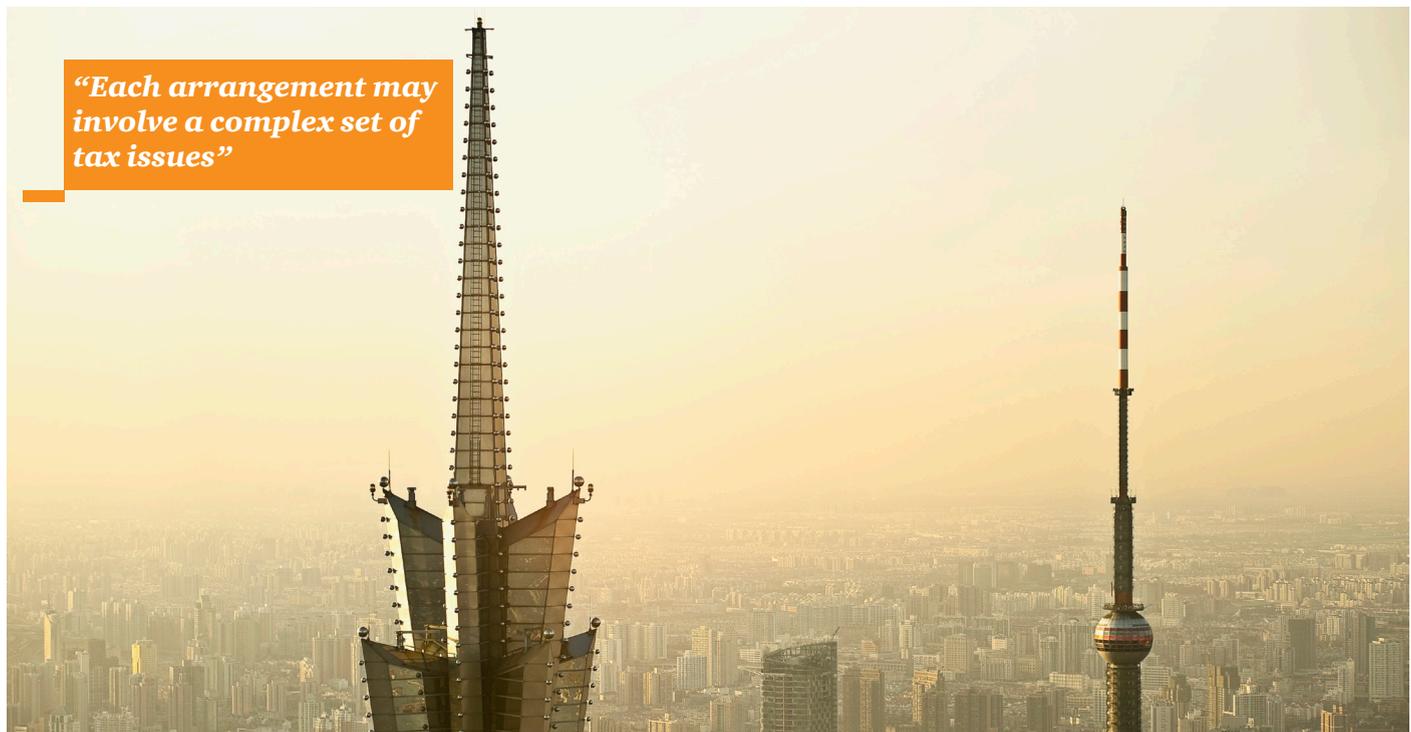
- Each arrangement between a Foreign University and an Indian Educational Institution is unique and involves a complex set of tax issues. Depending upon the structure and substance of the arrangement and the manner in which the same is documented, the Indian tax and regulatory implications may need to be analyzed.
- The Indian tax authorities are perceived to be very aggressive as far as examination and taxation of new unprecedented transactions or structures are concerned. Considering that Indian tax department sometimes aggressively scrutinizes cross-border transactions and also most importantly, the fact that litigation in India is a time-consuming and expensive process, it may be advisable to take the plunge only after careful, advance planning, so that Indian tax and regulatory exposures are mitigated.
- An illustrative operating model used by some Foreign Universities in relation to courses offered in India (as observed):



Mechanics – Roles of the two parties

- *Twining program of 2 years: 1st year in India and 2nd year overseas*
- *Degree to be awarded by Foreign Educational Institution at end of program, overseas*
- *Faculty for teaching: of both Foreign Educational Institution and Indian Educational Institution*
- *Services of Indian Educational Institution availed for collection of fees from students and remittance overseas*

“Each arrangement may involve a complex set of tax issues”



Regulatory Issues

- The AICTE has prescribed regulations for Foreign Universities undertaking twinning programs (i.e. collaborative and joint courses) with Indian Educational Institutions in Technical Education. Some key features of the same are:
 - Fee/seats prescribed by AICTE;
 - Degree/institution to be recognized in the home country;
 - Compliance with affirmative action mandatory;
 - For degree granting institutions, affiliation / tie-up with Indian University mandatory.
- The University Grants Commission ('UGC') recently gave in principle approval to regulations on twinning arrangements under 'Promotion and Maintenance of Standards of Academic Collaboration between Indian and Foreign Educational Institutions Regulations' 2012. The official copy of the regulation is not available in the public domain and information available through various media sources indicates that the new regulation stipulates as under:
 - Only top 500 Foreign Institutions in Times Higher Education World University Ranking or Shanghai Jiaotong ranking lists will be allowed to collaborate with Indian Educational Institutions;
 - Only those Indian institutions that have got highest accreditation grade from NAAC or NBA are eligible for a tie-up with a Foreign Institution;
 - The Indian and the Foreign Institution will have to enter into an agreement that will have to be approved by the UGC before it is implemented;
 - Existing collaborations will have to get UGC approval in 6 months' time;
 - No franchise agreement will be permitted.

- The Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010 which was introduced with a view to regulate the entry and operation of Foreign Educational Institutions seeking to impart Higher Education, is still pending before the Indian Parliament for the past two years.

Tax Issues

Some illustrative key tax issues in such arrangements are:

- Usually the Foreign Universities are tax exempt entities and hence all tax outflows tantamount to cash outflows. It is important to determine the tax status of the university in India, eligibility of claim of tax treaty benefits, taxability of incomes earned from India etc amongst others, while planning any arrangements with Indian parties.
- 'Unincorporated Joint Venture' exposure – in case of program tie-ups/joint programs
 - 'Unincorporated Joint Venture' is a unique concept under the Indian tax law. 'Unincorporated Joint Venture' is typically characterized by two or more persons coming together with the intention of producing income by a common action (amongst others). An 'Unincorporated Joint Venture' is treated as a separate taxable entity for Indian tax purposes.
 - Depending upon the substance and framework of the arrangement between Indian Educational Institutions and Foreign Universities, there may be exposures of creating an 'Unincorporated Joint Venture' in India.
 - Amongst others, formation of an 'Unincorporated Joint Venture' in India may have adverse tax implications, illustratively the following:
 - Uncertainty on availability of Tax Treaty benefits/status of venture under Tax Treaty;



- Higher tax rate on entire income of the joint venture – as high as 40% (on net basis);
- Restrictions on availability of carry forward and set off of losses in the hands of the individual parties.
- Taxability for Foreign Educational Institutions in respect of incomes received from India (in India)
 - Taxability in relation to income received by the Foreign University in India is determined by whether the Foreign University has a “taxable presence” in India or not (amongst others). If a ‘taxable presence’ is created in India, then tax rate in India could be as high as 40% (on net basis). Presence of faculty/staff in India for prolonged duration, access to premises/space at disposal, amongst several other factors needs to be examined to analyse whether a “taxable presence” is created for the Foreign University in India.
 - Depending upon the structure/nature/substance of the arrangement, the income of the Foreign University could be characterized as ‘Royalty’/ ‘Fees for Technical services’ and may be taxable as such in India at tax rates ranging from 10% to 40% (base rates exclusive of surcharge and education cess) on gross basis.
- Indirect Tax / Service Tax Implications:
 - Service Tax is an indirect tax levied on the services provided by a service provider in India: in some cases levied on service receiver under ‘reverse charge mechanism’. Service Tax – currently is 12.36%. Services rendered by Foreign Educational Institutions may be liable to Service Tax in India in certain instances.
- Withholding Tax Obligations
 - Withholding tax obligation is a vicarious obligation in India, required to be complied with by both residents as well as non-residents in respect of income taxable in India. Non-compliance with withholding tax obligations may lead to tax, multiple interest and penalty exposures.
 - Indian Educational Institutions may need to comply with withholding obligations in India while making payments to Foreign Educational Institutions. There may also be an obligation on Foreign Educational Institutions as well to withhold the taxes and comply with the relevant provisions at the time of payment of commission/fees to agents/ salary to its faculty/ making payments to personnel or other payments in India.
- Taxability of faculty/personnel in India
 - Taxability of individuals in India (including non-residents) depends on residential status which in turn is determined by the number of days of stay in India. Tax Treaty benefits may be available-to be examined on case –to-case basis. Some Tax Treaties also contain beneficial taxation provisions for professors, teachers etc.
- India has a relatively transparent tax and regulatory environment. Foreign countries generally have a well established tax code and taxation principles in India may seem similar to those existing in their home countries: however, there are subtle differences which can create traps for Foreign Universities in India. The best advice a foreign entity can take in this respect is to seek out advice before taking the plunge into this emerging market.
- The need of the hour is to plan an operating model which is tax efficient and regulatory compliant from an India perspective so that any potential adverse exposures in India are mitigated.

Need of the Hour

- Although an increasing number of stakeholders are looking seriously at investing into India, the technical expertise of how to bring international alliances into fruition is not always easy to acquire. Adequate due diligence will include appropriate attention to opportunity and potential in a new market but no form of analysis would be complete without an understanding of the tax and regulatory environment.



PwC Value Proposition

PwC India has a dedicated National Education specialist team across the various Lines of Services and offers a comprehensive range of services specific to the Education sector. In particular, for Foreign Universities, we could offer the following customized services:

- Joint venture partner search;
- Demand/Market Assessment & Feasibility studies;
- Project Viability/ Business Models;
- Tax and Regulatory:
 - Obtaining necessary regulatory approvals for the collaboration;
 - Assistance with collaboration agreements;
 - Appropriate entry strategies/holding company structures for the India ventures;
 - Entity forms/tax impact on income flows;
 - Analyzing possible exposures of creating 'taxable presence' for Foreign Institutions and suggesting ways to mitigate the same;

- Conceptualize relationships/ transactions/agreements from tax efficiency and regulatory compliance standpoint;
- Tax compliance and litigation assistance;
- Analysis of Double Taxation Avoidance Agreements between India and other countries and advise on optimizing tax liability in India for foreign personnel of the University.

In addition, following are the other services which we could offer Foreign Universities:

- Information Technology Enablement --Integrated Campus Solutions, ERP Implementation like PeopleSoft, Microsoft and SAP Training to ensure "Industry readiness" of students, Content management and archiving system, Data security, mining and MIS;
- Assistance with fund raise (in un-regulated areas);
- Transaction support including valuations.





Glossary

AICTE	All India Council for Technical Education
BCI	Bar Council of India
CAGR	Compound Annual Growth Rate
CSIR	Council of Scientific and Industrial Research
ERP	Enterprise Resource Planning
FDI	Foreign Direct Investment
HE	Higher Education
ICSSR	Indian Council of Social Science Research
ICAR	Indian Council of Agricultural Research
MCI	Medical Council of India
MHRD	Ministry of Human Resource Development
MIS	Management Information System
NAAC	National Assessment and Accreditation Council
NBA	National Board of Accreditation
NCTE	National Council For Teacher Education
PCI	Pharmacy Council of India
UNESCO	United Nations Educational, Scientific and Cultural Organization
UGC	University Grants Commission

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